



# Reserve Bank of New Zealand Amendment Act 2003

Public Act 2003 No 46  
Date of assent 20 August 2003  
Commencement see section 2

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**Reserve Bank of New Zealand  
Amendment Act 2003**

2003 No 46

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## The Parliament of New Zealand enacts as follows:

### 1 Title

- (1) This Act is the Reserve Bank of New Zealand Amendment Act 2003.
- (2) In this Act, the Reserve Bank of New Zealand Act 1989 is called “the principal Act”.

### 2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### Amendments to existing provisions

#### *Amendments to section 2*

### 3 Interpretation

(1) Section 2(1) of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**banking group** has the meaning given to it in the Orders in Council made under section 81

“**clearing house** means a person that provides clearing or settlement services for a payment system

“**designated payment system** has the meaning set out in section 156L

“**director**, except in relation to the Bank, means—

“(a) a person occupying the position of director by whatever name called:

“(b) in the case of an entity that does not have directors as such, any trustee, manager, or other person who acts in relation to that entity in the same or a similar fashion as a director would act were that entity a company incorporated in New Zealand under the Companies Act 1993

“**disclosure statement** means the document referred to in section 81(2)(a)

“**financial year** has the meaning given to it by section 157

“**home country supervisor** means any central bank, authority, or body in any country other than New Zealand that exercises functions in relation to a parent bank or an overseas incorporated registered bank that correspond with, or are similar to, those conferred on the Bank under Part V

“**home jurisdiction** means,—

“(a) in the case of an overseas person that is a body corporate, the country in which that body is incorporated:

“(b) in the case of an overseas person that is an unincorporated body, the country in which that body has its head office or principal place of business

“**New Zealand chief executive officer**, in relation to an overseas incorporated registered bank, means—

“(a) the most senior officer of that bank who is ordinarily resident in New Zealand; or

“(b) another person who may be nominated by that bank and agreed to in writing by the Bank; or

“(c) if section 82(3) applies, an employee of that bank who has been specified by the Bank under that section

“**non-voting security**, in relation to any body, means a specified security that does not confer a voting right

“**operator**, in relation to a payment system, means—

“(a) a clearing house; or

“(b) a settlement agent; or

“(c) any other person that provides clearing, settlement, or processing services to participants in that payment system

“**overseas bank** means any person that is formed, licensed, or registered as a bank in any country other than New Zealand

“**overseas person** means—

“(a) a body corporate incorporated outside New Zealand; or

“(b) an unincorporated body that has its head office or principal place of business outside New Zealand

“**parent bank** means an overseas bank that is a holding company of a registered bank

“**participant**, in relation to a payment system,—

“(a) means a person that participates in the payment system in accordance with the rules of that payment system; and

“(b) in the case of a designated payment system, includes an operator of the designated payment system if the designation under section 156M so provides

“**payment system**—

“(a) means a system or arrangement for—

“(i) the clearing or settlement of payment obligations; or

“(ii) the processing of payment instructions; and

“(b) includes any instruments, rules, and procedures that relate to the matters referred to in paragraph (a)

“**qualifying interest**, in relation to a specified security, means—

“(a) the legal or beneficial ownership of the specified security; or

- “(b) the power to exercise, or control the exercise of, any voting right attached to the specified security; or
- “(c) the power to acquire or dispose of the specified security; or
- “(d) the power to control the acquisition or disposition of the specified security by another person; or
- “(e) the powers referred to in paragraphs (b) to (d) under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the specified security

“**restricted word**—

“(a) means the words ‘bank’, ‘banker’, and ‘banking’; and

“(b) includes—

“(i) any of those words as part of any other word:

“(ii) a translation of those words into another language (whether or not the translation of those words is part of any other word)

“**significant influence**, in relation to a registered bank, means—

- “(a) 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
- “(b) a direct or indirect qualifying interest in 10% or more of the voting securities issued or allotted by the registered bank

“**specified security** has the meaning given to it by regulation 2(1) of the Overseas Investment Regulations 1995

“**trade mark** has the meaning given to it by section 5(1) of the Trade Marks Act 2002

“**voting right**, in relation to any body,—

- “(a) means a currently exercisable right to cast a vote at meetings of shareholders or members of that body; but
- “(b) does not include a right to vote that is exercisable only in 1 or more of the following circumstances:
  - “(i) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:
  - “(ii) on a proposal that affects rights attached to the security that confers the voting right:

- “(iii) on a proposal to put the body into liquidation:
  - “(iv) on a proposal for the disposal of the whole, or a material part, of the property, business, or undertaking of the body:
  - “(v) during the liquidation, receivership, bankruptcy, or statutory management of the body; and
  - “(c) does not include a right to vote that is exercisable only for a special, immaterial, or remote matter that is inconsequential to the control of the body
- “**voting security**, in relation to any body, means a specified security that confers a voting right.”
- (2) Section 2 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:
- “(2) For the purposes of section 36, Parts IV and V, and sections 179 and 179A, a person is an **associated person** of a financial institution or a registered bank, as the case may be, if—
- “(a) that person directly or indirectly controls the management of the financial institution or registered bank; or
  - “(b) that person has a direct or indirect qualifying interest in 20% or more of the voting or non-voting securities issued by the financial institution or registered bank; or
  - “(c) that financial institution or registered bank directly or indirectly controls the management of that person; or
  - “(d) that financial institution or registered bank has a direct or indirect qualifying interest in 20% or more of the voting or non-voting securities issued by that person.
- “(3) For the purposes of section 77A, **transaction** includes the—
- “(a) sale or transfer of property or securities; and
  - “(b) issue or allotment of securities; and
  - “(c) entering into, or giving effect to a provision in, a contract or arrangement; and
  - “(d) arriving at, or giving effect to, an understanding.
- “(4) For the purposes of Part V, a holding company of a registered bank has a **substantial interest** in a body if—
- “(a) that holding company directly or indirectly controls the management of that body; or
  - “(b) that holding company has a direct or indirect qualifying interest in 20% or more of the voting securities issued by that body.”



*Amendments to Part III***4 Incapacity of Governor and Deputy Chief Executive**

Section 47 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

“(5) While any of the following persons is acting as Governor in accordance with this section, he or she must be taken to be a director of the Bank:

“(a) the Deputy Chief Executive:

“(b) a person appointed to act as Governor, but who is not a director of the Bank.”

**5 Removal of Deputy Governor from office by Order in Council**

Section 50(2) of the principal Act is amended by repealing paragraph (a).

**6 New section 53A inserted**

The principal Act is amended by inserting, after section 53, the following section:

**“53A Board must prepare annual report**

“(1) The Board must prepare, for each financial year, a report setting out the Board’s assessment of the matters referred to in section 53(1).

“(2) The report must—

“(a) be signed by the chairperson and 1 other non-executive director; and

“(b) be delivered to the Minister within 3 months after the end of the financial year.

“(3) The report stands referred, by virtue of this section, to—

“(a) the House of Representatives; and

“(b) the committee of the House of Representatives that is responsible for the review of government finance and the Crown’s financial statements.”

**7 New section 54 substituted**

The principal Act is amended by repealing section 54, and substituting the following section:

**“54 Membership of Board**

- “(1) The Board must consist of—
- “(a) not less than 5, and not more than 7, non-executive directors appointed by the Minister; and
  - “(b) the Governor.
- “(2) The appointment of every non-executive director must be notified in the *Gazette*.
- “(3) The Governor is the only person employed in the service of the Bank who may be a director of the Bank.
- “(4) The validity of any act of the Board is not affected by—
- “(a) any vacancy in its membership; or
  - “(b) any defect in the appointment of a director; or
  - “(c) the fact that any non-executive director is disqualified from appointment under section 58.
- “(5) Subsection (3) is subject to sections 47 and 48.”

**8 New section 59A inserted**

The principal Act is amended by inserting, after section 59, the following section:

**“59A Chairperson of Board**

- “(1) The non-executive directors of the Bank must appoint 1 of their number, by majority vote, to be chairperson of the Board.
- “(2) A chairperson holds that office for a term of 12 months unless he or she—
- “(a) resigns from that office; or
  - “(b) is removed from that office, at any time, by a majority vote of the non-executive directors; or
  - “(c) ceases to be a non-executive director.
- “(3) A chairperson whose term of office has expired—
- “(a) is eligible for reappointment so long as he or she continues to be a non-executive director; and
  - “(b) continues to hold that office until a successor is appointed.
- “(4) A vacancy in the office of chairperson must be filled as soon as practicable in the manner set out in subsection (1).”

**9 New sections 60 to 60C substituted**

The principal Act is amended by repealing section 60, and substituting the following sections:

**“60 Meetings of Board**

- “(1) The Board may meet as often as necessary, but must meet at least 6 times each financial year.
- “(2) The chairperson, or any 2 directors, may, at any time, call a meeting of the Board.
- “(3) At any meeting of the Board, the quorum necessary for the transaction of business is 4 directors.
- “(4) All questions arising at any meeting of the Board that cannot be resolved by consensus must be decided by a majority of the votes cast by the directors present.
- “(5) If a vote is tied, the chairperson or, if the chairperson is not present, the director presiding at the meeting has a casting vote.
- “(6) Subject to this Act, the Board may regulate its own procedure.

**“60A Teleconference meeting**

A resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted if—

- “(a) a telephone or video conference of at least 4 directors is held; and
- “(b) notice of the conference has been given under section 60B and all reasonable efforts have been made to enable every director to participate in the conference; and
- “(c) each director who participates in the conference is able to individually express his or her views, and vote, on any question arising during the meeting; and
- “(d) the resolution is assented to by a majority of the directors participating in the conference.

**“60B Directors to be notified of meetings**

- “(1) The person or persons calling a meeting must ensure that each director is given—
  - “(a) at least 2 days’ notice of a meeting; or
  - “(b) if a meeting is to be convened as a matter of urgency, reasonable notice of the meeting.

- “(2) The notice must—
- “(a) indicate the business to be transacted at the meeting; and
  - “(b) be given in writing or, if the director to whom the notice is to be given agrees, orally.
- “(3) A notice in writing may be given by personal delivery, by post, or by electronic transmission (for example, by fax or email).
- “(4) At a meeting of the Board, any director may, with the leave of the chairperson or the majority of the directors present, raise any matter for the consideration of the Board, even though that matter has not been included in the notice of meeting under subsection (2)(a).
- “(5) For the purposes of subsection (1), it is enough if the person or persons calling a meeting made all reasonable efforts to ensure each director was given the notice by the time required under that subsection.

**“60C Who presides at meetings of Board**

- “(1) At all meetings of the Board, the chairperson presides if he or she is present and willing to do so.
- “(2) The non-executive directors present must appoint 1 of their number to be the chairperson for the meeting if—
- “(a) the chairperson is not present; or
  - “(b) there is no chairperson; or
  - “(c) the chairperson is present, but is unwilling or unable to preside.
- “(3) The person appointed under subsection (2) has and may exercise all the powers, duties, and functions of the chairperson for the purposes of that meeting.”

