

Reserve Bank of New Zealand Act 1989

An Act to consolidate and amend the law constituting and relating to the Reserve Bank of New Zealand and, in particular,---

- (a) To provide, while continuing to recognise the Crown's right to determine economic policy, for the Reserve Bank of New Zealand, as the central bank, to be responsible for formulating and implementing monetary policy designed to promote stability of the general level of prices; and
- (b) To confer on the Reserve Bank of New Zealand certain other functions and powers; and
- (c) To repeal the Reserve Bank of New Zealand Act 1964

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

1. Short Title and commencement---(1) This Act may be cited as the Reserve Bank of New Zealand Act 1989.

(2) Except as provided in sections 85, 87 to 92, and section 181 (5) and (9) of this Act, this Act shall come into force on the 1st day of February 1990.

2. Interpretation---(1) In this Act, unless the context otherwise requires,---

- ``Bank note'' or ``note'' means any negotiable instrument used or circulated, or intended for use or circulation, as currency:
- ``Deputy Chief Executive'' means, if 1 person is appointed under this Act as the Deputy Governor of the Bank, that person, and if 2 persons are appointed under this Act as Deputy Governors of the Bank, the Deputy Governor designated by the Board as the Deputy Chief Executive:
- ``Deputy Governor'' means, if 1 person is appointed under this Act as the Deputy Governor of the Bank, that person, and if 2 persons are appointed under this Act as Deputy Governors, each of those persons:
- ``Document'' means a document in any form, whether signed or initialled or otherwise authenticated by its maker or not; and includes---
 - (a) Any writing on any material:
 - (b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
 - (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
 - (d) Any book, map, plan, graph, or drawing:
 - (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:
- ``Financial institution'' means any person including a body of persons whether incorporated or not, who carries on the business

of borrowing and lending money, or providing financial services, or both, and without limiting the generality of the foregoing includes---

(a) A life insurance company, being a company as defined in section 2 of the Life Insurance Act 1908; and includes any branch, division, or office of that company; and

(b) A building society as defined in section 2 of the Building Societies Act 1965; and

(c) A registered bank; and

(d) A specified person or class of persons (including a body or bodies of persons, whether incorporated or not) engaged in the business of borrowing and lending money, or providing financial services, or both, who is or are declared by the Governor-General, by Order in Council, to be a financial institution or institutions for the purposes of this Act:

``Foreign exchange'' means---

(a) The bank notes or other currency, postal notes, or money orders of any country other than New Zealand:

(b) Promissory notes and bills of exchange payable otherwise than in New Zealand currency:

(c) A right to receive payment in the currency of a country other than New Zealand:

(d) An obligation to make payment in the currency of a country other than New Zealand:

(e) A security in respect of which any amount payable is payable in a country other than New Zealand or in a foreign currency:

``Governor'' means the Governor of the Bank appointed under this Act:

``Minister'' means the Minister of Finance:

``Registered bank'' means a person whose name is entered in the register maintained under section 69 of this Act or who continues to be a registered bank by virtue of the provisions of section 76 of this Act:

``Reserve Bank'' or ``the Bank'' means the Reserve Bank of New Zealand constituted under this Act:

``Security'' has the same meaning as in section 2 of the Securities Act 1978:

``Subsidiary'' means a subsidiary within the meaning of section 158 (1) (a) (ii) and (b) of the Companies Act 1955.

(2) For the purposes of section 36 and Part V of this Act, 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 owns directly or indirectly 20 percent or more in nominal value of the equity share capital, as defined in section 158 of the Companies Act 1955, of the financial institution or registered bank; or

(c) The financial institution or registered bank directly or indirectly controls that person; or

(d) The financial institution or registered bank owns directly or indirectly 20 percent or more of the equity share capital, as defined in section 158 of the Companies Act 1955, of that

person.
Cf. 1964, No. 134, s. 2; 1986, No. 131, s. 2

To be read together with s.2 RBNZ Amendment Act 1995:

Interpretation---Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term "Governor", the following definition: " 'Holding company' means a holding company within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be:".

3. Interpretation of provisions relating to false or misleading information---For the purposes of this Act, a reference to information or data that is false or misleading includes a reference to information or data that is false or misleading by reason of---
(a) The form or context in which it is published or supplied; or
(b) The omission of any other information that is material in the form and context in which it is published or supplied.

4. Act to bind the Crown---This Act shall bind the Crown.

**PART I
CONSTITUTION OF RESERVE BANK OF New Zealand**

5. Reserve Bank of New Zealand---(1) There shall continue to be a bank called the Reserve Bank of New Zealand.

(2) The Bank shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring, holding and disposing of real and personal property and of suing and being sued.

(3) Without limiting any other provision of this Act, the Bank shall have the rights, powers, and privileges of a natural person.

(4) The Bank is the same body corporate as that which was continued in existence by the Reserve Bank of New Zealand Act 1964.

Cf. 1964, No. 134, s. 3 (1), (2)

6. Branches and agencies---The Bank may establish branches and agencies and appoint agents in New Zealand or elsewhere.

Cf. 1964, No. 134, s. 3 (3)

**PART II
FUNCTIONS AND POWERS OF RESERVE BANK**

Central Bank

7. Bank to act as central bank---The Bank shall act as the central bank for New Zealand.

Cf. 1964, No. 134, s. 8 (1) (a); 1973, No. 16, s. 5

Monetary Policy

8. Primary function of Bank---The primary function of the Bank is to formulate and implement monetary policy directed to the economic

objective of achieving and maintaining stability in the general level of prices.

9. Policy targets---(1) The Minister shall, before appointing, or reappointing, any person as Governor, fix, in agreement with that person, policy targets for the carrying out by the Bank of its primary function during that person's term of office, or next term of office, as Governor.

(2) In the case of a person who is deemed to have been appointed as Governor under section 191 (1) of this Act, policy targets for that person's term of office shall be fixed by the Minister, in agreement with the Governor, within 30 days after the commencement of this Act.

(3) Policy targets may be fixed for the term of office of the Governor, or for specified periods during the term of office of the Governor, or for both.

(4) The Minister and the Governor may, from time to time,---
(a) Review or alter any policy targets fixed under this section; or
(b) Substitute new policy targets for targets fixed under this section.

(5) Where policy targets are fixed under this section,---
(a) The Minister shall ensure that they are recorded in writing; and
(b) The Governor shall ensure that they are tabled at the first Board meeting held after the date on which they are fixed; and
(c) The Minister shall, as soon as practicable after they are fixed, publish them in the Gazette and lay a copy of them before the House of Representatives.

10. Formulation and implementation of monetary policy---In formulating and implementing monetary policy the Bank shall---

(a) Have regard to the efficiency and soundness of the financial system;
(b) Consult with, and give advice to, the Government and such persons or organisations as the Bank considers can assist it to achieve and maintain the economic objective of monetary policy.

11. Governor to ensure policy targets followed---It is the duty of the Governor to ensure that the actions of the Bank in implementing monetary policy are consistent with the policy targets fixed under section 9 of this Act.

12. Bank may be directed to formulate and implement monetary policy for different economic objective---(1) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister, direct the Bank to formulate and implement monetary policy for any economic objective, other than the economic objective specified in section 8 of this Act, for such period not exceeding 12 months as shall be specified in the order.

