

Reserve Bank seeks feedback on Deposit Takers Bill

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The Reserve Bank of New Zealand (RBNZ) is seeking feedback on draft legislation for a proposed Deposit Takers Bill (the Bill).

The Bill, if enacted, would establish a single regulatory regime for banks and non-bank deposit-takers (organisations such as credit unions and building societies, which are in the business of taking deposits and lending to households and businesses). It would also establish a Depositor Compensation Scheme (which would allow some deposits to be protected in certain circumstances), and grant the RBNZ new supervisory and enforcement tools, among other things.

Consultations on the Bill are open until 21 February 2022. If you would like to make a submission on the draft version of the Bill, please contact a member of our [financial services regulation](#) team.

Review of the Reserve Bank of New Zealand Act 1989

The Bill has come as a result of the ongoing review of the Reserve Bank of New Zealand Act 1989. The review, which began in 2017, has the aim of updating and modernising the legislation underpinning the RBNZ. The review has led to two key reforms.

Firstly, the creation of the Reserve Bank of New Zealand Act 2021, which modernised the institutional arrangements of the RBNZ by creating a new decision-making model. Secondly, the creation of the Bill, which is intended to create a single regulatory regime for all bank and non-bank deposit takers.

Overview of the Bill

The Bill, if passed, would replace the existing regimes for the regulation of banks and non-bank deposit takers, which is currently governed by parts of the Reserve Bank of New Zealand Act 1989 and the Non-Bank Deposit Takers Act 2013.

The new Deposit Takers Bill aims to do the following:

- Establish a Depositor Compensation Scheme (DCS)
- Introduce a single regulatory regime for non-bank deposit-takers (NBDTs) and banks, with standards that would allow the RBNZ to set requirements
- Strengthen the accountability for directors of their deposit takers, with penalties for non-compliance
- Broaden the RBNZ's supervision and enforcement tools, which would include creating a new power to conduct on-site inspections
- Strengthen and clarify the crisis resolution framework.

The Depositor Compensation Scheme

Under the DCS, each "eligible investor" can protect up to \$100,000 of their deposit with a licensed deposit taker (Protected Deposit). The DCS would provide compensation to these eligible investors in the event that they have a Protected Deposit and the licensed deposit taker is put into liquidation (initiated or agreed to by the RBNZ). The DCS would also provide compensation to these eligible investors where the RBNZ issues a specified event notice (this notice would allow for compensation to be paid irrespective of whether the licensed deposit taker has entered liquidation).

Under the Bill, the term "eligible investor" would include a holder of a protected deposit or a person on whose behalf a protected deposit is held. It would not include a licensed deposit taker, a licensed insurer, a government agency, and more ([the full list of exclusions can be found at section 185 of the Bill](#)).

The RBNZ would be responsible for managing and administering the DCS. This would include determining entitlements, exercising rights of subrogation, collecting the levies and interest payable that would fund the scheme, administering, operating and investing the fund, and more ([the full list of its responsibilities can be found at section 189 of the Bill](#)). Ultimately, the purpose of the DCS is to avoid or mitigate the adverse effects of financial instability.

New regulatory regime

The Bill brings together the current registered bank and NBDT regulatory regimes into one 'licensed deposit taker' framework.

Broadly speaking, the framework is intended to capture firms that are in the business of borrowing and lending in New Zealand, with exclusions for organisations that wholly borrow from wholesale investors, or that conduct incidental lending as part of a business activity (more on this topic can be found in the [RBNZ's Deposit Takers Bill - Exposure Draft: Explanatory Notes](#)).

Under the new framework it is anticipated that all deposit takers will be required to have a licence ([this is set out in Part 2 of the Bill](#)). The RBNZ will have the power to use licence conditions to differentiate between deposit takers. It will also be able to take a proportionate approach to prudential regulation. Prudential requirements for licensed deposit takers will be set out in standards, which will be a secondary legislative instrument issued by the RBNZ under the Legislation Act 2019 (the Bill also sets out the scope of matters that can be addressed through standards).

Supervision, enforcement, and increased accountability

Part 4 of the Bill sets out the new supervisory and enforcement powers of the RBNZ. Among other things, the RBNZ will have the power to:

- Require that information be supplied (from the deposit taker themselves, from a firm that may be a financial service provider (to help determine if firms are inappropriately operating without a licence), or from other entities that may have information about the business activities of a deposit taker)
- Require a third-party report
- Undertake 'on-site' inspections of licensed deposit takers.

These powers will be available where the RBNZ is satisfied that a contravention of prudential obligations is likely to have occurred. Criminal penalties will apply to most breaches of the Bill (but breaches of the standards issued by the RBNZ will only incur civil penalties). As well as court-based enforcement and infringement fees, RBNZ will be able to sanction entities in other ways. These include issuing a remedial notice (which would require the deposit taker to take specific actions or prepare a remedial plan to address any contraventions) or asking the deposit taker to voluntarily enter into enforceable undertakings.

Crisis management

Part 7 of the Bill deals with crisis management. It sets out the powers RBNZ will have in the event of a crisis (for example, the Bill gives RBNZ the ability to issue directions to deposit takers or individual employees working for deposit takers in certain circumstances, such as when the deposit taker is operating fraudulently or recklessly). In addition to granting these powers, the Bill imposes an obligation on the RBNZ to prepare and maintain a resolution plan for each licensed deposit taker (in other words, a plan to deal with licensed deposit takers in a situation where it would not be possible for the licensed deposit taker to go through normal insolvency proceedings because of the risk that it would harm public interest or cause financial instability).

Implementation of the Bill

Consultation will close on 21 February 2022. Following the closing of consultations, the RBNZ will consider feedback and revise the Bill as appropriate. The Bill will then be introduced into Parliament in early 2022. It is expected to come into force as law in sometime 2023. After the Bill comes into force, there will be a transition period to give RBNZ and entities caught by the Bill time to adapt to the new regime. The length of that transition period has not been determined as of yet.

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