*New Part IV substituted*

**10 New Part IV substituted**

The principal Act is amended by repealing Part IV, and substituting the following Part:

**“Part IV****“Use of words ‘bank’, ‘banker’, and ‘banking’***“Limit on use of restricted words in name or title***“64 Limit on use of restricted words in name or title****“(1) No person may—**

**“(a) be formed, incorporated, or registered using a name or title that includes a restricted word; or**

**“(b) change a person’s name or title to a name or title that includes a restricted word; or**

**“(c) carry on any activity directly or indirectly in New Zealand (whether through an agent or otherwise) using a name or title that includes a restricted word.**

**“(2) Subsection (1) does not apply to—**

**“(a) the Bank; or**

**“(b) a registered bank; or**

**“(c) any person who is authorised by the Bank under section 65 to use a name or title that includes a restricted word but only to the extent that the person is acting within the scope of that authorisation; or**

**“(d) any person who is exempted under section 66 but only to the extent that the person is acting within the scope of that exemption.**

**“(3) Despite subsection 2(b), a registered bank must not use, without an authorisation from the Bank under section 65(1)(e), a name or title that includes a restricted word in respect of a unit trust of which the registered bank is a trustee or a manager within the meaning of the Unit Trusts Act 1960.**

**“(4) Subsection 2(b) does not extend to a person carrying on any activity by means of, or through the agency of, a registered bank.**

**“(5) A person commits an offence if the person contravenes this section.**

**“(6) The penalty for an offence against this section is set out in section 66M.**

**“(7) In this section (except subsection (1)(a) to (c)) and sections 65 and 66, **use**, in relation to a restricted word, means act in a manner prohibited by subsection (1)(a) to (c) (as the context requires).**

**“65 Bank may authorise use of restricted words in name or title**

**“(1) The Bank may authorise any of the following persons to use a name or title that includes a restricted word:**

**“(a) a person licensed or registered as a bank in a country other than New Zealand:**

**“(b) a class of persons licensed or registered as banks in a country other than New Zealand:**

**“(c) a person that is formed, incorporated, or registered to represent the interests of—**

**“(i) any registered bank; or**

**“(ii) any person connected with a registered bank:**

**“(d) an associated person of a registered bank:**

**“(e) a registered bank or an associated person of a registered bank that intends to use a name or title that includes a restricted word in respect of a unit trust of which the registered bank or the associated person is a trustee or manager within the meaning of the Unit Trusts Act 1960:**

**“(f) a person that is not a financial institution.**

**“(2) In the case of an authorisation under subsection (1)(a), the Bank must—**

**“(a) give the authorisation by notice in writing to the person; and**

**“(b) impose both of the following conditions:**

**“(i) the condition that the person use a particular name or title approved by the Bank; and**

**“(ii) the condition that the person carry on in New Zealand only those activities specified by the Bank in the notice.**

**“(3) In the case of an authorisation under subsection (1)(b), the Bank must—**

**“(a) give the authorisation by notice in the *Gazette*; and**

**“(b) impose the condition that each member of the class of persons carries on in New Zealand only those activities specified by the Bank in the notice in the *Gazette* in respect of the class to which that member belongs.**

**“(4) In the case of an authorisation under subsection (1)(c) to (f), the Bank must—**

**“(a) give the authorisation by notice in writing to the person; and**

- “(b) impose the condition that the person uses a particular name or title approved by the Bank.
- “(5) Nothing in subsections (2) to (4) prevents the Bank from imposing any other conditions to the authorisation that it thinks fit.
- “(6) The Bank may, at any time, revoke an authorisation, or vary or remove a condition of an authorisation, or add a condition of an authorisation, by,—
- “(a) in the case of an authorisation that relates to a person, notice in writing to the person; or
- “(b) in the case of an authorisation that relates to a class of persons, notice in the *Gazette*.
- “(7) Any authorisation given under this section applies to any other person (for example, the Registrar of Companies), but only to the extent that the acts of that person are necessary to allow the person to whom the authorisation is given to have the benefit of that authorisation.
- “66 **Certain persons exempt from application of section 64**  
Nothing in section 64(1) applies to a person using a name or title that includes a restricted word if—
- “(a) the restricted word signifies a geographic place name or the name of a natural person; and
- “(b) the name or title is not used in respect of a financial institution, or could not reasonably be mistaken for the name or title of a financial institution.
- “66A **Application of Companies Act 1993**  
Nothing in sections 65 and 66 affects or limits the following sections of the Companies Act 1993:
- “(a) sections 20 to 24 (which relate to company names):
- “(b) section 333 (which relates to the reservation of the name of an overseas company).
- “*Limit on use of restricted words in advertisement*
- “66B **Limit on use of restricted words in advertisement**
- “(1) No specified person may use a restricted word in any advertisement unless the advertisement contains a statement that complies with subsection (2).

- “(2) The statement must—
- “(a) state that the specified person is not a registered bank; and
  - “(b) be communicated in a manner that ensures, as far as is reasonably practicable, that the statement attracts the attention of the persons to whom the advertisement is directed.
- “(3) A specified person commits an offence if the specified person contravenes this section.
- “(4) The penalty for an offence against this section is set out in section 66M.
- “(5) In this section and sections 66D and 66M,—
- “**advertisement**—
    - “(a) means any thing used to promote—
      - “(i) the interests of a specified person; or
      - “(ii) the services or products of that person; and
    - “(b) includes a trade mark of a specified person; but
    - “(c) does not include the name or title of a specified person
  - “**specified person** means a person that—
    - “(a) is a financial institution; and
    - “(b) is not a registered bank.

*“Powers of Bank in relation to use of restricted words*

**“66C Power to obtain information**

- “(1) If the Bank believes or has reasonable grounds for believing that there has been a contravention of section 64 or section 66B, the Bank, for the purpose of determining whether there has been a contravention of either of those sections, may, by notice in writing, require any person to—
- “(a) produce to the Bank a document in the person’s possession, custody, or control;
  - “(b) supply the Bank with information or an explanation about any information.
- “(2) The Bank may exercise the power in subsection (1) only if the Bank has reasonable cause to believe that the person may have information or documents relevant to the purpose of that subsection.



- “(3) A person to whom a notice is given must comply with the notice within the period of time specified by the Bank (which period must be reasonable in the circumstances).
- “(4) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- “(5) The penalty for an offence against this section is set out in section 66M.

**“66D Power to require change of name, etc**

- “(1) If the Bank is satisfied on reasonable grounds that a person has contravened, or is contravening, section 64 or section 66B, it may, by notice in writing, require that person to—
  - “(a) change that person’s name or title to a name or title that does not include a restricted word:
  - “(b) cease using a restricted word in an advertisement:
  - “(c) cease carrying on any activity using a name or title that includes a restricted word.
- “(2) The Bank may require any person to whom a notice is given to supply the Bank with information or documents that may be necessary for the Bank to verify that the notice has been complied with.
- “(3) A person must comply with a requirement of the Bank under this section within the period of time specified by the Bank (which period must be reasonable in the circumstances).
- “(4) A person commits an offence if the person fails to comply with this section.
- “(5) The penalty for an offence against this section is set out in section 66M.

**“66E Power to appoint person to enter and search premises**

- “(1) This section applies if the Bank has reasonable cause to believe—
  - “(a) that any information or documents supplied to the Bank under section 66C or section 66D(2) are false or misleading in a material particular; or
  - “(b) that a person has failed to comply with any requirement to supply information or documents under section 66C or section 66D(2).

- “(2) If this section applies, the Bank may appoint, in writing, any suitably qualified person to enter and search any premises.
- “(3) A person appointed under subsection (2) may—
- “(a) inspect, remove, and take copies of any documents relating to the use of a restricted word that may be in the possession, custody, or control of any person; and
  - “(b) if necessary, require the reproduction in usable form of any information recorded or stored in those documents.
- “(4) A person commits an offence if, without lawful justification or excuse, the person hinders, obstructs, or delays the conduct of any search by a person appointed under subsection (2).
- “(5) The penalty for an offence against this section is set out in section 66M.

**“66F Requirements on entering and searching premises**

- “(1) A person appointed under section 66E(2) must not enter and search any premises, or inspect, remove, or take copies of any documents in the possession, custody, or control of any person, or require the reproduction in usable form of any information recorded or stored in any documents, unless—
- “(a) the occupier of the premises, or the person who has possession, custody, or control of the documents, agrees; or
  - “(b) the person appointed under section 66E(2) obtains a warrant under section 66I.
- “(2) A person authorised to enter and search any premises under a warrant must, on first entering those premises and, if requested, at any subsequent time, produce—
- “(a) evidence of that person’s authority to enter the premises; and
  - “(b) evidence of that person’s identity.

**“66G Confidentiality of information or documents**

- “(1) This section applies to information or documents supplied or disclosed to, or obtained by, the Bank for the purposes of, or in connection with, the exercise of powers conferred by this Part.
- “(2) The Bank, any officer or employee of the Bank, or a person appointed under section 66E(2) must not publish or disclose

any information or documents to which this section applies except—

- “(a) with the consent of the person to whom the information relates or of the person to whom the information is confidential; or
  - “(b) to the extent that the information is available to the public under any Act, including the Official Information Act 1982, or is otherwise publicly available; or
  - “(c) for the purposes of, or in connection with, the exercise of powers conferred by this Part; or
  - “(d) in connection with any investigation or inquiry (whether or not preliminary to any proceedings) in respect of, or any proceedings for, an offence against this Act or any other Act; or
  - “(e) to any central bank, authority, or body in any other country that exercises functions that correspond with, or are similar to, those conferred on the Bank under this Act for the purposes of the exercise by that central bank, authority, or body of those functions; or
  - “(f) to any person who the Bank is satisfied has a proper interest in receiving the information.
- “(3) The Bank, any officer or employee of the Bank, or a person appointed under section 66E(2) must not publish or disclose any information or documents under subsection (2)(e) or (f) unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of that information or those documents.
- “(4) A person referred to in subsection (5) commits an offence if the person contravenes this section.
- “(5) The persons are—
- “(a) any officer or employee of the Bank; or
  - “(b) a person appointed under section 66E(2).
- “(6) The penalty for an offence against this section is set out in section 66M.

**“66H Limits on further disclosure of information or documents published or disclosed under section 66G**

“(1) A person to whom any information or documents are published or disclosed under section 66G must not publish, disclose, or use that information or those documents unless the publication, disclosure, or use is,—

“(a) in the case of a publication or disclosure under section 66G(2)(a), in accordance with the terms and conditions of the consent referred to in that paragraph:

“(b) in the case of a publication or disclosure under section 66G(2)(c),—

“(i) for the purposes of, or in connection with, the exercise of powers conferred by this Part; and

“(ii) in accordance with any conditions that the Bank may have imposed:

“(c) in the case of a publication or disclosure under section 66G(2)(f),—

“(i) authorised by the Bank and in accordance with any conditions that the Bank may have imposed; or

“(ii) necessary or desirable for the performance of any function or exercise of any power conferred by any enactment.

“(2) A person commits an offence if the person contravenes this section.

“(3) The penalty for an offence against this section is set out in section 66M.

**“66I Procedure for obtaining warrants**

A Judge of the High Court may issue a warrant to a person appointed under section 66E(2) if the Judge is satisfied, on application in writing made on oath, that there are reasonable grounds for believing—

“(a) that any information or documents supplied to the Bank under section 66C or section 66D(2) are false or misleading in a material particular; or

“(b) that a person has failed to comply with any requirement to supply information or documents under section 66C or section 66D(2).

**“66J Effect of warrant**

- “(1) A warrant authorises the person named in it, at any time and, if necessary, by force, to—
- “(a) enter and search the premises specified in the warrant:
  - “(b) inspect, remove, and take copies of documents that the person executing the warrant believes on reasonable grounds may be relevant:
  - “(c) if necessary, require any information recorded or stored in those documents to be reproduced in usable form.
- “(2) The warrant continues in force for a period of 1 month or until the purpose for which it was granted has been satisfied, whichever is the lesser.
- “(3) Every person named in the warrant must, as soon as practicable after removing any documents from any premises, supply a copy of the documents to the person from whose possession, custody, or control the documents were removed.

**“66K Effect of proceedings**

- “(1) If any person commences any proceedings in any court in respect of the exercise of any powers conferred by section 66E, until a final decision in relation to those proceedings is given, the powers may be, or may continue to be, exercised as if the proceedings had not been commenced, and no person is excused from fulfilling any obligation under that section by reason of those proceedings.
- “(2) This section applies despite the provisions of any other Act or any rule of law.

**“66L Effect of final decision that exercise of powers under section 66E unlawful**

- “(1) This section applies if—
- “(a) any power conferred by section 66E has been exercised; and
  - “(b) that exercise has been declared to be unlawful in a final decision given in proceedings in respect of the exercise of that power.
- “(2) The Bank must ensure that, as soon as practicable after the decision is given,—
- “(a) any information supplied by a person and any documents or records obtained as a result of the unlawful

exercise of the power are returned to the person previously having possession, custody, or control of those documents or records, and any copies of those documents or records are destroyed:

- “(b) any documents or records derived from, or based on, the documents or records are destroyed.
- “(3) No information, documents, or records obtained as a result of the unlawful exercise of the power are admissible in evidence in any proceedings.

*“Penalty for offences against this Part*

**“66M Penalty for offences**

- “(1) A person who commits an offence against any of the provisions listed in subsection (2) is liable, on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000; and
  - “(b) in the case of a body corporate, to a fine not exceeding \$1,000,000.
- “(2) The provisions are—
- “(a) section 64 (which relates to the use of restricted words in a name or title):
  - “(b) section 66B (which relates to the use of restricted words in an advertisement):
  - “(c) section 66C (which relates to failing to produce a document or supply information to the Bank after being required to do so):
  - “(d) section 66D (which relates to failing to change a person’s name or title or cease using a restricted word in an advertisement or cease carrying on any activity after being required to do so):
  - “(e) section 66E (which relates to obstructing a person appointed to conduct a search):
  - “(f) section 66G (which relates to breaches of confidentiality provisions):
  - “(g) section 66H (which relates to further disclosures of information).”

*Amendments to Part V***11 Application for registration**

Section 70 of the principal Act is amended by adding the following subsections:

- “(4) A person commits an offence if the person provides false or misleading information to the Bank for the purposes of an application.
- “(5) The penalty for an offence against this section is set out in section 156AC.”