(2) Notwithstanding anything in section 8 of this Act, the Bank shall formulate and implement monetary policy in accordance with any economic objective specified in an Order in Council in force under subsection (1)

of this section.

(3) The Governor-General may, by Order in Council, on the advice of the Minister, before the period specified in an Order in Council made under subsection (1) of this section expires, extend the period specified in that order for a period, which shall be specified in the order, not exceeding 12 months, and may in the same manner extend that period on successive occasions.

(4) Every Order in Council made under subsection (1) of this section shall expire with the close of the last day of the period specified in the order or any extension of that period.

(5) An Order in Council made under subsection (1) of this section may be revoked.

(6) The Minister shall, as soon as practicable after the making of an Order in Council under this section, publish a copy of the order in the Gazette and lay a copy of the order before the House of Representatives.

(7) While an Order in Council made under subsection (1) of this section remains in force,---

(a) The policy targets fixed under section 9 of this Act shall cease to have effect; and

(b) The Minister and the Governor shall,---

(i) Within 30 days of the making of the order, or the making of an Order in Council under subsection (3) of this section, as the case may be, fix new policy targets for the period that the order remains in force; and

(ii) Within 30 days of the expiry or revocation of the order, fix new policy targets for the carrying out by the Bank of its primary function.

(8) Subsections (4) and (5) of section 9 of this Act shall apply in relation to any policy targets fixed under subsection (7) (b) of this section.

13. Bank's primary function not affected---Except as provided in sections 9 to 12 of this Act, nothing in this Act or in any other Act whether passed before or after the commencement of this Act limits or affects the obligation of the Bank to carry out its primary function.

14. Advice concerning effects of monetary policy---Where the Bank gives advice to the Minister under any provision of this Act and the Governor considers that giving effect to that advice would, or would be likely to, affect the monetary policy of the Bank, the Governor shall advise the Minister of---

(a) The effect, or likely effects, on monetary policy; and

(b) Any action that may be taken by the Bank in implementing the Bank's monetary policy if effect is given to that advice.

15. Policy statements---(1) Within 3 months after the commencement of this Act, and at intervals of not less than 6 months after publication of each preceding statement, and, if directed by the Minister, more

frequently, the Bank shall deliver to the Minister and publish a policy statement for the next 6 months or for such other period as may be specified by the Minister in any direction to the Bank.

(2) The policy statement shall be signed by the Governor and shall---

- (a) Specify the policies and means by which the Bank intends to achieve the policy targets fixed under section 9 of this Act:
- (b) State the reasons for adopting those policies and means:
- (c) Contain a statement of how the Bank proposes monetary policy might be formulated and implemented during the next 5 years:
- (d) Contain a review and assessment of the implementation by the Bank of monetary policy during the period to which the preceding policy statement relates.

(3) Every policy statement shall, by virtue of this section, stand referred to---

- (a) The House of Representatives; and
- (b) Any committee of the House of Representatives responsible for the overall review of financial management in government departments and other public bodies.

Foreign Exchange

16. Dealing in foreign exchange by Bank---For the purposes of performing its functions and fulfilling its obligations under this Act or any other Act, the Bank may, from time to time, deal in foreign exchange with such persons, including the Crown, and on such terms and conditions as the Bank thinks fit.

17. Power of Minister to direct Bank to deal in foreign exchange within guidelines---(1) The Minister may, for the purpose of influencing the exchange rate or exchange rate trends, from time to time, by notice in writing to the Bank, direct the Bank to deal in foreign exchange within guidelines prescribed by the Minister in the notice.

(2) Notwithstanding section 16 of this Act, while the direction remains in force all foreign exchange dealing by the Bank shall comply with the direction.

(3) The Minister may, from time to time, by notice in writing to the Bank, vary or revoke any direction given under subsection (1) of this section.

18. Power of Minister to fix exchange rates for foreign exchange dealing by Bank---(1) Subject to this section, the Minister may from time to time, by notice in writing to the Bank,---

- (a) Direct that all foreign exchange dealing by the Bank shall be at rates of exchange, or within a range of rates of exchange, specified by the Minister in the direction:
- (b) Direct the Bank to deal in foreign exchange at those rates or within that range of rates with such persons or class or classes of persons as may be specified by the Minister in the direction.

(2) Notwithstanding sections 16 and 17 of this Act, the Bank shall, on receiving a direction under this section,---

- (a) Conduct its foreign exchange dealing at the rates, or within the range of rates, specified:
- (b) Deal in foreign exchange at those rates, or within that range of rates, with such of the persons or class or classes of persons specified in the direction as may require the Bank to do so.

(3) The Minister may from time to time, by notice in writing to the Bank, vary or revoke any direction given under subsection (1) of this section.

(4) The Minister shall not give a direction under subsection (1) of this section unless the Minister has been authorized to do so by the Governor-General by Order in Council within 30 days before the direction is given and a separate authorization shall be required for each separate occasion on which a direction is given.

(5) The Minister shall give notice in the Gazette of the fact that a direction has been given and that a direction has been revoked.

19. Effect of directions on policy targets---(1) If the Governor considers that the giving effect to by the Bank of a direction under either section 17 or section 18 of this Act would, while not being inconsistent with the economic objective of monetary policy, be inconsistent with achieving the policy targets fixed under section 9 of this Act, the Governor may, by notice in writing to the Minister, advise the Minister that the Bank will, in giving effect to the direction, be unable to achieve those policy targets and request new policy targets to be fixed.

- (2) Where a notice is given under this section---
 - (a) The Bank is not required to achieve the existing policy targets:
 - (b) The Minister and the Governor shall, within 1 month after the notice is given, substitute new policy targets in accordance with section 9 (4) (b) of this Act and, in that event, the provisions of section 9 (5) of this Act shall apply to those policy targets.

20. Effect of directions on monetary policy---(1) If the Governor considers that the giving effect to by the Bank of a direction under either section 17 or section 18 of this Act would be inconsistent with the economic objective of monetary policy the Governor may, by notice in writing, advise the Minister that the Bank does not propose to give effect to the direction.

(2) Where a notice is given under this section the Bank shall not, unless an Order in Council is made under section 12 of this Act that requires the Bank to formulate and implement monetary policy in accordance with an economic objective that is consistent with the direction, be required to comply with that direction.

21. Foreign exchange gains and losses---(1) The Bank shall pay into the Crown Bank Account any exchange gains (whether realised or unrealised) made by the Bank as a result of dealing in foreign exchange under sections 17 and 18 of this Act.

(2) The Minister shall, without further appropriation, pay to the Bank out of the Crown Bank Account the amount of any exchange losses (whether realised or unrealised) incurred by the Bank as a result of dealing in foreign exchange under sections 17 and 18 of this Act.

22. Temporary suspension of foreign exchange business---(1) The Governor may, if the Governor is satisfied that it is necessary to avoid disorder in the foreign exchange market, from time to time, by notice in writing to all registered banks, direct that, subject to any exceptions specified in the notice, no registered bank shall, except with permission granted by the Bank, deal until further notice in any foreign exchange or foreign exchange of such kinds as are specified in the notice.

(2) The Governor shall, as soon as practicable, give notice in writing to the Minister of the exercise of the power conferred under subsection (1) of this section.

(3) Every notice under subsection (1) of this section shall remain in force until it is revoked---

(a) By Order in Council; or

(b) By notice in writing given by the Governor to all registered banks.