**12 Voluntary removal of name from register**

Section 71 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) The Bank must—
  - “(a) remove the name of the registered bank from the register on the date specified in the notice; and
  - “(b) within 7 days after that date, arrange for the publication in the *Gazette* of a notice that indicates the removal of that name.”

**13 New section 72 substituted**

The principal Act is amended by repealing section 72, and substituting the following section:

**“72 Offence for person who is not registered bank to hold itself out to be registered bank**

- “(1) A person commits an offence if the person—
  - “(a) is not a registered bank; and
  - “(b) uses any name, title, trade mark, style, designation, or description that represents or implies that the person is a registered bank.
- “(2) The penalty for an offence against this section is set out in section 156AC.”

**14 Determination of applications**

Section 73 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) In determining an application under section 70, the Bank must have regard to all of the following:

- “(a) the incorporation and ownership structure of the applicant; and
- “(b) the size and nature of the applicant’s business or proposed business, or any part of the applicant’s business or proposed business; and
- “(c) the ability of the applicant to carry on its business or proposed business in a prudent manner; and
- “(d) the standing of the applicant in the financial markets; and
- “(e) the suitability for their positions of the directors and senior managers of the applicant; and
- “(f) the standing of the owner of the applicant in the financial markets; and
- “(g) any other matters that may be prescribed in regulations.”

#### **15 New sections 73A and 73B inserted**

The principal Act is amended by inserting, after section 73, the following sections:

##### **“73A Further matters to which Bank must have regard if applicant is overseas person**

In determining an application from an overseas person, the Bank must, in addition to the matters set out in section 73(2), have regard to all of the following:

- “(a) the law and regulatory requirements of the applicant’s home jurisdiction that relate to—
  - “(i) the recognition and priorities of claims of creditors or classes of creditors in the event of the insolvency of the applicant; and
  - “(ii) the disclosure by the applicant of financial and other information of the kind that a registered bank must disclose under section 81; and
  - “(iii) the accounting and auditing standards applicable to the applicant; and
  - “(iv) the duties and powers of directors of the applicant; and
  - “(v) the licensing, registration, authorisation, and supervision of the applicant; and
- “(b) the nature and extent of the financial and other information disclosed to the public by the applicant.



**“73B Further matters to which Bank must have regard if applicant is subsidiary of overseas person**

In determining an application from a subsidiary of an overseas person, the Bank must, in addition to the matters set out in section 73(2), have regard to all of the following:

- “(a) the law and regulatory requirements of the home jurisdiction of the overseas person that relate to—
  - “(i) the disclosure by the overseas person of financial and other information of the kind that a registered bank must disclose under section 81; and
  - “(ii) the accounting and auditing standards applicable to the overseas person; and
  - “(iii) the duties and powers of the directors of the overseas person; and
  - “(iv) the licensing, registration, authorisation, and supervision of the overseas person; and
- “(b) the nature and extent of the financial and other information disclosed to the public by the overseas person.”

**16 New section 74 substituted**

The principal Act is amended by repealing section 74, and substituting the following section:

**“74 Conditions of registration**

- “(1) A person may be registered as a registered bank unconditionally or subject to any conditions that the Bank may impose.
- “(2) The Bank may, 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, remove, add to, or substitute any conditions of registration.
- “(3) The Bank must not exercise a power referred to in subsection (2) unless—
  - “(a) the Bank gives the registered bank not less than 7 days’ notice in writing of the Bank’s intention to do so; and
  - “(b) the notice contains, or is accompanied by, a statement of the Bank’s reasons; and
  - “(c) the registered bank has a reasonable opportunity to make submissions to the Bank; and
  - “(d) the Bank has regard to those submissions.

- “(4) The Bank may impose conditions that relate to any of the following matters:
- “(a) the matters to which the Bank must have regard under sections 73 to 73B in determining an application for registration, including any matters prescribed by regulations made under section 73(2)(g); and
  - “(b) the matters referred to in section 78, including any matters prescribed by regulations made under that section; and
  - “(c) the matters referred to in section 81, including any matters prescribed by an Order in Council made under that section.
- “(5) A registered bank commits an offence if the registered bank fails to comply with a condition of registration imposed by the Bank under this section.
- “(6) The penalty for an offence against this section is set out in section 156AB.”

## **17 Cancellation of registration**

- (1) The principal Act is amended by repealing section 77(1), and substituting the following subsection:
- “(1) The Minister may, by notice in writing to the Bank given in accordance with a recommendation of the Bank, direct the Bank to cancel the registration of a registered bank.”
- (2) Section 77(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:
- “(b) that, in relation to a registered bank,—
    - “(i) there has been a change in any of the matters to which the Bank must have regard under section 73 (including a change in any of the matters prescribed by regulations made under section 73(2)(g)); and
    - “(ii) the Bank considers the change to be materially adverse to the registered bank’s standing or financial position; or
  - “(ba) that, in relation to a registered bank,—
    - “(i) there has been a transfer of direct or indirect control of the registered bank; and

- “(ii) the Bank considers the transfer to be materially adverse to the registered bank’s standing or financial position; or
  - “(bb) that, in relation to a registered bank,—
    - “(i) there has been a change in any of the matters to which the Bank must have regard under section 73A or section 73B; and
    - “(ii) the Bank considers the change to be materially adverse; or”.
- (3) Section 77(2) of the principal Act is amended by—
  - (a) repealing paragraph (d):
  - (b) adding to paragraph (g) the words “or imposed by regulations made under this Act”.
- (4) Section 77 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:
  - “(5) The Bank must, as soon as practicable after receiving a notice from the Minister under subsection (1),—
    - “(a) inform the registered bank in writing of—
      - “(i) the fact that the Minister has directed the Bank to cancel the registration of the registered bank; and
      - “(ii) the grounds on which the Bank’s recommendation to cancel the registration of the registered bank was made; and
      - “(iii) the date of cancellation of the registration of the registered bank; and
    - “(b) publish a notice of the cancellation in the *Gazette*.”

## 18 New sections 77A and 77B inserted

The principal Act is amended by inserting, after section 77, the following sections:

### “77A Changes of ownership

- “(1) A person must obtain the written consent of the Bank before giving effect to a transaction if,—
  - “(a) in the case of a person who does not have a significant influence over a registered bank, the transaction would result in that person acquiring a significant influence over that registered bank; or
  - “(b) in the case of a person who has, with the consent of the Bank, acquired a significant influence over a registered bank, the transaction would result in that person

- increasing the level of the person's significant influence over that registered bank beyond the level permitted in the existing consent; or
- “(c) in the case of a person who acquired a significant influence over a registered bank before the commencement of the Reserve Bank of New Zealand Amendment Act 2003, the transaction would result in that person increasing the person's significant influence over that registered bank beyond the existing level.
- “(2) The Bank may, in giving its consent,—
- “(a) specify the level of significant influence that a person may have or acquire over any registered bank without the need for a further consent; and
- “(b) impose any terms and conditions the Bank thinks fit.
- “(3) The Bank may, at any time, by notice in writing, vary or revoke—
- “(a) a consent given under this section; or
- “(b) any term or condition of a consent.
- “(4) A person commits an offence if the person fails to comply with subsection (1).
- “(5) The penalty for an offence against this section is set out in section 156AA.
- “(6) For the purposes of this section, a reference to a registered bank is a reference to a registered bank that is not an overseas person.

**“77B Effect of section 77A on contracts, etc**

Nothing in section 77A invalidates any contract, or transfer of ownership, made without the written consent of the Bank.”

**19 Carrying on business in prudent manner**

- (1) Section 78(1)(b) of the principal Act is amended by inserting, after the expression “section 77(2)(f)”, the expression “or section 113(1)(e)”.
- (2) Section 78(1) of the principal Act is amended by inserting, after paragraph (f), the following paragraphs:
- “(fa) risk management systems and policies or proposed risk management systems and policies:

“(fb) arrangements for any business, or functions relating to any business, of the applicant or registered bank to be carried on by any person other than the applicant or the registered bank:”.

## **20 New section 80 substituted**

The principal Act is amended by repealing section 80, and substituting the following section:

### **“80 Credit rating of registered banks**

“(1) The Bank may, by notice in writing to any registered bank or to all registered banks or to all members of any class of registered banks, require each of those banks to—

“(a) obtain a rating of its creditworthiness or financial condition by a person or organisation nominated or approved by the Bank; and

“(b) maintain a current rating of the type referred to in paragraph (a).

“(2) The Bank may require a registered bank to publish the registered bank’s current rating, and all the qualifications to that rating, in the manner and with the frequency that the Bank directs.

“(3) A person commits an offence if the person fails to comply with this section.

“(4) The penalty for an offence against this section is set out in section 156AC.”

## **21 New sections 81 to 81AC substituted**

The principal Act is amended by repealing section 81, and substituting the following sections:

### **“81 Public disclosure of information or data by registered banks**

“(1) The Governor-General may, by Order in Council made on the advice of the Minister that is given in accordance with a recommendation of the Bank, prescribe information or data that must be published by—

“(a) all registered banks; or

“(b) any class of registered banks specified in the order.

“(2) A registered bank to which an Order in Council applies must publish the information or data specified in the order—

- “(a) in a document to be known as a disclosure statement;  
and
  - “(b) in the manner and with the frequency specified in the order.
- “(3) The information or data that may be prescribed in an Order in Council includes, without limitation, information or data about—
- “(a) the corporate matters of a registered bank; and
  - “(b) the financial matters of a registered bank; and
  - “(c) the prudential matters of a registered bank; and
  - “(d) any other matters relating to the business, operation, and management of a registered bank.
- “(4) The Order in Council must be published in the *Gazette*.
- “(5) The Regulations (Disallowance) Act 1989 applies to the Order in Council as if the order were a regulation within the meaning of section 2 of that Act.

**“81AA Further matters that may be prescribed**

- “(1) An Order in Council made under section 81 may, in addition to the matters referred to in section 81(3), require a registered bank to disclose information or data—
- “(a) about an associated person of the registered bank if the associated person is incorporated, domiciled, or resident in New Zealand:
  - “(b) about an associated person of the registered bank if the information or data is publicly available in the country in which the associated person is incorporated, domiciled, or resident and if that country is not New Zealand:
  - “(c) about any individual member of its banking group, whether or not the member is incorporated, domiciled, or resident in New Zealand:
  - “(d) about a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding company of the registered bank has a substantial interest.

- “(2) An Order in Council made under section 81 may also—
- “(a) prescribe the information that is required to be contained in accordance with generally accepted accounting practice (within the meaning of section 3 of the Financial Reporting Act 1993) in financial statements:
  - “(b) require the publication of financial statements and notes to those statements for any period or periods specified in the order:
  - “(c) require the information to be published in consolidated form:
  - “(d) require financial information that is required to be published to be taken from audited financial statements:
  - “(e) require the information that is required to be published to be audited and to be accompanied by an auditor’s report:
  - “(f) require a disclosure statement to contain any statements specified in the order that are made by—
    - “(i) the directors of the registered bank or persons authorised in writing by the directors of the bank; and
    - “(ii) in the case of an overseas incorporated registered bank, its New Zealand chief executive officer.

**“81AB Disclosure statement not required to include information or data about customers or clients of registered banks**

- “(1) Despite sections 81 and 81AA, a registered bank is not required to publish in a disclosure statement any information or data about the affairs of a particular customer or client of—
- “(a) the registered bank; or
  - “(b) an associated person of the registered bank; or
  - “(c) a company in which a holding company of the registered bank has a substantial interest.
- “(2) Nothing in subsection (1) applies to the publication by a registered bank of information or data about transactions with related parties of—
- “(a) the registered bank; or
  - “(b) an associated person of the registered bank; or
  - “(c) a company in which a holding company of the registered bank has a substantial interest.

- “(3) Subsection (1) does not extend to the publication of the following matters:
- “(a) the amount of any loan or risk exposure (without disclosing the identity of the particular customer or client to whom it relates); or
  - “(b) the number of loans or risk exposures that fall within a specified range of amounts and the actual amounts of those loans or risk exposures; or
  - “(c) the number of loans or risk exposures that fall within a specified range of percentages or are above a specified percentage, as the case may be, of the capital or equity of the registered bank, or an associated person of the registered bank, or the banking group or a company in which a holding company of a registered bank has a substantial interest, and the actual amounts involved.

**“81AC Duty to supply information or data to registered bank**

- “(1) This section applies to—
- “(a) an associated person of a registered bank; and
  - “(b) a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding company of a registered bank has a substantial interest.
- “(2) A person to whom this section applies must, on being required by a registered bank to do so for the purpose of enabling the registered bank to comply with an Order in Council made under section 81, supply the registered bank with any information or data that the registered bank may be required to disclose under section 81AA if that information or data—
- “(a) is in the possession, custody, or control of that person; and
  - “(b) is not in the possession, custody, or control of the registered bank.
- “(3) A person to whom this section applies commits an offence if, without lawful justification or excuse, the person fails to comply with a requirement of a registered bank under this section.
- “(4) The penalty for an offence against this section is set out in section 156AC.”



**22 New section 82 substituted**

The principal Act is amended by repealing section 82, and substituting the following section:

**“82 Disclosure statements must be signed**

“(1) Every disclosure statement that a registered bank is required to publish under section 81 must be dated and signed,—

“(a) in the case of a body corporate, by every director of the body corporate or by each director’s agent authorised in writing to do so; and

“(b) in the case of an overseas incorporated registered bank, by its New Zealand chief executive officer or that person’s agent authorised in writing to do so.

“(2) Every overseas incorporated registered bank must notify the Bank in writing of the name and address of its New Zealand chief executive officer and any subsequent changes to those details.

“(3) If an overseas incorporated registered bank fails to comply with subsection (2), the Bank may, after giving the registered bank 14 days’ notice in writing of its intention to do so, specify a particular employee of that registered bank to be its New Zealand chief executive officer for the purposes of this Act.

“(4) If the Bank exercises the power conferred by subsection (3), it must give notice in writing to the registered bank as soon as practicable.”

**23 New sections 89 to 89C substituted**

The principal Act is amended by repealing section 89, and substituting the following sections:

**“89 Offence to fail to publish required information in disclosure statement**

“(1) A registered bank commits an offence if, without lawful justification or excuse, the registered bank fails to publish information that it is required to publish in a disclosure statement under section 81.

“(2) The penalty for an offence against this section is set out in section 156AC.

**“89A Offence to publish false or misleading disclosure statements**

- “(1) If a disclosure statement that includes information that is false or misleading is published by a registered bank, all of the following persons commit an offence:
- “(a) the registered bank; and
  - “(b) every director of the registered bank who signed the disclosure statement or on whose behalf the disclosure statement was signed; and
  - “(c) in the case of an overseas incorporated registered bank, the New Zealand chief executive officer who signed the disclosure statement or on whose behalf the disclosure statement was signed.
- “(2) It is a defence to a prosecution for an offence against this section if—
- “(a) the defendant proves that the information was immaterial; or
  - “(b) in the case of a defendant who is director of a registered bank or a New Zealand chief executive officer of an overseas incorporated registered bank, that defendant proves that he or she had reasonable grounds to believe, and believed, up to the publication of the disclosure statement, that the information was true.
- “(3) The penalty for an offence against this section is set out in section 156AC.

**“89B Offence to fail to make most recent disclosure statement publicly available**

- “(1) A registered bank commits an offence if, without lawful justification or excuse, the registered bank fails to make its most recent disclosure statement publicly available in the manner set out in an Order in Council made under section 81.
- “(2) The penalty for an offence against this section is set out in section 156AB.

**“89C Other offences in relation to disclosure statements**

- “(1) A registered bank commits an offence if the registered bank fails to comply with a requirement of the Bank under section 83 for the registered bank to—

- “(a) publish a disclosure statement that does not contain false or misleading information; or
  - “(b) publish a disclosure statement that contains information that was previously omitted; or
  - “(c) take the corrective action specified by the Bank in a notice given under that section.
- “(2) The penalty for an offence against this section is set out in section 156AC.”

## **24 Civil liability**

Section 90 of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

- “(a) the registered bank; and
- “(b) every person holding office as a director of the registered bank at the time of the publication of the disclosure statement; and
- “(c) the New Zealand chief executive officer of an overseas incorporated registered bank at the time of the publication of the disclosure statement.”

## **25 New sections 93 to 95A substituted**

The principal Act is amended by repealing sections 93 to 95, and substituting the following sections:

### **“93 Supply of information by registered banks for purposes of prudential supervision**

- “(1) For the purposes of this Part, the Bank may, by notice in writing to any registered bank or by notice in the *Gazette* that applies to any specified class of registered banks, require the registered bank or, as the case may be, registered banks of that class to supply to the Bank any information, data, or forecasts about—
- “(a) the corporate matters of the registered bank:
  - “(b) the financial matters of the registered bank:
  - “(c) the prudential matters of the registered bank:
  - “(d) any other matters relating to the business, operation, or management of the registered bank.
- “(2) A registered bank may be required to supply information, data, or forecasts—

- “(a) relating to business carried on by the registered bank in New Zealand or elsewhere (whether that business is carried on as principal, broker, agent, or intermediary); and
  - “(b) in a consolidated form (if specified by the Bank).
- “(3) A notice may specify—
- “(a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and
  - “(b) the time by which, and the place in New Zealand at which, the information, data, or forecasts must be supplied.
- “(4) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.
- “(5) A registered bank commits an offence if, without lawful justification or excuse, the registered bank—
- “(a) fails to comply in any respect with any requirements of the Bank under this section; or
  - “(b) supplies information or data that the registered bank is required to supply under this section that is false or misleading in a material particular.
- “(6) The penalty for an offence against this section is set out in section 156AB.

**“93A Scope of notice under section 93**

The Bank may, by notice under section 93, require a registered bank or a specified class of registered banks to supply, without limitation, information, data, or forecasts in relation to—

- “(a) any associated person of a registered bank; or
- “(b) a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding company of a registered bank has a substantial interest.

**“93B Certain persons may be required to supply information to registered banks**

- “(1) A person referred to in section 93A(a) or (b) must, on being required by a registered bank to do so, supply the registered

bank with information, data, or forecasts relating to that person in order to enable the registered bank to comply with a notice under section 93.

- “(2) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- “(3) The penalty for an offence against this section is set out in section 156AB.

**“93C Supply of information by other persons for purposes of prudential supervision**

- “(1) If the Bank has reasonable grounds to believe that a person has information, data, or forecasts that the Bank could require a registered bank or a class of registered banks to supply under section 93, it may, by notice in writing to that person, require that person to supply the information, data, or forecasts to the Bank.
- “(2) A notice may specify—
  - “(a) the periods for which, and the form in which, the information, data, or forecasts must be supplied; and
  - “(b) the time by which, and the place in New Zealand at which, the information, data, or forecasts must be supplied.
- “(3) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.
- “(4) A person commits an offence if, without lawful justification or excuse, the person—
  - “(a) fails to comply with any requirements of the Bank under this section; or
  - “(b) supplies information or data that the person is required to supply under this section that is false or misleading in a material particular.
- “(5) The penalty for an offence against this section is set out in section 156AB.

**“94 Requirement that information, data, or forecasts be audited**

- “(1) The Bank may, by notice in writing, require a registered bank or other person to obtain an audit, by an auditor approved by

the Bank, of any information, data, or forecasts that the registered bank or other person, as the case may be, is required to supply under section 93 or section 93C.

- “(2) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- “(3) The penalty for an offence against this section is set out in section 156AA.

**“95 Bank may require report relating to registered banks, etc**

- “(1) The Bank may, by notice in writing to a registered bank, require that registered bank to supply the Bank with a report or series of reports, prepared by a person approved by the Bank, on—
  - “(a) the corporate matters of the registered bank:
  - “(b) the financial matters of the registered bank:
  - “(c) the prudential matters of the registered bank:
  - “(d) any other matters relating to the business, operation, or management of the registered bank:
  - “(e) any of the matters referred to in paragraphs (a) to (d) in relation to—
    - “(i) any associated person of the registered bank:
    - “(ii) a body incorporated in New Zealand, or an overseas company registered under section 337 of the Companies Act 1993, in which a holding company of the registered bank has a substantial interest.
- “(2) A person referred to in subsection (1)(e)(i) or (e)(ii) must, if required to do so by a registered bank, supply information relating to that person in order to enable the registered bank to comply with a notice under this section.
- “(3) A person commits an offence if, without lawful justification or excuse, the person fails to comply with this section.
- “(4) The penalty for an offence against this section is set out in section 156AC.

**“95A Bank may require report under section 95 to be published**

- “(1) The Bank may, by notice in writing to a registered bank, require that the report or series of reports, as the case may be,

that has been prepared under section 95 in relation to the registered bank be published by that registered bank in the form specified in the notice.

- “(2) A registered bank commits an offence if, without lawful justification or excuse, the registered bank fails to comply with this section.
- “(3) The penalty for an offence against this section is set out in section 156AC.”

## **26 New heading and sections 98A and 98B inserted**

The principal Act is amended by inserting, after section 98, the following heading and sections:

*“Access to information by home country supervisor*

### **“98A Access to information by home country supervisor**

- “(1) This section applies to—
- “(a) a registered bank; and
  - “(b) any member of the registered bank’s banking group (being a member that has a physical presence in New Zealand).
- “(2) For the purpose of the exercise by a home country supervisor of its supervisory functions, the Bank may authorise a home country supervisor to—
- “(a) conduct an inspection of any person to whom this section applies; or
  - “(b) require any person to whom this section applies to supply to the home country supervisor any information, data, or forecasts relating to that person.
- “(3) The information, data, or forecasts that a home country supervisor may be authorised to obtain may include, without limitation, information about the affairs of a particular customer or client of a person to whom this section applies.
- “(4) The Bank may grant an authorisation only if it is satisfied that sufficient provision exists to protect the confidentiality of the information, data, or forecasts obtained or required by the home country supervisor.
- “(5) An authorisation may be—
- “(a) granted for the period or periods that the Bank thinks fit; and
  - “(b) varied, revoked, or amended by the Bank at any time.

- “(6) The Bank must give notice in writing to a person to whom this section applies if the Bank—
- “(a) grants an authorisation in relation to that person; or
  - “(b) varies, revokes, or amends that authorisation.
- “(7) This section has effect despite anything to the contrary in any other enactment or rule of law.
- “(8) For the purposes of this section, a member of a registered bank’s banking group has a physical presence in New Zealand if that member—
- “(a) has an office in New Zealand; or
  - “(b) has an agent in New Zealand.

**“98B Duties of person on receipt of notice under section 98A**

- “(1) A person to whom section 98A applies must, on receipt of a notice from the Bank under that section, comply with that notice by, as the case may be,—
- “(a) permitting the home country supervisor to conduct an inspection of that person; or
  - “(b) supplying the home country supervisor with the required information, data, or forecasts within the time, and at the place, specified in the notice.
- “(2) A person commits an offence if, without lawful justification or excuse, the person—
- “(a) fails to comply in any respect with any requirements notified by the Bank under this section; or
  - “(b) supplies any information or data that the person is required to supply under this section that is false or misleading in a material particular.
- “(3) The penalty for an offence against this section is set out in section 156AA.”

**27 New section 99 substituted**

The principal Act is amended by repealing section 99, and substituting the following section:

**“99 Powers to obtain information and documents**

- “(1) This section applies if the Bank has reasonable cause to believe—
- “(a) that any information or data published in a disclosure statement by a registered bank under section 81 or



- section 83 is false or misleading in a material particular;  
or
- “(b) that a registered bank has failed to publish information or data that it is required to publish in a disclosure statement under section 81 or section 83; or
  - “(c) that any information or data supplied to the Bank by a registered bank under section 93 is false or misleading in a material particular; or
  - “(d) that any information or data supplied by a person to a registered bank under section 93B or to the Bank under section 93C, as the case may be, is false or misleading in a material particular; or
  - “(e) that a registered bank or a person, as the case may be, has failed to comply with any requirement to supply information, data, or forecasts under section 93 or section 93B or section 93C; or
  - “(f) that a registered bank has failed to comply with section 95.
- “(2) If this section applies, the Bank may,—
- “(a) by notice in writing to the registered bank or person, require that registered bank or person to supply to the Bank, within the time specified in the notice, the information or data specified in the notice; or
  - “(b) appoint, in writing, any suitably qualified person to enter and search any premises and inspect, remove, and take copies of any documents in the possession, custody, or control of any person and, if necessary, require the reproduction in usable form of any information recorded or stored in those documents.
- “(3) A person commits an offence if, without lawful justification or excuse, the person hinders, obstructs, or delays, in the conduct of an inspection under this section, any person duly authorised to make that inspection.
- “(4) A registered bank or person commits an offence if, without lawful justification or excuse, the registered bank or person—
- “(a) fails to comply with any requirement of the Bank under subsection (2)(a); or
  - “(b) supplies any information or data that is required to be supplied under subsection (2)(a) that is false or misleading in a material particular.

- “(5) The penalty for an offence against this section is set out,—
- “(a) in the case of an offence against subsection (3), in section 156AB; and
  - “(b) in the case of an offence against subsection (4), in section 156AC.”