(4) An obligation on a person to do a thing on a day on which that person is prevented from doing it by a notice under this section, or is unable to do it by reason of any such notice, shall be deemed to be complied with if that person does it as soon as practicable after the notice is revoked.

(5) Where any transaction to which a notice issued under this section applies is subject to the Bills of Exchange Act 1908 or the Banking Act 1982, then, in relation to that transaction, every day on which the notice remains in force shall be deemed to be a non-business day for the purposes of the Bills of Exchange Act 1908.

Cf. 1964, No. 134, s. 26A; 1986, No. 131, s. 8

23. Bank to advise Minister on foreign exchange matters---The Bank shall, from time to time, advise the Minister on---

(a) Foreign exchange rate systems:

(b) The management of foreign reserves:

(c) The operation of the foreign exchange market:

(d) Any other matters relating to foreign exchange.

24. Foreign reserves---(1) The Minister shall, from time to time, in consultation with the Bank, determine the level at which, or the levels within which, foreign reserves shall be maintained for the purpose of enabling the Bank to exercise the powers conferred by this Act.

(2) The Bank shall hold and maintain foreign reserves at that level or within those levels and, for that purpose, but without limiting the powers of the Bank under this Act, may---

(a) Acquire and deal in foreign currency:

(b) Deal in foreign currency on behalf of the Crown:

(c) Appoint any person to acquire and deal in foreign currency on

behalf of the Crown or the Bank.

Currency

25. Issue of currency by Bank---(1) The Bank shall have the sole right to issue bank notes and coins in New Zealand.

(2) The Bank shall determine the denominations, form, design, content, weight, and composition of its bank notes and coins.

(3) Every bank note issued by the Bank before the commencement of this Act, and every coin issued by the Minister under the Decimal Currency Act 1964 or under the Coinage Act 1933 by virtue of the Decimal Currency Act 1964, which is legal tender at the commencement of this Act shall be deemed for all purposes to have been made or issued under this Act.

Cf. 1964, No. 134, s. 20 (1), (3); 1964, No. 27, s. 10

26. Power of Bank to call in currency---(1) The Bank may, from time to time, with the prior consent of the Minister, by notice in the Gazette, call in any bank notes or coins issued or deemed to have been issued under this Act.

(2) Every notice shall take effect on a date specified in it.

(3) When the notice takes effect, all bank notes or coins to which it applies shall cease to be legal tender; but the Bank shall continue to be liable to pay any such bank note or coin on presentation at the head office of the Bank.

(4) The Bank shall continue to be liable to pay any bank note issued before the commencement of this Act which has ceased to be legal tender before the commencement of this Act and which the Bank was, immediately before the commencement of this Act, liable to pay, on presentation at the head office of the Bank.

(5) The Bank shall be liable to pay any coin issued by the Minister before the commencement of this Act which has ceased to be legal tender before the commencement of this Act, on presentation at the head office of the Bank.

Cf. 1964, No. 134, s. 22; 1964, No. 27, s. 12

27. Legal tender---(1) Every bank note issued, or deemed to be issued, under this Act shall be a legal tender for the amount expressed in the note.

(2) A tender of payment of money, to the extent that it is made in coins issued, or deemed to be issued, under this Act, shall be a legal tender,---

(a) In the case of coins of a denomination of \$10 or more, for the payment of any amount:

- (b) In the case of coins of a denomination of \$1 or more but less than \$10, for the payment of any amount not exceeding \$100:
- (c) In the case of coins of the denomination of 5 cents or more, but less than \$1, for the payment of an amount not exceeding \$5:
- (d) In the case of any coins of the denomination of less than 5 cents, for the payment of an amount not exceeding 20 cents.

(3) The references to coins and bank notes in subsections (1) and (2) of this section do not include references to coins and bank notes that have been called in.

Cf. 1964, No. 134, s. 20 (2); 1964, No. 27, s. 14

28. Defacing bank notes---(1) No person shall, without the prior consent of the Bank, wilfully deface, disfigure, or mutilate any bank note.

(2) No person who is a party to the defacement, disfigurement, or mutilation of any bank note, shall---

- (a) Pay away; or
- (b) Part with; or
- (c) Put in circulation; or
- (d) Demand payment of; or
- (e) Deposit or offer to deposit in any bank,---

that bank note.

(3) Every person who contravenes subsection (1) or subsection (2) of this section commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$1,000.

Cf. 1964, No. 134, s. 23

29. Making or issuing of other bank notes or coins---(1) No person shall make or issue any bank note or coin, other than a bank note or coin issued under this Act.

(2) Every person who contravenes subsection (1) of this section commits an offence against this Act and shall be liable on conviction on indictment,---

- (a) In the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$100,000:
- (b) In the case of a body corporate, to a fine not exceeding \$300,000.

30. Reproduction or imitation of currency---(1) No person shall, without the prior consent of the Bank,---

- (a) Make, design, engrave, print, or reproduce; or
- (b) Use, issue, or publish---

any article or thing resembling a bank note or coin or so nearly resembling or having such a likeness to a bank note or coin as to be likely to be confused with or mistaken for it.

(2) Every person who contravenes subsection (1) of this section commits an offence against this Act.

- (3) Where a person is convicted of an offence against subsection (2) of this section, the Court may order---
- (a) The article or thing:
 - (b) Any copy of it:
 - (c) Any plates, blocks, dies, and other instruments used or capable of being used for printing or reproducing it---

in the possession of that person to be destroyed.

Cf. 1964, No. 134, s. 24 (2); 1973, No. 16, s. 6

Other Functions and Powers

31. Bank to act as lender of last resort---The Bank shall, if the Bank considers it necessary for the purpose of maintaining the soundness of the financial system, act as lender of last resort for the financial system.

32. Bank may provide settlement account services---The Bank may provide settlement account services for financial institutions on such terms and conditions as may be determined by agreement.

33. Financial sector policy advice---The Bank shall, from time to time, advise the Minister on matters relating to the operation of the financial system.

34. Government banking business---(1) Subject to the Public Finance Act 1989, the Bank may, in accordance with an agreement with the Minister, undertake all or part of the banking business of the Government.

(2) Any such agreement may provide for the Bank to charge for the provision of banking services.

Cf. 1964, No. 134, s. 12

35. Securities registry services---(1) The Bank may provide securities registry services for any person including services in connection with---

- (a) The issue, registration, exchange, transfer, or replacement of securities:
- (b) The calling and acceptance of tenders for securities:
- (c) The making or receiving of payment in respect of any security.

(2) Securities registry services may be provided for such remuneration, and on such terms and conditions, as may be agreed by the Bank and the person for whom they are provided.

36. Bank may require financial institution to supply information---(1) For the purposes of enabling the Bank to carry out the functions and exercise the powers conferred on it by this Part of this Act, the Bank may, from time to time, by notice in writing to any financial institution, or by notice in the Gazette applying to any specified class of financial institutions, require the institution or, as the case may be, institutions of that class, to supply to the Bank such information and data relating to the business of the institution or institutions of that class for such periods, and in such form, as may be specified in

the notice.

(2) Without limiting subsection (1) of this section, a notice may require information and data to be supplied relating to the assets and liabilities, income and expenditure (including interest rates charged and payable), fees and charges, obligations and commitments, and risk exposures of, and classes of transactions entered into by, that institution or class of institutions and any associated person and, where specified, in consolidated form, in respect of business carried on in New Zealand or elsewhere and whether as principal, broker, agent, or intermediary.