## **28 Procedure for obtaining warrants**

- (1) Section 106(1) of the principal Act is amended by inserting, before paragraph (a), the following paragraphs:
- “(aaa) that any information or data published in a disclosure statement by a registered bank under section 81 or section 83 is false or misleading in a material particular; or
  - “(aa) that a registered bank has failed to publish information that it is required to publish in a disclosure statement under section 81 or section 83; or”.
- (2) Section 106(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraphs:
- “(ba) that any information or data supplied by a person to a registered bank under section 93B or to the Bank under section 93C, as the case may be, is false or misleading in a material particular; or
  - “(bb) that a person has failed to comply with any requirement to supply information, data, or forecasts to a registered bank under section 93B, or to the Bank under section 93C as the case may be; or”.
- (3) Section 106(1) of the principal Act is amended by omitting the expression “99(1)(e)”, and substituting the expression “99(2)(b)”.
- (4) Section 106(2) of the principal Act is amended by omitting the expression “111”, and substituting the expression “113”.
- (5) Section 106 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:
- “(3) A warrant issued under subsection (1) must identify the paragraph in that subsection under which it has been issued.”

**29 Heading above section 111 substituted and sections 111 and 112 repealed**

The principal Act is amended by repealing the heading above section 111 and sections 111 and 112, and substituting the following heading:

*“Reserve Bank may give directions”.*

**30 New sections 113 to 113B substituted**

The principal Act is amended by repealing section 113, and substituting the following sections:

**“113 Bank may give directions**

“(1) The Bank may give a registered bank or an associated person of a registered bank a direction, in writing, if it has reasonable grounds to believe that—

“(a) the registered bank or associated person is insolvent or is likely to become insolvent; or

“(b) the registered bank or associated person is about to suspend payment or is unable to meet its obligations as and when they fall due; or

“(c) the affairs of the registered bank or associated person are being conducted in a manner prejudicial to the soundness of the financial system; or

“(d) the circumstances of the registered bank or associated person are such as to be prejudicial to the soundness of the financial system; or

“(e) the business of the registered bank has not been, or is not being, conducted in a prudent manner; or

“(f) any of the following persons has failed to comply with any requirement imposed by or under this Act or regulations made under this Act:

“(i) the registered bank:

“(ii) a director of the registered bank:

“(iii) in the case of an overseas incorporated registered bank, its New Zealand chief executive officer; or

“(g) any of the following persons has been convicted of an offence against this Act:

“(i) the registered bank:

“(ii) a director of the registered bank:

“(iii) in the case of an overseas incorporated registered bank, its New Zealand chief executive officer; or

- “(h) the registered bank has failed to comply with a condition of its registration.
- “(2) The Bank must obtain the consent of the Minister before giving a direction under this section.
- “(3) A direction given under this section must state the grounds on which it is given.
- “(4) The Bank may, with the consent of the Minister,—
- “(a) amend or modify a direction; or
  - “(b) replace a direction with another direction; or
  - “(c) revoke a direction.
- “(5) To avoid doubt, the Bank may exercise the power conferred by subsection (1) by giving a direction to a registered bank in respect of an associated person of that registered bank, and vice versa.

#### “113A Scope of directions

A direction given under section 113 may require a registered bank or an associated person of a registered bank to—

- “(a) consult with the Bank immediately, and from time to time, about the circumstances of the registered bank or of an associated person of the registered bank and the methods of resolving any difficulties facing the registered bank or the associated person; or
- “(b) carry on business, or any part of its business, in accordance with the direction; or
- “(c) cease to carry on its business, or any part of its business, in accordance with the direction; or
- “(d) ensure that any officer or employee of the registered bank or associated person ceases to take part in the management or conduct of its business except with the permission of the Bank and so far as that permission extends; or
- “(e) remove or replace any of the directors of an associated person of the registered bank; or
- “(f) remove or replace its auditor or appoint an auditor approved by the Bank; or
- “(g) take the action that is specified in the direction to address a breach of any condition of its registration; or
- “(h) take the action that is specified in the direction to address any circumstances of financial difficulties; or

“(i) take any other action that may be specified in the direction.

**“113B Power to remove, replace, or appoint directors**

“(1) This section applies if the Bank has reasonable grounds to believe that—

“(a) any of the circumstances referred to in section 113(1) exists; and

“(b) it is necessary to remove, replace, or appoint a director of a registered bank or of an associated person of a registered bank.

“(2) If this section applies, the Bank may—

“(a) remove or replace a director of any registered bank or of an associated person of any registered bank; or

“(b) appoint any person as a director of any registered bank or of an associated person of any registered bank.

“(3) The Bank must—

“(a) obtain the consent of the Minister before exercising the power conferred by subsection (2); and

“(b) exercise that power by giving notice in writing to—  
“(i) the director or the person concerned; and  
“(ii) if applicable, the Registrar of Companies.

“(4) A notice given under subsection (3)(b)(ii) is sufficient compliance with section 159 of the Companies Act 1993 as long as the notice is accompanied by the form of consent and certificate required under section 152 of that Act.

“(5) This section has effect despite any enactment, rule of law, or the terms of the constitution of, or the instrument or contract creating, a registered bank or an associated person of a registered bank.”

**31 New section 116 substituted**

The principal Act is amended by repealing section 116, and substituting the following section:

**“116 Miscellaneous provisions with respect to directions and dispositions**

“(1) A direction given under section 113 is taken to have been given on delivery to the head office, registered office, principal place of business in New Zealand, or address for service of

the registered bank or associated person of the registered bank.

- “(2) If the Bank has reasonable grounds to believe that 1 or more of the circumstances listed in section 113(1) exist, it may, with the consent of the Minister, by notice in writing to the parties, approve any sale or other disposition of the whole or part of the capital or business undertaking of the registered bank or associated person of the registered bank specified in the notice.
- “(3) If the Bank grants an approval under subsection (2), the provisions of any enactment requiring any consent, licence, permission, or clearance or other authority do not apply as a condition of the legality or validity of the sale or other disposition.
- “(4) For the purposes of this section, **address for service**, in relation to a registered bank, means the address for service specified in a disclosure statement published in accordance with section 81.”

### **32 Statutory management of registered banks and associated persons**

- (1) Section 117 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) If any question arises as to whether, on the date on which a statutory manager was appointed, an act was done or a transaction was entered into or effected before or after the appointment, that act or transaction must, in the absence of proof to the contrary, be treated as having been done or entered into or effected, as the case may be, after the appointment of the statutory manager.”
- (2) Section 117(1)(b) of the principal Act is amended by adding the words “for a specified period”.
- (3) Section 117 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:
- “(2) If an Order in Council is made under subsection (1), every subsidiary of a registered bank declared to be subject to statutory management, except any subsidiary declared to be a subsidiary to which the order does not apply, is subject to statutory management and the appointment of a statutory

manager for the specified period in respect of that registered bank also applies to those subsidiaries.

- “(2A) If a registered bank acquires a subsidiary after it has been declared to be subject to statutory management under subsection (1), that subsidiary is not subject to statutory management unless a further Order in Council is made declaring that subsidiary to be subject to statutory management.”
- (4) Section 117 of the principal Act is amended by adding the following subsection:
- “(6) A person appointed under subsection (1)(b) has all the rights and powers conferred, and all the duties imposed, on a person appointed under section 101 and, without limitation, the following provisions apply, with any necessary modifications, as if that person were appointed under section 101:
- “(a) section 102 (which relates to powers to carry out an investigation of the affairs of a registered bank); and
  - “(b) section 103 (which sets out offences in relation to investigations); and
  - “(c) section 104 (which sets out the requirements that must be complied with by a person carrying out an investigation).”

### **33 Grounds on which registered bank may be declared to be subject to statutory management**

Section 118 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) The Bank must not make a recommendation under section 117 unless—
- “(a) it is satisfied on reasonable grounds that 1 or more of the circumstances listed in section 113(1)(a) to (e) exist; or
  - “(b) a registered bank or an associated person of a registered bank has failed to comply with a direction given under section 113.”

### **34 Considerations affecting exercise of powers by statutory manager**

- (1) Section 121(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraphs:

- “(b) provide the reports that the Bank may require as to the state of the affairs, business, and statutory management of the registered bank to persons specified by the Bank (including, but not limited to, the Bank) in the form and with the frequency that the Bank may require:
- “(c) provide the information that an advisory committee appointed under section 119 may reasonably require as to the affairs, business, and statutory management of the registered bank.”
- (2) Section 121 of the principal Act is amended by adding the following subsection:
- “(3) A statutory manager may refuse to supply information to an advisory committee under subsection (2)(c) if the Bank considers that the refusal is appropriate and gives its written approval to the statutory manager accordingly.”

### **35 Moratorium**

- (1) Section 122 of the principal Act is amended by repealing subsections (5) and (6), and substituting the following subsection:
- “(5) Nothing in subsection (1)(a), (b), and (d) to (h) limits or prevents any person from taking any of the actions specified in those paragraphs in relation to an obligation incurred or a right granted under a deed, instrument, trust, or contract entered into by a registered bank after the date on which, and the time at which, that registered bank was declared to be subject to statutory management.”
- (2) Section 122(7) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:
- “(c) nothing in subsection (1) limits or prevents the exercise of any right referred to in paragraphs (d) to (f) of that subsection in respect of any property of that registered bank to the extent that the right is exercised to enforce, or to assist in enforcing, the due performance, by that registered bank, of obligations entered into by that registered bank under a recognised multilateral netting agreement (within the meaning of section 310A of the Companies Act 1993).”
- (3) Section 122 of the principal Act is amended by adding the following subsections:



- “(8) In the case of netting under the rules of a designated payment system,—
- “(a) nothing in subsection (1) limits or prevents the exercise of any rights relating to the calculation of a netted balance under those rules; and
  - “(b) nothing in subsection (1) limits or prevents the exercise of any right referred to in paragraphs (d) to (f) of that subsection in respect of any property of that registered bank if the right that is exercised—
    - “(i) is provided under the rules of the designated payment system; and
    - “(ii) has been granted to secure, or to assist in securing, the due performance, by that registered bank, of obligations entered into by that registered bank under those rules.
- “(9) For the purpose of subsection (8), **netted balance** and **netting** have the meanings set out in section 156L.”

### **36 Statutory manager may suspend payment of money owing**

- (1) Section 127 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:
- “(1) The statutory manager of a registered bank may, despite the terms of any contract,—
- “(a) suspend in whole or in part the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person; and
  - “(b) cancel the obligation to provide funding to any person.
- “(2) A suspension or cancellation by a statutory manager under subsection (1) does not constitute a breach or repudiation of any contract entered into by the registered bank with any person.”
- (2) Section 127(3) of the principal Act is amended by inserting, after the word “obligation” in the first place where it occurs, the words “, or the cancellation by the statutory manager of any obligation to provide funding,”.
- (3) Section 127(4) of the principal Act is amended by inserting, after the words “section 93C of the Insolvency Act 1967”, the words “or section 156R”.

**37 New section 143A inserted**

The principal Act is amended by inserting, after section 143, the following section:

**“143A Continuation of statutory management**

“(1) This section applies to a registered bank, an associated person of a registered bank, or a subsidiary of a registered bank, that has been removed from the New Zealand register under section 317 of the Companies Act 1993 while subject to statutory management under this Act.

“(2) If a person to whom this section applies is restored to the New Zealand register under section 328 of the Companies Act 1993, the person continues to be subject to statutory management from the date that person is so restored.”

**38 New section 145 substituted**

The principal Act is amended by repealing section 145, and substituting the following section:

**“145 Obligations incurred by statutory manager**

“(1) Any obligations incurred by a statutory manager of a registered bank in the course of his or her duties as statutory manager are incurred by that statutory manager on behalf of the registered bank, and the statutory manager does not incur personal liability for those obligations.

“(2) In the winding up or liquidation of a registered bank or an associated person of a registered bank or a subsidiary of a registered bank, all amounts required to satisfy obligations incurred by the statutory manager on behalf of the registered bank, associated person, or subsidiary must be paid in priority to all other debts.”

**39 Section 146 repealed**

The principal Act is amended by repealing section 146.

**40 New heading and sections 156AA to 156AC inserted**

The principal Act is amended by inserting, after section 156, the following heading and sections:

*“Penalties for offences against this Part***“156AA Penalty for miscellaneous offences**

“(1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—

“(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000:

“(b) in the case of a body corporate, to a fine not exceeding \$500,000.

“(2) The provisions are—

“(a) section 77A (which relates to failing to comply with the requirement for consent to be sought from the Bank in the event of a significant change of ownership):

“(b) section 94 (which relates to failing to comply with a requirement from the Bank that information, data, or forecasts be audited):

“(c) section 98B(2)(a) (which relates to failing to comply with the requirements notified by the Bank in relation to a home country supervisor):

“(d) section 98B(2)(b) (which relates to supplying any information or data to a home country supervisor that is false or misleading in a material particular):

“(e) section 105 (which relates to the misuse of confidential information):

“(f) section 115 (which relates to the unauthorised disclosure of the fact that a direction has been given).

**“156AB Penalty for offences relating to supply of information, etc**

“(1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—

“(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000:

“(b) in the case of a body corporate, to a fine not exceeding \$1,000,000.

“(2) The provisions are—

“(a) section 74 (which relates to failing to comply with a condition of registration):

- “(b) section 89B (which relates to failing to make the most recent disclosure statement publicly available):
- “(c) section 93 (which relates to a registered bank failing to comply with provisions concerning the supply of information for the purposes of prudential supervision and to supplying information that is false or misleading in a material particular):
- “(d) section 93B (which relates to a person failing, after being required by a registered bank to do so, to supply the registered bank with information, data, or forecasts relating to that person in order to enable the registered bank to comply with a notice under section 93):
- “(e) section 93C (which relates to a person failing to comply with provisions concerning the supply of information for the purposes of prudential supervision and to supplying information that is false or misleading in a material particular):
- “(f) section 99(3) (which relates to hindering, obstructing, or delaying the conduct of an inspection).

**“156AC Penalty for offences relating to registration of banks, disclosure statements, prudential supervision of registered banks, etc**

- “(1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—
  - “(a) in the case of an individual, to imprisonment for a term not exceeding 18 months or to a fine not exceeding \$200,000:
  - “(b) in the case of a body corporate, to a fine not exceeding \$2,000,000.
- “(2) The provisions are—
  - “(a) section 70 (which relates to providing false or misleading information for the purposes of an application for registration):
  - “(b) section 72 (which relates to falsely holding out to be a registered bank):
  - “(c) section 80 (which relates to failing to obtain or maintain a current credit rating):

- “(d) section 81AC (which relates to failing to supply information or data to a registered bank to enable the registered bank to comply with an Order in Council made under section 81):
- “(e) section 89 (which relates to failing to publish information that is required to be published in a disclosure statement):
- “(f) section 89A (which relates to publishing a disclosure statement that includes information that is false or misleading):
- “(g) section 89C(1)(a) (which relates to failing to publish a disclosure statement that does not contain false or misleading information after being required to do so under section 83):
- “(h) section 89C(1)(b) (which relates to failing to publish a disclosure statement that contains information that was previously omitted after being required to do so under section 83):
- “(i) section 89C(1)(c) (which relates to failing to take the corrective action specified by the Bank in a notice given under section 83 after being required to do so under that section):
- “(j) section 95 (which relates to failing to supply a report required by the Bank):
- “(k) section 95A (which relates to failing to forward a report prepared under section 95 as required by the Bank):
- “(l) section 99(4) (which relates to failing to comply with a requirement from the Bank to supply information for the purposes of an inspection and to supplying information that is false or misleading in a material particular):
- “(m) section 103(1) (which relates to hindering, obstructing, or delaying an investigation, etc):
- “(n) section 103(2) (which relates to failing to comply with a requirement of a person appointed to carry out an investigation, etc)
- “(o) section 114(1) (which relates to failing to comply with a direction):
- “(p) section 114(2) (which relates to obstructing or hindering, etc, a registered bank from giving effect to a direction):

- “(q) section 126 (which relates to transferring or removing from New Zealand any property or assets of a registered bank that is subject to statutory management):
- “(r) section 150 (which relates to failing to deliver books, records, etc, to a statutory manager):
- “(s) section 151(1)(a) (which relates to destroying, altering, etc, any book, document, or record relating to a registered bank that is subject to statutory management):
- “(t) section 151(1)(b) (which relates to failing or refusing to answer a statutory manager’s question about any book, document, etc, relating to a registered bank that is subject to statutory management, and giving a false answer to that question).”

#### **41 Other amendments to Part V**

Part V of the principal Act is amended in the manner indicated in Schedule 1.

### **Part 2**

#### **New Parts VB and VC inserted in principal Act**

#### **42 New Parts VB and VC inserted in principal Act**

The principal Act is amended by inserting, after Part VA, the following Parts:

#### **“Part VB**

#### **“Oversight of payment systems**

#### *“General*

#### **“156B Exercise of powers under this Part**

The powers conferred on the Bank by this Part must be exercised for the purpose of promoting the maintenance of a sound and efficient financial system.

#### *“Supply of information relating to payment systems*

#### **“156C Requirement to supply information relating to payment system**

- “(1) The Bank may, by notice in writing to any person referred to in subsection (2), require that person to supply any information or data relating to a payment system.

- “(2) A notice may be given to—
- “(a) an operator of a payment system; or
  - “(b) any person who is wholly or partly responsible for the operation of a payment system; or
  - “(c) a participant in a payment system.
- “(3) A notice may specify—
- “(a) the periods for which, and the form in which, the information or data must be supplied; and
  - “(b) the time by which, and the place in New Zealand at which, the information or data must be supplied.
- “(4) The Bank may, by a subsequent notice, vary, revoke, or amend a notice.

**“156D Offence to fail to supply information**

- “(1) A person commits an offence if the person, without lawful justification or excuse,—
- “(a) fails to supply information or data in accordance with section 156C or fails to comply with any requirement of the Bank under that section; or
  - “(b) supplies information or data in accordance with section 156C that is false or misleading in a material particular.
- “(2) The penalty for an offence against this section is set out in section 156J.

**“156E Requirement that information be audited**

- “(1) The Bank may, by notice in writing to any person referred to in section 156C(2), require that person to obtain an audit of any information or data supplied in accordance with section 156C if the Bank has reasonable grounds to believe that the information or data is inadequate or inaccurate.
- “(2) Every audit must be conducted by a suitably qualified independent person who is approved by the Bank.

**“156F Offence not to comply with requirement for audit**

- “(1) A person commits an offence if the person fails, without lawful justification or excuse, to comply with a requirement under section 156E(1) for that person to obtain an audit.
- “(2) The penalty for an offence against this section is set out in section 156J.

*“Disclosure of information relating to payment systems***“156G Disclosure of information**

- “(1) The Bank may publish or disclose any information or data supplied in accordance with section 156C only if—
- “(a) the information or data is available to the public under any Act or is otherwise publicly available information; or
  - “(b) the information or data is in a statistical or summary form; or
  - “(c) the publication or disclosure of the information or data is for the purposes of, or in connection with, the exercise of powers conferred by this Act; or
  - “(d) the publication or disclosure of the information or data is to any central bank, authority, or body in any other country that exercises functions that correspond with, or are similar to, those conferred on the Bank under this Act, and the Bank is satisfied that the information or data will be used by that central bank, authority, or body for the purpose of exercising those functions; or
  - “(e) the publication or disclosure of the information or data is to any person who the Bank is satisfied has a proper interest in receiving the information; or
  - “(f) the publication or disclosure of the information or data is with the consent of the person to whom the information relates or of the person to whom the information is confidential.
- “(2) The Bank must not publish or disclose information or data under subsection (1)(d) or (e) unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of that information or data.
- “(3) An officer or employee of the Bank must not publish or disclose any information or data supplied in accordance with section 156C except for the purposes of, or in connection with, the exercise of powers conferred by this Act.
- “(4) An officer or employee of the Bank commits an offence if the officer or employee contravenes this section.
- “(5) The penalty for an offence against this section is set out in section 156J.



**“156H Limits on further disclosure of information**

- “(1) A person to whom any information or data is published or disclosed must not publish, disclose, or use that information or data unless the publication, disclosure, or use is,—
- “(a) in the case of a publication or disclosure under section 156G(1)(c),—
    - “(i) for the purposes of, or in connection with, the exercise of powers conferred by this Act; and
    - “(ii) in accordance with any conditions that may be imposed by the Bank:
  - “(b) in the case of a publication or disclosure under section 156G(1)(e),—
    - “(i) authorised by the Bank and in accordance with any conditions that the Bank may have imposed; or
    - “(ii) necessary or desirable for the exercise of any function or power conferred by any enactment:
  - “(c) in the case of a publication or disclosure under section 156G(1)(f), in accordance with the terms and conditions of the consent referred to in that paragraph.
- “(2) A person commits an offence if the person contravenes this section.
- “(3) The penalty for an offence against this section is set out in section 156J.

**“156I Application of other enactments to information published or disclosed under section 156G**

Nothing in any Act, other than this Act or the Official Information Act 1982, requires the Bank or any person to whom information or data has been published or disclosed under section 156G to make that information or data available to any other person.

*“Penalties for offences against this Part***“156J Penalties for offences**

- “(1) A person who commits an offence under any of the provisions listed in subsection (2) is liable, on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$50,000; and

- “(b) in the case of a body corporate, to a fine not exceeding \$500,000.
- “(2) The provisions are—
- “(a) section 156D (which relates to failing to supply information relating to a payment system):
- “(b) section 156F (which relates to failing to comply with a requirement for an audit):
- “(c) section 156G (which relates to disclosure of information supplied in accordance with section 156C):
- “(d) section 156H (which relates to further disclosure of information).

## “Part VC “Designated payment systems

### “General

#### “156K Exercise of powers under this Part

The powers conferred on the Governor-General, the Minister, and the Bank by this Part must be exercised for the purposes of—

- “(a) promoting the maintenance of a sound and efficient financial system; or
- “(b) avoiding significant damage to the financial system that could result from the failure of a participant in a payment system.

#### “156L Definitions for this Part

In this Part, unless the context otherwise requires,—

“**contact person**, in relation to a payment system, has the meaning set out in section 156M(2)(c)

“**designated payment system** means a payment system that is declared as a designated payment system under section 156M

“**insolvency** means,—

- “(a) in the case of a company or other body corporate,—
- “(i) liquidation under Part XVI of the Companies Act 1993; or
- “(ii) statutory management under Part III of the Corporations (Investigation and Management) Act 1989; or

- “(iii) statutory management under Part V; or
- “(iv) liquidation, winding up, statutory management, or other similar process under any other enactment or rule of law (whether of New Zealand or of another country); and

“(b) in the case of an individual, being adjudged a bankrupt under the Insolvency Act 1967 or any corresponding enactment (whether of New Zealand or of another country)

“**netted balance** means any amount calculated under the netting provisions of the rules of a designated payment system as the net debit payable by, or on behalf of, a participant in the designated payment system to, or on behalf of, another participant in that system for all or any claims or obligations to which those rules apply

“**netting** means the conversion into 1 net claim or obligation, or the set off, of different claims or obligations between participants in a payment system that results from the issue and receipt of payment instructions involving 2 or more participants in the payment system or that is otherwise provided for under the rules of the payment system,—

- “(a) whether on a bilateral or multilateral basis; and
- “(b) whether or not through the interposition of an operator of the payment system; and
- “(c) whether or not the obligations or claims constitute mutual credits, mutual debts, or other mutual dealings; and
- “(d) whether or not the obligations or claims are denominated in New Zealand currency

“**payment instruction** means an instruction by a participant in a payment system—

- “(a) that is made in accordance with the rules of that payment system; and
- “(b) that results, or is intended to result, in 1 or more settlements being effected

“**rules,—**

- “(a) in relation to a payment system, means the rules of the payment system (whether made under bylaws, agreements, procedures, contracts, or other documents) that

are evidenced in writing and that provide, among other things, for—

- “(i) the basis on which payment instructions are given; and
- “(ii) the basis on which payments are calculated; and
- “(iii) the basis on which settlements are effected (either on a gross basis or using netting); and
- “(iv) any action to be taken if a participant in the payment system is unable, or likely to become unable, to meet the participant’s obligations to any or all of the following:
  - “(A) an operator of the payment system:
  - “(B) another participant in the payment system:
  - “(C) any other party to those rules; and
- “(b) in the case of a designated payment system, means the rules of that payment system that are contained in documents specified in the designation under section 156M; and includes any amendments to those rules that have been notified to, and agreed by, the Bank

“**settlement** means—

- “(a) the making of a payment—
  - “(i) that is done in accordance with a payment instruction; and
  - “(ii) that is on a gross basis or that uses netting; and
  - “(iii) whether by way of book entry on the accounts of a central bank or the operator of a designated payment system or otherwise; or
- “(b) any other act that discharges a payment obligation in accordance with a payment instruction.

### *“Designation*

#### “156M Designation of payment system

- “(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, declare any payment system to be a designated payment system.
- “(2) The order must specify—
  - “(a) the payment system that is the subject of the designation; and

- “(b) the documents that evidence the rules of that payment system; and
  - “(c) the name or title of a person to whom notices relating to the designation must be given (**the contact person**).
- “(3) The order may also specify—
- “(a) conditions to which the designation is subject; and
  - “(b) that a particular operator is a participant in the payment system that is the subject of the designation.

**“156N Bank’s recommendation subject to procedure in sections 156V to 156X**

The procedure set out in sections 156V to 156X must be followed by the Bank when it makes a recommendation under section 156M(1).