(3) A notice given pursuant to this section may, by a subsequent notice, be revoked, varied, or amended by the Bank.

(4) Information and data required to be supplied pursuant to this section shall be supplied to the Bank at such place in New Zealand and at such time as are specified in the notice.

(5) A financial institution shall not be required to supply data or information under this section relating to the affairs of a particular customer or client.

Cf. 1964, No. 134, s. 38H (1), (2), (4)-(6); 1986, No. 131, s. 10

37. Failure to supply information---Every financial institution commits an offence against this Act if, without lawful justification or excuse, it---

- (a) Fails to comply in any respect with any of the provisions of section 36 of this Act or of any requirements of the Bank under that section; or
- (b) Supplies any information or data which it is required to supply under section 36 of this Act which is false or misleading in any material particular.

Cf. 1964, No. 134, s. 38H (7); 1986, No. 131, s. 10

38. Requirement that information be audited---(1) Where the Bank believes that any information or data supplied by a financial institution pursuant to section 36 of this Act is, or may be, inadequate or inaccurate, it may, by notice in writing to that financial institution, require that information or data to be audited by an auditor approved by the Bank.

(2) Every financial institution commits an offence against this Act if, without lawful justification or excuse, it fails to comply with a requirement under subsection (1) of this section.

Cf. 1964, No. 134, s. 38H (3); 1986, No. 131, s. 10

39. Powers---Without limiting section 5 or any other provision of this Act, the Bank has power, whether in New Zealand or elsewhere, to---

- (a) Carry on the business of banking:
- (b) Issue securities:
- (c) Give a fixed or floating charge over all or any part of the

- undertaking or property of the Bank:
- (d) If the Bank ceases to carry out any function, make provision, whether or not it is in the Bank's interest to do so, for the benefit of employees of the Bank, or former employees, or their dependants:
 - (e) Enter into agreements or arrangements and obtain assurances necessary or desirable for carrying out its functions and exercising its powers:
 - (f) Carry on any business or exercise any powers, not inconsistent with any other function of the Bank, which can be conveniently carried on, or exercised in conjunction with its functions and the exercise of its powers.

PART III
MANAGEMENT OF RESERVE BANK

Governor and Deputy Governor

40. Governor---(1) There shall be a Governor of the Bank who shall be appointed by the Minister on the recommendation of the Board.

(2) The Governor shall be the Chief Executive of the Bank.

41. Duties of Governor---(1) It is the duty of the Governor to ensure that the Bank carries out the functions imposed on it by this Act.

(2) The Governor has the authority, in the performance of those functions, to act in relation to all matters that are not by this Act required to be dealt with by the Board.

42. Conditions of employment of Governor---(1) The Governor shall be appointed for a term of 5 years and may be reappointed for a further term or terms, each of up to 5 years.

(2) The conditions of employment of the Governor, including remuneration, shall be---

- (a) Determined by agreement between the Minister and the Governor after consultation with the Board; and
- (b) Tabled at the first Board meeting after they are agreed.

(3) No condition of the agreement shall have effect if it is inconsistent with the Bank's functions or limits or prevents the Governor from ensuring that those functions are carried out.

43. Deputy Governor---(1) There shall be either 1 Deputy Governor or 2 Deputy Governors of the Bank who shall be appointed by the Board on the recommendation of the Governor.

(2) If 2 Deputy Governors are appointed, the Board shall, on the recommendation of the Governor, designate 1 of them as the Deputy Chief Executive of the Bank.

(3) Subject to this Act, the Deputy Governor or Deputy Governors, as the case may be, shall perform such duties and functions as are

determined by the Governor.

44. Conditions of employment of Deputy Governor---(1) The Deputy Governor or Deputy Governors, as the case may be, shall be appointed for a term of 5 years and may be reappointed for a further term or terms, each of up to 5 years.

(2) The conditions of employment, including remuneration, of the Deputy Governor or Deputy Governors, shall be determined by the Board and shall specify the grounds on which the Governor may recommend that the Deputy Governor may be removed from office by the Board.

45. Removal of Deputy Governor from office---(1) The Board may, on the recommendation of the Governor, remove any Deputy Governor from office.

(2) A recommendation under subsection (1) of this section may be made only on the grounds specified for that purpose in the conditions of employment of the Deputy Governor to whom the recommendation relates.

46. Disqualification of Governor and Deputy Governor---(1) No person shall be appointed or reappointed, or continue to hold office, as Governor, Deputy Governor, or a Deputy Governor, if that person---

- (a) Is a member of Parliament; or
- (b) Is an employee of a registered bank; or
- (c) Is 70 years of age or over; or
- (d) Is a chief executive of a Government department, or a member of the senior executive service, or an employee of a Government department, appointed under the State Sector Act 1988; or
- (e) Is a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or
- (f) Is a person who is convicted of any offence punishable by imprisonment for a term of 2 years or more; or
- (g) Is a person who is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
- (h) Is a person who is prohibited under section 188A of the Companies Act 1955 from being a director or promoter of, or in any way whether directly or indirectly being concerned or taking part in the management of, a company; or
- (i) Is a person to whom an order made under section 189 of the Companies Act 1955 applies; or
- (j) Is a person who is prohibited under section 189A of the Companies Act 1955 from being an officer or promoter of, or being concerned in or taking part (whether directly or indirectly) in the management of, any company; or
- (k) Is a mentally disordered person within the meaning of the Mental Health Act 1969.

(2) The Governor, the Deputy Governor, or a Deputy Governor, as the case may be, shall be deemed to have resigned office if that person is prohibited from continuing to hold office under this section.

47. Incapacity of Governor and Deputy Chief Executive---(1) In the

case of the absence or incapacity of the Governor, the Deputy Chief Executive shall have all the duties, responsibilities, and functions of the Governor under this Act and may exercise all the powers of the Governor under this Act.

(2) In the case of the absence or incapacity of the Governor and the Deputy Chief Executive, the Minister shall, on the recommendation of the Board, appoint---

- (a) A director of the Bank; or
- (b) An officer of the Bank---

to act as Governor.

(3) If the Minister is unable to make an appointment under subsection (2) of this section by reason of the fact that, in the circumstances, it is impracticable for a meeting of the Board to be held, the Minister shall appoint---

- (a) A director of the Bank; or
- (b) An officer of the Bank---

to act as Governor for a period not exceeding 28 days.

(4) The person appointed to act as Governor shall, so long as the appointment continues, have all the duties, responsibilities, and functions of the Governor under this Act and may exercise all the powers of the Governor under this Act.

(5) A person who is not a director of the Bank, but who is appointed to act as Governor, shall, while acting as Governor, be deemed to be a director of the Bank.

Cf. 1964, No. 134, s. 18 (2), (6), (7)

48. Vacancy in office of Governor---(1) If the office of Governor becomes vacant, the Minister shall, on the recommendation of the Board, appoint---

- (a) A director of the Bank; or
- (b) An officer of the Bank; or
- (c) Any other person---

to act as Governor for a period not exceeding 6 months or for the remainder of the Governor's term, whichever is less.

(2) Pending the appointment of a person to act as Governor under subsection (1) of this section, the Deputy Chief Executive shall act as Governor for a period of 28 days or until a person is appointed under that subsection, whichever is less.