*“Effect of designation*

**“156O Rules of designated payment system are valid and enforceable**

- “(1) The rules of a designated payment system are valid and enforceable despite any enactment or rule of law to the contrary.
- “(2) However, subsection (1) applies only to the extent that the rules provide for—
- “(a) the basis on which payment instructions are given; and
  - “(b) the basis on which payments are calculated; and
  - “(c) the basis on which settlements are effected (either on a gross basis or using netting); and
  - “(d) any action to be taken if a participant in the designated payment system is unable, or likely to become unable, to meet the participant’s obligations to any or all of the following:
    - “(i) an operator of the designated payment system:
    - “(ii) another participant in the designated payment system:
    - “(iii) any other party to those rules.

**“156P Settlements must not be reversed, etc**

- “(1) A settlement that is effected under the rules of a designated payment system must not, whether in whole or in part, be

reversed, repaid, recovered, or set aside despite any enactment or rule of law to the contrary.

- “(2) Subsection (1) extends to any application made to a New Zealand court by a liquidator from another country to reverse, repay, recover, or set aside a settlement (whether in whole or in part) that relates to an insolvency in that country.

**“156Q Limits on application of section 156P(1)**

- “(1) Section 156P(1) does not apply to a settlement that is effected under the rules of a designated payment system if—

“(a) a participant in the designated payment system in respect of whom the settlement is effected becomes insolvent; and

“(b) the settlement is effected after the commencement of that insolvency.

- “(2) Despite subsection (1), section 156P(1) applies to the settlement if—

“(a) the settlement is effected within 24 hours of the commencement of the insolvency; and

“(b) the contact person can demonstrate that the contact person did not have notice of the commencement of the insolvency at the time that the settlement was effected.

- “(3) For the purposes of subsection (2), a contact person is taken to have notice of the commencement of an insolvency if—

“(a) the contact person fails to make any inquiries into the matter that an honest and reasonable person would have made in the circumstances; or

“(b) the contact person fails to have regard to any public notice of the commencement of the insolvency that an honest and reasonable person would have had regard to in the circumstances.

**“156R Netting is valid and enforceable**

If the rules of a designated payment system provide for netting, any netting under those rules is valid and enforceable despite any enactment or rule of law to the contrary.

**“156S Certain provisions of Companies Act 1993 and of Insolvency Act 1967 not to apply to netting**

The following provisions do not apply to any netting under the rules of a designated payment system:

- “(a) sections 310A to 310O of the Companies Act 1993;
- “(b) sections 93A to 93H of the Insolvency Act 1967.

**“156T Limits on effect of section 156O or section 156P or section 156R**

- “(1) Nothing in section 156O or section 156P or section 156R prevents—
  - “(a) the operation of any enactment or rule of law in relation to an underlying transaction (including, without limitation, sections 56, 292, 297, and 298 of the Companies Act 1993 and section 56 of the Insolvency Act 1967); or
  - “(b) any party from taking action against another party that has acted fraudulently or dishonestly so long as the remedy sought or obtained in respect of that action does not affect the application of section 156O or section 156P or section 156R.
- “(2) If a person brings an action under any enactment or rule of law in relation to an underlying transaction (including, without limitation, sections 56, 292, 297, and 298 of the Companies Act 1993 and section 56 of the Insolvency Act 1967), that person may produce evidence of a settlement before the court for the purpose of proving that—
  - “(a) a participant received value by means of that settlement; and
  - “(b) the value received was an element of the underlying transaction.
- “(3) In this section, **underlying transaction**—
  - “(a) means a transaction that gives rise to—
    - “(i) a payment; or
    - “(ii) a payment obligation; but
  - “(b) does not include—
    - “(i) a payment instruction; or
    - “(ii) a settlement in accordance with the rules of a designated payment system.

**“156U Certain enactments prevail over sections 156O, 156P, and 156R**

The following enactments prevail over sections 156O, 156P, and 156R:

- “(a) sections 122(8) and 127(4):
- “(b) sections 42(8) and 44(4) of the Corporations (Investigation and Management) Act 1989.

*“Procedure for making designation*

**“156V Application for designation**

- “(1) A person who wishes to have a payment system declared as a designated payment system may apply to the Bank.
- “(2) An application must be accompanied by—
  - “(a) a copy of the rules of the payment system and any information required by the Bank; and
  - “(b) the application fee (if any) that is determined by the Bank and approved by the Minister by notice in the *Gazette*.

**“156W Consideration of application**

- “(1) The Bank must consider any application made in accordance with section 156V.
- “(2) In considering an application, the Bank may have regard to any or all of the following matters:
  - “(a) the purpose and scope of the payment system:
  - “(b) the rules of the payment system:
  - “(c) any laws or regulatory requirements relating to the operation of the payment system and the extent to which the payment system complies with those laws or regulatory requirements:
  - “(d) the importance of the payment system to the financial system:
  - “(e) any other matters that the Bank considers appropriate.

**“156X Decision on application**

- “(1) After considering an application, the Bank may—
  - “(a) make a recommendation to the Minister that the payment system to which the application relates be declared to be a designated payment system under section 156M; or



“(b) refuse to make that recommendation.

“(2) If subsection (1)(b) applies, the Bank must give notice in writing to the applicant stating—

“(a) that the Bank refuses to make a recommendation that the payment system to which the application relates be declared to be a designated payment system under section 156M; and

“(b) the reasons for the refusal.

*“Further provisions relating to designation*

**“156Y Variation of designation**

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, vary any designation made under section 156M—

“(a) by amending any of the matters referred to in section 156M(2)(b) and (c) and (3)(b); or

“(b) by revoking or amending any condition to which the designation is subject; or

“(c) by making the designation subject to a new condition.

**“156Z Revocation of designation**

The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, revoke any designation made under section 156M.

**“156ZA Settlement and netting not affected by variation or revocation of designation**

The variation or revocation of a designation made under section 156M does not affect the application of sections 156O, 156P, and 156R to settlements that were effected, and netting that took place, before the variation or revocation.

**“156ZB Matters Bank may have regard to in recommending variation or revocation of designation**

In determining whether to make a recommendation that any designation made under section 156M be varied or revoked, the Bank may have regard to any or all of the following matters:

- “(a) the purpose and scope of the designated payment system:
- “(b) the rules of the designated payment system:
- “(c) any laws or regulatory requirements relating to the operation of the designated payment system and the extent to which the designated payment system complies with those laws or regulatory requirements:
- “(d) the importance of the designated payment system to the financial system:
- “(e) any failure to comply with any condition to which the designation is subject:
- “(f) any other matters that the Bank considers appropriate.

**“156ZC Procedure for variation or revocation of designation**

- “(1) Before making a recommendation that any designation made under section 156M be varied or revoked, the Bank must—
  - “(a) give the contact person notice of—
    - “(i) the reasons for proposing to vary or revoke the designation; and
    - “(ii) the fact that the contact person may make submissions to the Bank in relation to the proposed variation or revocation; and
  - “(b) give the contact person an opportunity to make those submissions within a time period that the Bank considers reasonable in the circumstances; and
  - “(c) consider any submissions made by the contact person during that time period.
- “(2) The notice referred to in subsection (1)(a) may be given either in writing or orally depending on the circumstances of the particular case.

*“Supply of information*

**“156ZD Supply of information relating to designated payment system**

- “(1) The Bank may, by notice in writing, require any or all of the following persons to supply the Bank with any information relating to any designated payment system:
  - “(a) an operator of the designated payment system:
  - “(b) a participant in the designated payment system:
  - “(c) the contact person of the designated payment system.

- “(2) The Bank may exercise the power conferred by subsection (1) only if the Bank considers that the information is reasonably required to enable it to perform its functions and duties under this Part.
- “(3) A notice under subsection (1) may specify—
- “(a) the periods for which, and the form in which, the information must be supplied; and
  - “(b) the manner in which the information must be verified.
- “(4) A person commits an offence if the person, without lawful justification or excuse, fails to supply information in accordance with this section and is liable, on summary conviction,—
- “(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$100,000;
  - “(b) in the case of a body corporate, to a fine not exceeding \$1,000,000.

**“156ZE Contact person must be notified of insolvency**

- “(1) This section applies if—
- “(a) a participant in a designated payment system (**participant A**) becomes insolvent;
  - “(b) any other participant whose settlements are effected by participant A through that designated payment system becomes insolvent.
- “(2) If this section applies, participant A must, as soon as practicable after becoming aware of the insolvency, notify that fact to the contact person of that designated payment system.
- “(3) It is sufficient compliance with the requirement to notify the contact person under subsection (2) if—
- “(a) participant A takes all reasonable steps to comply with that requirement; or
  - “(b) the contact person was already aware of the commencement of the insolvency by the time participant A had to notify the contact person under that subsection.”

### Part 3 Miscellaneous

#### *Consequential amendment to Part VI*

#### **43 Funding agreements**

Section 159(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraphs:

“(da) Part VB:

“(db) Part VC:”.

#### *Consequential amendments to Part VII*

#### **44 New sections 175A and 175B inserted**

The principal Act is amended by inserting, after section 175, the following sections:

##### **“175A Privilege against self-incrimination no excuse**

A person is not excused from answering any question, supplying any information, producing any document, or providing any explanation under this Act on the ground that to do so would or might incriminate or tend to incriminate that person.

##### **“175B Admissibility of self-incriminating statements**

“(1) A self-incriminating statement made orally by a person (whether or not the statement is recorded in writing) in the course of answering any question, or supplying any information, or producing any document, or providing any explanation, may be used in evidence against that person only in a prosecution for any offence where the person gives evidence inconsistent with the statement.

“(2) Despite subsection (1), any statement made in relation to—

“(a) a refusal or failure to answer any question, supply any information, produce any document, provide any explanation, or comply with any other requirement may be used in evidence against that person in a prosecution for any offence under this Act arising from that refusal or failure:

“(b) the answering of any question in a way that is false or misleading in a material particular, or the supply of any information, or the production of any document, or the provision of any explanation that is false or misleading in a material particular, may be used in evidence against

that person in a prosecution for any offence under this Act arising from that act.”

**45 New section 177 substituted**

The principal Act is amended by repealing section 177, and substituting the following section:

**“177 Time limit for prosecutions**

Despite section 14 of the Summary Proceedings Act 1957, an information for an offence against this Act may be laid,—

“(a) in the case of an offence against section 28 or section 30, within 3 years from the time when the matter of the information arose; or

“(b) in any other case, within 6 years from the time when the matter of the information arose.”

**46 Section 179 substituted**

The principal Act is amended by repealing section 179, and substituting the following section:

**“179 Protection from liability**

“(1) This section applies to—

“(a) every statutory manager of a registered bank or of an associated person of a registered bank; and

“(b) every officer or employee of the Bank; and

“(c) every person appointed under section 66E or section 99 or section 101.

“(2) No person to whom this section applies is personally liable for an act done or omitted to be done in the exercise or performance in good faith of that person’s functions, duties, or powers under this Act.”

**47 New section 179A inserted**

The principal Act is amended by inserting, after section 179, the following section:

**“179A Indemnity**

“(1) The Crown indemnifies the persons listed in subsection (2) for any liability that arises from the exercise or purported exercise of, or omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was in bad faith.

- “(2) The persons are—
- “(a) every statutory manager of a registered bank or of an associated person of a registered bank:
  - “(b) every officer or employee of the Bank:
  - “(c) every person appointed under section 66E or section 99 or section 101:
  - “(d) every member of an advisory committee:
  - “(e) the Bank.
- “(3) Any money required for the purposes of this section must be paid out of the Crown Bank Account without further appropriation than this section.
- “(4) The indemnity conferred by subsection (1) extends to legal costs incurred in defending a proceeding.
- “(5) Within 12 sitting days of the making of any payment under this section, the Minister must present to the House of Representatives a report which contains details of the circumstances giving rise to the liability of the Crown, the amount of the payment, the person to whom the payment was made and any other relevant matters.”

*Amendments to other Acts and revocation*

**48 Amendments to other Acts and revocation**

- (1) The Acts specified in Schedule 2 are amended in the manner indicated in that schedule.
- (2) The Reserve Bank of New Zealand (Registration of Banks) Regulations (No 2) 2001 (SR 2001/32) are revoked.

*Transitional provisions*

**49 Deputy Governors cease to be directors of Bank on commencement of this Act**

- (1) On the commencement of this Act, every Deputy Governor ceases to hold office as a director of the Bank.
- (2) A Deputy Governor is not entitled to any compensation for—
  - (a) loss of office as a director; or
  - (b) any change in his or her conditions of employment arising from that loss of office.

**50 Savings relating to authorisations or consents under Part IV of principal Act**

Any authorisations or consents relating to the use of a restricted word that were granted under section 65 of the principal Act before the commencement of this Act remain in force.

**51 Temporary exemption from Part IV of principal Act**

- (1) This section applies to any person who,—
- (a) immediately before the commencement of this Act, was lawfully entitled to use, or was lawfully using, a name or title that included a restricted word; and
  - (b) after the commencement of this Act, can no longer lawfully use that name or title.
- (2) A person to whom this section applies may, despite anything in Part IV of the principal Act, continue to use that name or title for a period of 6 months commencing on the date of commencement of this Act.

**52 Existing applications**

An application for registration as a registered bank under the principal Act that has been made, but not determined or withdrawn, before the date of commencement of this Act must continue to be dealt with in accordance with the principal Act and any regulations made under that Act as if this Act had not been enacted.

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## Schedule 1

s 41

### Other amendments to Part V of principal Act

#### Section 71

Omit from subsection (4)(a) the expression “section 99(1)(d)” and substitute the expression “section 99(2)(a)”.

Omit from subsection (4)(b) the expression “section 99(1)(e)” and substitute the expression “section 99(2)(b)”.

Omit from subsection 4(d) the words “notice is in force under section 111” and substitute the words “direction is in force under section 113”.

Omit from subsection (5)(a) the expression “section 99(1)(d)” and substitute the expression “section 99(2)(a)”.

Omit from subsection (5)(b) the expression “section 99(1)(e)” and substitute the expression “section 99(2)(b)”.

Omit from subsection (5)(d) the words “notice is in force under section 111” and substitute the words “direction is in force under section 113”.

#### Section 83

Insert in paragraph (d), after the word “was”, the word “previously”.

#### Section 96

Insert, after the words “registered bank” in the first place where they occur, the words “or an associated person of a registered bank”.

Insert, after the words “registered bank” in the second and third places where they occur, the words “or associated person”.

#### Section 97

Omit from the heading to this section the words “**registered bank**”.

Insert, after the words “registered bank”, the words “or associated person”.

#### Section 100

Omit the expression “section 99(1)(e)” and substitute the expression “section 99(2)(b)”.

#### Section 101

Omit the expression “111” and substitute the expression “113”.

Insert, after the words “registered bank” in the first place where they occur, the words “or associated person of a registered bank”.

Add the words “or associated person of that registered bank”.



**Section 102**

Insert, after the words “registered bank” in the first place where they occur, the words “or associated person of a registered bank”.

Insert, after the words “registered bank” in each subsequent place where they occur, the words “or associated person”.

Insert, after subsection (1):

“(1A) Any questioning under subsection (1)(c) may be carried out by any person appointed under section 101, or a barrister or solicitor acting on behalf of that person, who may require the person who is subject to the questioning to take an oath or make an affirmation.”

**Section 103**

Omit from subsection (1)(b) the words “by that person”.

Omit from subsection (1)(c) the words “required to be supplied” and substitute the words “, or provides an answer to any question, required to be supplied or provided”.

Insert in subsection (2), after the words “registered bank”, the words “or associated person of the registered bank”.

Omit from subsection (2)(b) the words “required to be supplied” and substitute the words “, or provides an answer to any question, required to be supplied or provided”.

Repeal subsection (3) and substitute:

“(3) The penalty for an offence against this section is set out in section 156AC.”

**Section 105**

Omit the words “section 99(1)(e) or section 101” in each place where they occur and substitute in each case the words “section 99(2)(b), section 101, or section 119”.

Omit from subsection (2)(b) the words “or in a public document” and substitute the words “or is otherwise publicly available information”.

Repeal subsection (7) and substitute:

“(7) A person referred to in subsection (7A) commits an offence if the person contravenes this section.

“(7A) The persons are—

“(a) any officer or employee of the Bank; or

“(b) a person appointed under section 99(2)(b), section 101, or section 119.

“(7B) The penalty for an offence against this section is set out in section 156AA.”

**Section 109**

Omit the expression “subsection (1)(c)” in both places where it occurs and substitute in each case the expression “subsection (2)(a)”.

Omit the expression “subsection (1)(d)” in both places where it occurs and substitute in each case the expression “subsection (2)(b)”.

Omit from paragraph (b)(ii) the expression “111” and substitute the expression “113”.

**Section 110**

Omit from paragraph (b)(ii) the expression “111” and substitute the expression “113”.

**Section 114**

Add:

“(3) The penalty for an offence against this section is set out in section 156AC.”

**Section 115**

Omit from the heading to this section the word “**notice**” and substitute the word “**direction**”.

Omit from subsection (1) the words “that a notice has been given under section 111 of this Act or that a direction has been given under section 113 of this Act” and substitute “that a direction has been given under section 113 or that a notice has been given under section 113B”.

Omit from subsection (2) the words “notice or direction” in each place where they occur and substitute in each case the words “direction or notice”.

Omit from subsection (3) the words “under subsection 1(c) or (d) or subsection 2(c) or (d) of section 113 of this Act” and substitute the words “requiring the actions set out in section 113A(d) or section 113A(e) or section 113A(f)”.

Add:

“(4) The penalty for an offence against this section is set out in section 156AA.”

**Section 119**

Omit from subsection (1) the words “in the *Gazette*” and substitute the words “in writing to the statutory manager of that registered bank or associated person”.

Omit from subsection (4) the words “in the *Gazette*” and substitute the words “in writing”.

**Section 119**—continued

Omit from subsection (5) the words “in the *Gazette*” and substitute the words “in writing”.

Add:

“(8) A notice under subsection (1) or subsection (5) must specify the date on which it comes into force (which date must not be earlier than the date on which the Minister signed the notice).

“(9) Every notice given under this section must be published in the *Gazette* as soon as practicable.”

**Section 123**

Omit from the heading to this section the expression “1955” and substitute the expression “1993”.

**Section 126**

Repeal subsection (2) and substitute:

“(2) A person commits an offence if the person contravenes subsection (1).

“(2A) The penalty for an offence against this section is set out in section 156AC.”

**Section 136(1)(a)**

Omit the expression “the Companies Act 1955 or”.

Omit the words “either of those Acts” and substitute the words “that Act”.

**Section 138**

Omit from subsection (4) the words “the Companies Act 1955 or”.

**Section 141**

Repeal subsection (1) and substitute:

“(1) The Minister may, by notice in writing to the statutory manager of a registered bank that is given in accordance with the recommendation of the Bank, terminate the appointment of that statutory manager for inability to perform the functions of the office or for bankruptcy or if the Minister is of the opinion that the statutory manager has failed to perform the statutory manager’s duties satisfactorily.”

Omit from subsection (3) the words “the Governor-General may, by Order in Council, on the advice of the Minister given on the recommendation of the Bank, appoint a person to replace that statutory manager” and substitute the words “the Minister may, by notice published in the *Gazette*, appoint a person to replace that statutory manager for a specified period”.

**Section 141**—continued

Omit from subsection (3A) the words “an Order in Council is made” and substitute the words “a notice is published in the *Gazette*”.

Omit from subsection (3A) the words “the order” and substitute the words “the notice”.

Repeal subsection (4) and substitute:

“(4) A statutory manager continues in office until his or her successor is appointed despite—

“(a) his or her resignation; or

“(b) his or her period of appointment having expired.

“(5) A registered bank continues to be subject to statutory management under section 117 even though its statutory manager—

“(a) has had his or her appointment terminated, or

“(b) has resigned from office; or

“(c) has died, or

“(d) has ceased to hold office because of the expiry of his or her period of appointment:

“(6) The Bank must publish a notice given by the Minister under this section in the *Gazette* as soon as practicable.”

**Section 148**

Insert, after the words “registered bank”, the words “or associated person of the registered bank or a subsidiary of the registered bank”.

Add:

“(2) The statutory manager may, with the approval of the Bank, apportion the costs, charges, and expenses referred to in subsection (1) between the registered bank and any associated person or subsidiary of the registered bank that is also subject to statutory management in the amounts that the statutory manager considers just and equitable.

“(3) This section prevails over section 145.”

**Section 150**

Omit from subsection (1) the words “possession and control” and substitute the words “possession, custody, or control”.

Omit from subsection (2) the words “and is liable on summary conviction to a fine not exceeding \$5,000 and to a further fine not exceeding \$100 for every day after the expiration of those 7 days during which the offence has continued”.

**Section 150**—continued

Add:

“(5) The penalty for an offence against this section is set out in section 156AC.”

**Section 151**

Omit from subsection (1) the words “, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000,”.

Insert in subsection (1)(b), after the word “false”, the words “or misleading”.

Insert, after subsection (1):

“(1A) The penalty for an offence against this section is set out in section 156AC.”

**Section 153**

Omit from subsection (1) the words “the Companies Act 1955” and substitute the words “the Companies Act 1993”.

Repeal subsections (2) and (3).

Omit from subsection (8) the words “subsections (2), (4), and (7) of this section” and substitute the words “subsections (4), (7), and (9)”.

Add:

“(9) To avoid doubt, the Bank or any other person is not a director (within the meaning of section 126 of the Companies Act 1993) of any registered bank or an associated person of the registered bank by reason only of the Bank or that other person exercising the powers conferred by this Part.”

**Section 154**

Repeal subsection (1) and substitute:

“(1) The statutory manager of a registered bank must appoint 1 or more persons (whether as individuals or as the members from time to time of any firm or firms) who are qualified for appointment as auditors of a company under the Companies Act 1993 and who have been approved by the Bank to be the auditor of that registered bank.”

Omit from subsection (4) the words “Governor-General in Council” in the first place where they occur and substitute the words “Minister, by notice in writing to the auditor,”.

**Section 154**—continued

Omit from subsection (4) the words “Governor-General in Council” in the second place where they occur and substitute the word “Minister”.

Add:

“(8) A notice given under subsection (4) must be published in the *Gazette* as soon as practicable.”

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s 48(1)

## Schedule 2

### Amendments to other Acts

#### Companies Act 1993 (1993 No 105)

Omit paragraph (b) from the definition of **onerous property** in section 269(2) and substitute:

“(b) does not include—

“(i) a netting agreement to which sections 310A to 310O apply; or

“(ii) any contract of the company that constitutes a transaction under a netting agreement; or

“(iii) a payment instruction or a settlement under the rules of a payment system that is declared to be a designated payment system under Part VC of the Reserve Bank of New Zealand Act 1989.”

#### Corporations (Investigation and Management) Act 1989

(1989 No 11)

Add to section 42:

“(8) In the case of netting under the rules of a payment system that is declared to be a designated payment system under Part VC of the Reserve Bank of New Zealand Act 1989,—

“(a) nothing in subsection (1) limits or prevents the exercise of any rights relating to the calculation of a netted balance under those rules; and

“(b) nothing in subsection (1) limits or prevents the exercise of any right referred to in paragraphs (d) to (f) of that subsection in respect of any property of that corporation if the right that is exercised—

“(i) is provided under the rules of the designated payment system; and

“(ii) has been granted to secure, or to assist in securing, the due performance, by that corporation, of obligations entered into by that corporation under those rules.

“(9) For the purpose of subsection (8), **netted balance**, **netting**, and **rules** have the meanings set out in section 156L of the Reserve Bank of New Zealand Act 1989.”

Insert in section 44(4), after the words “section 93C of the Insolvency Act 1967”, the words “or section 156R of the Reserve Bank of New Zealand Act 1989”.

**Insolvency Act 1967 (1967 No 54)**

Repeal section 93I and substitute:

**“93I Disclaimer of onerous property and termination of netting agreement not permitted**

“(1) The Assignee must not—

“(a) disclaim, under section 75 or section 78, any property of a bankrupt that relates to a transaction under a netting agreement:

“(b) terminate, under section 76, a netting agreement or any contract of a bankrupt that constitutes a transaction under a netting agreement:

“(c) if the bankrupt is a participant in a designated payment system, disclaim or terminate a payment instruction or a settlement except in accordance with the rules of the designated payment system.

“(2) In this section,—

“(a) **participant** has the meaning set out in section 2(1) of the Reserve Bank of New Zealand Act 1989; and

“(b) **designated payment system, payment instruction, rules, and settlement** have the meanings set out in section 156L of that Act.”

**Private Savings Banks (Transfer of Undertakings) Act 1992**  
(1992 No 21)

Repeal section 13.

**Summary Proceedings Act 1957 (1957 No 87)**

Omit from Part II of the First Schedule the item relating to the Reserve Bank of New Zealand Act 1989.

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### **Legislative history**

23 April 2002	Introduction (Bill 211–1)
1 October 2002	First reading and referral to Finance and Expenditure Committee
14 April 2003	Reported from Finance and Expenditure Committee (Bill 211–2)
5 August 2003	Second reading
12 August 2003	Committee of the whole House (Bill 211–3)
14 August 2003	Third reading
20 August 2003	Royal assent

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

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