(3) The person appointed to act as Governor or the Deputy Chief Executive, as the case may be, shall, so long as that person acts as Governor, have all the duties, responsibilities and functions of the Governor under this Act and may exercise all the powers of the Governor under this Act.

(4) A person who is appointed to act as Governor under this section,

but who is not a director of the Bank, shall, while acting as Governor, be deemed to be a director of the Bank.

49. Removal of Governor from office---(1) The Governor- General may, by Order in Council, on the advice of the Minister, remove the Governor from office.

(2) The Minister may tender advice under subsection (1) of this section if the Minister is satisfied---

- (a) That the Bank is not adequately carrying out its functions; or
- (b) That the Governor has not adequately discharged the responsibilities of office; or
- (c) That the Governor has obstructed, hindered, or prevented the Board from discharging its responsibilities under this Act; or
- (d) That the performance of the Governor in ensuring that the Bank achieves the policy targets fixed under section 9 or section 12 (7) (b) of this Act has been inadequate; or
- (e) That, in a case where section 9 (2) or subparagraph (i) or subparagraph (ii) of section 12 (7) (b) of this Act applies, the Minister and the Governor have not been able, within the time prescribed, to agree on new policy targets; or
- (f) That a policy statement made pursuant to section 15 of this Act is inconsistent in a material respect with the Bank's primary function or any policy target fixed under section 9 or section 12 (7) (b) of this Act; or
- (g) That the resources of the Bank have not been properly or effectively managed; or
- (h) That the Governor, except as provided in his or her conditions of employment, has, while holding office as Governor,---
 - (i) Held any other office of profit; or
 - (ii) Engaged in any other occupation for reward; or
 - (iii) Had an interest in a registered bank; or
 - (iv) Had an interest in a bank carrying on business outside New Zealand; or
- (i) That the Governor is unable to carry out the responsibilities of office, or has been guilty of serious neglect of duty or misconduct.

(3) The Minister may tender advice under this section whether or not the Board has made a recommendation under section 53 (3) of this Act that the Governor be removed from office.

50. Removal of Deputy Governor from office by Order in Council---(1) The Governor-General may, by Order in Council, on the advice of the Minister, remove the Deputy Governor or a Deputy Governor from office.

(2) The Minister may tender advice under subsection (1) of this section if the Minister is satisfied that the Deputy Governor---

- (a) Is unable, or has failed, to perform the duties of a director of the Bank under this Act; or
- (b) Has been guilty of misconduct; or
- (c) Has obstructed, hindered, or prevented the Governor from discharging the responsibilities of the Governor under this Act; or
- (d) Except as provided in his or her conditions of employment, has,

while holding office as Deputy Governor,---

- (i) Held any other office of profit; or
- (ii) Engaged in any other occupation for reward; or
- (iii) Had an interest in a registered bank; or
- (iv) Had an interest in a bank carrying on business outside New Zealand.

(3) If a person who holds office as the Deputy Governor or as a Deputy Governor is removed from office under this section, that person shall, unless that person's conditions of employment provide for that person to cease to be employed as an officer of the Bank in the event of removal from office of Deputy Governor under this section, continue to be employed by the Bank.

51. Delegation---(1) The Governor may, at any time, delegate to the Deputy Chief Executive any of the Governor's functions and powers including the power of delegation under subsection (2) of this section.

(2) The Governor may, at any time, delegate any of the Governor's functions and powers---

- (a) If there is more than 1 Deputy Governor of the Bank, to the Deputy Governor who is not the Deputy Chief Executive:
- (b) To any officer of the Bank.

(3) The fact that the Deputy Chief Executive exercises any powers or functions of the Governor shall be conclusive proof of the authority to do so, and no person shall be concerned to inquire whether the occasion for doing so has arisen or has ceased.

(4) A Deputy Governor who is not the Deputy Chief Executive and any officer of the Bank who purports to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Subject to any general or special directions given or conditions attached by the Governor, any person to whom any powers or functions are delegated under this section may exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(6) A delegation under this section may be revoked at any time.

(7) A delegation of any power or function under this section shall not prevent the exercise of the power or function by the Governor.

(8) Any such delegation, until it is revoked, shall continue in force according to its tenor, notwithstanding that the Governor who made it may have ceased to hold office.

Cf. 1964, No. 134, s. 18 (3), (4)

Board of Directors

52. Board of directors---There shall be a board of directors of the Bank.

53. Duties of Board---(1) Subject to this Act, the Board of the Bank shall---

- (a) Keep under constant review the performance of the Bank in carrying out its functions:
- (b) Keep under constant review the performance of the Governor in discharging the responsibilities of that office:
- (c) Keep under constant review the performance of the Governor in ensuring that the Bank achieves the policy targets agreed to with the Minister under section 9 or section 12 (7) (b) of this Act:
- (d) Determine whether policy statements made pursuant to section 15 of this Act are consistent with the Bank's primary function and the policy targets agreed to with the Minister under section 9 or section 12 (7) (b) of this Act:
- (e) Keep under constant review the use of the Bank's resources.

(2) The Board may give advice to the Governor on any matter relating to the performance of the Bank's functions and the exercise of its powers.

(3) If the Board is satisfied---

- (a) That the Bank is not adequately carrying out its functions; or
- (b) That the Governor has not adequately discharged the responsibilities of that office; or
- (c) That the performance of the Governor in ensuring that the Bank achieves the policy targets fixed under section 9 or section 12 (7) (b) of this Act has been inadequate; or
- (d) That a policy statement made pursuant to section 15 of this Act is inconsistent in a material respect with the Bank's primary function or any policy target fixed under section 9 or section 12 (7) (b) of this Act; or
- (e) That the resources of the Bank have not been properly or effectively managed; or
- (f) That the Governor, except as provided in his or her conditions of employment has, while holding office as Governor,---
 - (i) Held any other office of profit; or
 - (ii) Engaged in any other occupation for reward; or
 - (iii) Had an interest in a registered bank; or
 - (iv) Had an interest in a bank carrying on business outside New Zealand; or
- (g) That the Governor is unable to carry out the responsibilities of office, or has been guilty of serious neglect of duty, or has been guilty of misconduct,---

the Board shall advise the Minister in writing and may recommend to the Minister that the Governor be removed from office.

54. Membership of Board---(1) The Board shall consist of not less than 7 and not more than 10 members.

(2) The membership of the Board shall comprise---

- (a) Not less than 4 and not more than 7 non-executive directors to be appointed from time to time by the Minister:
- (b) The Governor:
- (c) The Deputy Governor, or if more than 1 Deputy Governor holds

office, each Deputy Governor.

(3) The appointment of every non-executive director shall be notified in the Gazette.

(4) No person employed in the service of the Bank, except the Governor and a Deputy Governor, may be a director of the Bank.

(5) The validity of the acts of the Board are not affected by any vacancy in its membership.

Cf. 1964, No. 134, s. 4; 1973, No. 16, s. 3 (1)

55. Term of office of non-executive directors---(1) Except as provided in subsection (2) of this section and in sections 57 to 59 of this Act, every non-executive director shall hold office for a term of 5 years.

(2) The first non-executive directors of the Bank appointed under this Act shall be appointed for terms, not exceeding 5 years, which ensure that not more than 2 of those directors retire in the same year.

(3) A non-executive director may from time to time be reappointed.

(4) A non-executive director may at any time resign office by notice in writing to the Minister.

56. Considerations affecting appointment of non-executive directors---In considering the appointment or reappointment of a person to the office of non-executive director of the Bank, the Minister shall have regard, in relation to that office, to---

(a) That person's knowledge, skill, and experience; and

(b) The likelihood of any conflict between the interests of the Bank and any interests which that person has or represents.

57. Extraordinary vacancies---(1) If a non-executive director dies, or resigns or is removed from office, that office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(2) A non-executive director shall be deemed to have resigned office if that director---

(a) Is prohibited by section 58 of this Act from holding office as a director; or

(b) Fails, without the Board's consent, to attend 3 consecutive meetings of the Board.

(3) The manner of filling an extraordinary vacancy shall be the manner prescribed by section 54 of this Act.

(4) A person who is appointed to fill an extraordinary vacancy shall be appointed for the residue of the term of the vacating director.

58. Disqualification of non-executive directors---No person shall be appointed, or reappointed, to the office of non-executive director of the Bank, or hold that office, if that person---

(a) Is a member of Parliament; or

(b) Is an employee of a registered bank; or

- (c) Is a bankrupt who has not obtained a final order of discharge, or whose order of discharge has been suspended for a term not yet expired, or is subject to a condition not yet fulfilled; or
- (d) Is a person who is convicted of any offence punishable by imprisonment for a term of 2 years or more; or
- (e) Is a person who is convicted of any offence punishable by imprisonment for a term of less than 2 years and is sentenced to imprisonment for that offence; or
- (f) Is a person who is prohibited under section 188A of the Companies Act 1955 from being a director or promoter of, or in any way whether directly or indirectly being concerned or taking part in the management of, a company; or
- (g) Is a person to whom an order made under section 189 of the Companies Act 1955 applies; or
- (h) Is a person who is prohibited under section 189A of the Companies Act 1955 from being an officer or promoter of, or being concerned in or taking part (whether directly or indirectly) in the management of, any company; or
- (i) Is a mentally disordered person within the meaning of the Mental Health Act 1969.

Cf. 1964, No. 134, s. 5; 1986, No. 131, s. 5

59. Removal from office of non-executive directors---(1) The Governor-General may, by Order in Council, on the advice of the Minister, remove a non-executive director of the Bank from office.

(2) The Minister may tender advice under subsection (1) of this section if the Minister is satisfied that the director---

- (a) Is unable, or has failed, to perform the duties of a director of the Bank under this Act; or
- (b) Has been guilty of misconduct; or
- (c) Has obstructed, hindered, or prevented the Governor from discharging the responsibilities of the Governor under this Act.

60. Meetings of Board---(1) The Board of the Bank shall meet at least 10 times in each year.

(2) The Governor, or in the absence of the Governor, the Deputy Chief Executive, shall convene meetings of the Board.

(3) The Governor or, in the absence of the Governor, the Deputy Chief Executive, shall convene a special meeting of the Board on the written request of 3 or more non-executive directors.

(4) The Governor, or in the absence of the Governor, the Deputy Chief Executive, shall preside at meetings of the Board.

(5) If the Governor and the Deputy Chief Executive are absent from a meeting, the directors present shall appoint a director to preside.

(6) At meetings of the Board the quorum necessary for the transaction of business is 5 directors of whom at least 3 shall be non-executive directors.

(7) Decisions of the Board shall be made by a majority of the votes of

the directors present.

(8) The director presiding has a deliberative vote and in the case of an equality of votes has a casting vote.

(9) A Deputy-Governor who is not the Deputy Chief Executive is not entitled to vote at any meeting of the Board at which the Governor, the Deputy Chief Executive and only 3 non-executive directors are present.

(10) Subject to this section, the Board may regulate its own procedure.

Cf. 1964, No. 134, s. 13

61. Directors to disclose interests---(1) A director who is interested in a contract or proposed contract with the Bank, or in the exercise or proposed exercise by the Bank of a power, shall declare that interest at every meeting of the Board at which that contract or proposed contract, or the exercise or proposed exercise of the power, is considered by the Board.

(2) A director is not entitled to vote, or be counted in a quorum present, at a meeting at which a contract or proposed contract, or the exercise or proposed exercise of a power, in which the director has an interest is considered.

To be read together with s.3 RBNZ Amendment Act 1990:

Directors to disclose interests---Section 61 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: ``(2) A director who is interested in a contract or proposed contract or in the exercise or proposed exercise of a power--- ``(a) Is not entitled to vote on a resolution that relates to the contract or proposed contract or the exercise or proposed exercise of the power: ``(b) Shall not be counted for the purpose of determining whether a quorum is present when--- ``(i) The contract or proposed contract or the exercise or proposed exercise of the power is considered by the Board; or ``(ii) A resolution relating to the contract or proposed contract or the exercise or proposed exercise of the power is voted on."

62. Committees---(1) The Board may, from time to time, appoint committees of 1 or more directors and may delegate any of its functions and powers, except this power of delegation, to such committees.

(2) The Board may from time to time---

(a) Discharge, alter, or reconstitute a committee; or

(b) Discharge a member of a committee and appoint another member in that member's place.

(3) Subject to any direction given by the Board, the functions and powers delegated to a committee may be performed or exercised with the same effect as if they had been conferred by this Act and not by delegation.

(4) A committee purporting to act under delegation shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the delegation.

(5) A delegation may be revoked by the Board at any time.

(6) A delegation does not prevent the Board from performing or exercising its functions and powers.

(7) A delegation to a committee shall continue in force even though the membership of the Board or the committee changes.

(8) Subject to this Act and to any directions given by the Board, a committee may regulate its own procedure.

63. Fees and expenses of non-executive directors---(1) The Bank shall pay the non-executive directors such fees as the Minister, after considering any recommendation by the Board, determines.

(2) The Bank shall pay the non-executive directors travelling and other expenses incurred in carrying out their duties.

Cf. 1964, No. 134, s. 15; 1980, No. 138, s. 2 (1)

PART IV
USE OF WORDS ``BANK'', ``BANKER'', AND ``BANKING ''

64. Restriction on use of words ``bank'', ``banker'', and ``banking''---(1) Except as otherwise provided in this Part of this Act,---

- (a) No body (whether incorporated or not) shall be formed or registered under any name or title that includes the words ``bank'', ``banker'', or ``banking'', or any of those words as part of any other word:
- (b) No person shall carry on any business, trade, or occupation under a name or title, that includes the words ``bank'', ``banker'', or ``banking'', or any of those words as part of any other word.

(2) Every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on summary conviction,---

- (a) In the case of an individual, to a fine not exceeding \$100,000; and
- (b) In the case of a body corporate, to a fine not exceeding \$300,000.

(3) For the purposes of this section and section 65 of this Act, a reference to the words ``bank'', ``banker'', or ``banking'' includes a reference to a translation of those words in another language.

Cf. 1964, No. 134, s. 38A; 1986, No. 131, s. 10

65. Certain persons exempt from application of section 64---(1) Nothing in section 64 of this Act applies to---

- (a) The Bank:
- (b) A registered bank:
- (c) Any body (whether incorporated or not) that is formed or registered in a country other than New Zealand under a name or title that includes the words ``bank'', ``banker'', or ``banking'', or any of those words as part of any other word, that is authorised for the time being by the Bank to use those words, or any of those words as part of any other word, in connection with the establishment or operation of a representative office in New Zealand:

- (d) Any body (whether incorporated or not) that is formed or registered to represent the interests of any person referred to in this subsection, or any person connected with any such person, and which is authorised for the time being by the Bank to use those words, or any of those words as part of any other word:
- (e) A subsidiary of a registered bank that is authorised for the time being by the Bank to use those words, or any of those words as part of any other word:
- (f) Any body (whether incorporated or not) that is not a financial institution but that is authorised for the time being by the Bank to use those words, or any of those words as part of any other word.

(2) Nothing in section 64 of this Act prevents any body (whether incorporated or not) from carrying on under a name or title that includes the words ``bank'', ``banker'', or ``banking'' or any of those words as part of any other word, any business, trade, or occupation that, immediately before the 1st day of April 1987, was lawfully carried on by that body under that name or title.

(3) Nothing in subsection (2) of this section applies to a person whose registration as a registered bank has been cancelled.

(4) Nothing in section 64 of this Act prevents any body corporate that, immediately before the commencement of this Act, was lawfully formed or registered under a name that included the words ``bank'', ``banker'', or ``banking'' or any of those words as part of any other word, from changing its name, with the consent of the Bank, to a name that includes those words or any of those words as part of any other word and from carrying on any business, trade, or occupation under that name.

(5) Nothing in section 64 of this Act prevents a body (whether incorporated or not) being formed or registered, or carrying on any business, trade, or occupation, under a name or title that includes the words ``bank'', ``banker'', or ``banking'' where those words signify---

- (a) Any geographic place name; or
- (b) The name of any town or road; or
- (c) The surname of any person.

(6) An authorisation or consent under this section may be given subject to such conditions as the Bank thinks fit.

(7) The Bank may, by notice in writing to the person to whom the authorisation or consent has been given,---

- (a) Revoke the authorisation or consent:
- (b) Vary, alter, or remove any condition of the authorisation or consent or add a further condition to it.

(8) For the purposes of this section ``representative office'' means any premises or place of business used solely for the purposes of promoting or assisting any business or activity carried on in a country other than New Zealand.

(9) Nothing in this section limits or affects section 31 of the Companies Act 1955.

Cf. 1964, No. 134, s. 38B; 1986, No. 131, s. 10; 1988, No. 90, s. 38

66. Power to require change of name or title---(1) Where the Bank is satisfied that a person has contravened, or is contravening, section 64 of this Act, it may, by notice in writing to that person and whether or not that person has been convicted of an offence against that section, require that person to change its name or title.

(2) Every person to whom a notice is given under subsection (1) of this section shall comply with the notice within 6 weeks after receiving it or within such longer period as the Bank may allow.

PART V

REGISTRATION OF BANKS AND PRUDENTIAL SUPERVISION OF REGISTERED BANKS

67. Registration and prudential supervision---The Bank shall in accordance with this Part of this Act---

- (a) Register banks; and
- (b) Undertake prudential supervision of registered banks.

Cf. 1964, No. 134, s. 38I; 1986, No. 131, s. 10

68. Exercise of powers under this Part---The powers conferred on the Governor-General, the Minister, and the Bank by this Part of this Act shall 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 registered bank.

Cf. 1964, No. 134, s. 38J; 1986, No. 131, s. 10

Registration of Banks

69. Register---(1) The Bank shall maintain a register of persons to be known as ``registered banks''.

(2) The register of registered banks shall be available for public inspection at the head office of the Bank during normal business hours.

Cf. 1964, No. 134, s. 38C (1), (2); 1986, No. 131, s. 10

70. Application for registration---(1) Any person may apply to the Bank to be registered as a registered bank.

- (2) Applications to be registered as a registered bank shall be---
 - (a) Made in such manner as may be specified by the Bank; and
 - (b) Accompanied by payment of such fee as may be determined by the Bank from time to time and approved by the Minister by notice in the Gazette.

(3) Every person who makes an application under this section shall furnish to the Bank such information as may be required by the Bank to assist it in determining the application.

Cf. 1964, No. 134, s. 38C (3), (4), (5); 1986, No. 131, s. 10

71. Voluntary removal of name from register---(1) A registered bank may, by notice in writing, require the Bank to remove the name of that registered bank from the register on a date specified in the notice, not being a date earlier than 28 days, or such shorter period as the Bank may agree to, after the date the notice is given.

(2) The registered bank shall, within 7 days of giving that notice, give public notice of the fact that it had given the notice to the Bank.

(3) The Bank shall remove the name of the registered bank from the register on the date specified in the notice and shall give notice of the removal of the name in the Gazette.

(4) Except with the consent of the Bank, a registered bank shall not give a notice under subsection (1) of this section if---

- (a) A notice has been given to that registered bank under section 99 (1) (d) of this Act; or
- (b) A person has been appointed under section 99 (1) (e) of this Act to exercise, in relation to that registered bank, the powers conferred by that paragraph; or
- (c) A person has been appointed under section 101 of this Act to carry out an investigation of the affairs of that registered bank; or
- (d) A notice is in force under section 111 of this Act in relation to that registered bank; or
- (e) The registered bank is subject to statutory management.

(5) The Bank may refuse to remove the name of a registered bank from the register if---

- (a) A notice has been given to the registered bank under section 99 (1) (d) of this Act; or
- (b) A person has been appointed under section 99 (1) (e) of this Act to exercise, in relation to that registered bank, the powers conferred by that paragraph; or
- (c) A person has been appointed under section 101 of this Act to carry out an investigation into the affairs of that registered bank; or
- (d) A notice is in force under section 111 of this Act in relation to that registered bank; or
- (e) The registered bank is subject to statutory management.

72. Offence---(1) No person other than a registered bank shall use any name, title, style, or designation or use any description which represents or implies that that person is a registered bank.

(2) Every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on summary conviction,---

- (a) In the case of an individual, to a fine not exceeding \$100,000; and
- (b) In the case of a body corporate, to a fine not exceeding \$300,000. Cf. 1964, No. 134, s. 38C (7), (8); 1986, No. 131, s. 10

73. Determination of applications---(1) The Bank shall not register any person as a registered bank unless it is satisfied that the business

carried on, or proposed to be carried on, by the applicant consists of, or to a substantial extent consists of, or will, or will to a substantial extent, consist of, the borrowing and lending of money, or the provision of other financial services, or both.

(2) In determining an application under section 70 of this Act, the Bank shall have regard to---

- (a) The incorporation and ownership structure of the applicant:
- (b) The size of the applicant's business or proposed business:
- (c) The ability of the applicant to carry on its business or the proposed business in a prudent manner:
- (d) The standing of the applicant in the financial market:
- (e) In any case where the applicant is a body corporate incorporated outside New Zealand or an unincorporated body having its head office or principal place of business outside New Zealand, the law and regulatory requirements relating to the licensing, registration, or authorisation of banks of the country in which that body is incorporated or in which that unincorporated body has its head office or principal place of business and their application to any registered bank having its head office or principal place of business in New Zealand:
- (f) In any case where the applicant is a subsidiary of any body corporate incorporated outside New Zealand, the law and regulatory requirements relating to the licensing, registration, or authorisation of banks of the country in which the body corporate which the Bank considers exercises ultimate control of the applicant is incorporated and their application to any registered bank having its head office or principal place of business in New Zealand:
- (g) Such other matters as may from time to time be prescribed in regulations.

(3) For the purposes of subsection (2) (g) of this section, the Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations prescribing additional matters to which the Bank shall have regard in considering applications for registration.

(4) The Bank shall give notice in the Gazette of the registration of any person as a registered bank under this section.

Cf. 1964, No. 134, s. 38D (1), (2), (4); 1986, No. 131, s. 10

74. Conditions of registration---(1) A person may be registered as a registered bank unconditionally, or subject to such conditions as the Bank may specify.

(2) The Bank may, from time to time, by notice in writing to a registered bank,---

- (a) In a case where the bank has been registered unconditionally or has been deemed to have been registered, impose conditions of registration:
- (b) Vary or remove any condition, whether imposed on the registration of the bank or under paragraph (a) of this subsection, or add to any such condition.

- (3) The Bank shall not---
- (a) Impose conditions of registration under subsection (2) (a) of this section; or
- (b) Vary or add to conditions of registration under subsection (2) (b) of this section---

unless the registered bank is given notice in writing of the Bank's intention to do so, has a reasonable opportunity to make submissions to the Bank, and the Bank has regard to those submissions.

- (4) The Bank may specify conditions that relate to any of the following matters---
 - (a) The matters to which the Bank is required to have regard under section 73 of this Act in determining an application for registration including any matters prescribed by regulations made under that section; and
 - (b) The matters referred to in section 78 of this Act including any matters prescribed by regulations made under that section.
- Cf. 1964, No. 134, s. 38D (3); 1986, No. 131, s. 10

To be read together with *s.3 RBNZ Amendment Act 1995*:

Conditions of registration---Section 74 of the principal Act is hereby amended by repealing subsections (2) and (3), and substituting the following subsections: ``(2) The Bank may, from time to time, by notice in writing to a registered bank-- ``(a) Impose conditions of registration whether or not the registration of the bank is subject to conditions; or ``(b) Vary, add to, remove, or substitute any conditions of registration. ``(3) The Bank shall not exercise a power referred to in subsection (2) of this section 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."

- 75. Publication of principles---The Bank shall publish the principles on which it acts, or proposes to act,---
- (a) In determining applications for registration; and
- (b) In imposing, varying, removing, or adding to conditions of registration.

76. Registration of certain persons---(1) Every person, that immediately before the commencement of this Act, was a registered bank, or deemed to be a registered bank, pursuant to Part VA of the Reserve Bank of New Zealand Act 1964, shall continue to be a registered bank as if that person had been registered under this Act.

(2) If that person was registered, or deemed to have been registered, under that Act subject to any conditions, those conditions shall continue to apply as if they had been imposed under section 74 of this Act.

(3) Nothing in subsection (1) or subsection (2) of this section limits any other provisions of this Part of this Act.

77. Cancellation of registration---(1) The Governor-General may, from time to time, by Order in Council on the advice of the Minister given in accordance with a recommendation of the Bank, cancel the registration of a registered bank.

(2) The Bank shall not make a recommendation under subsection (1) of this section unless it is satisfied---

- (a) That the registered bank was registered on information that was false or misleading in a material particular; or
- (b) That the registered bank has suffered a material loss of standing in the financial market since being registered; or
- (c) If the registered bank is a body corporate---
 - (i) That an order has been made for the winding up of that body corporate; or
 - (ii) That a resolution has been passed for the voluntary winding up of that body corporate; or
 - (iii) That a receiver has been appointed in respect of that body corporate; or
- (d) If the registered bank is a partnership---
 - (i) That the partnership is dissolved; or
 - (ii) That if a member of the partnership is a body corporate, an event referred to in paragraph (c) of this subsection has occurred in relation to that member; or
 - (iii) That a member of the partnership is adjudged bankrupt or has made a composition or arrangement with that member's creditors; or
- (e) That a condition of registration has not been complied with; or
- (f) That the registered bank has not carried on its business in a prudent manner; or
- (g) That the registered bank has failed to comply with an obligation imposed under this Act.

(3) The Bank shall not make a recommendation under subsection (1) of this section unless---

- (a) The registered bank is given not less than 7 days' notice in writing of the Bank's intention to consider making the recommendation; and
- (b) The registered bank has a reasonable opportunity to make submissions to the Bank; and
- (c) The Bank has regard to those submissions.

(4) A copy of any written submission made by the registered bank shall be sent to the Minister together with any recommendation by the Bank.

(5) The Bank shall, as soon as practicable after the making of an Order in Council cancelling the registration of a registered bank, give notice in writing to the bank stating the grounds on which the Bank's recommendation was made.

Cf. 1964, No. 134, s. 38F (1), (2), (3) (a)-(e), (g), (4), (5);
1986, No. 131, s. 10

To be read together with *s.4 RBNZ Amendment Act 1995*:

Cancellation of registration---Section 77 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection: ``(3) The Bank shall not make a recommendation under subsection (1) of this section unless--- ``(a) The Bank gives the registered bank not less than 7 days' notice in writing of the Bank's intention to consider making the recommendation; 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."`

78. Carrying on business in prudent manner---(1) In---

- (a) Having regard, under section 73 (2) (c) of this Act, to the ability of an applicant for registration as a registered bank to carry on its business or proposed business in a prudent manner; or
- (b) Determining under section 77 (2) (f) of this Act that a registered bank has not carried on its business in a prudent manner,---

the Bank shall confine its consideration to the following matters:

- (c) Capital in relation to the size and nature of the business or proposed business:
- (d) Loan concentration or proposed loan concentration and risk exposures or proposed risk exposures:
- (e) Separation of the business or proposed business from other business and from other interests of any person owning or controlling the applicant or registered bank:
- (f) Internal controls and accounting systems or proposed internal controls and accounting systems:

(g) Such other matters as may from time to time be prescribed in regulations.

(2) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations prescribing additional matters for the purposes of subsection (1) (g) of this section.

(3) The Governor shall, from time to time, issue, in such manner as the Governor may determine, guidelines for the purpose of interpreting any of the matters referred to in paragraphs (c) to (g) of subsection (1) of this section.

This section to be read together with s.5 RBNZ Amendment Act 1995:

Carrying on business in prudent manner---Section 78 (3) of the principal Act is hereby amended by omitting the word "shall", and substituting the word "may".

79. Annual fee---(1) Every registered bank shall pay to the Bank an annual fee of such amount as may be determined by the Bank from time to time, approved by the Minister, and notified in the Gazette.

(2) Without limiting subsection (1) of this section,---

- (a) Different fees may be determined for different classes of registered banks:
- (b) In determining fees the Bank may have regard to the anticipated costs of the Bank in exercising the powers conferred by this Part of this Act.

80. Credit assessment of registered banks---(1) The Bank may, from time to time, by notice in writing to all registered banks or to all members of any class of registered banks, require each of those banks---

- (a) To undergo an independent assessment of its credit worthiness or financial stability by a person or organisation nominated or approved by the Bank; and
- (b) To publish the results of that assessment in such manner as the Bank directs.

(2) Every registered bank shall comply with a notice given under this section.

Financial Disclosure by Registered Banks

81. Public disclosure of financial and other information by registered banks---(1) The Bank shall, from time to time, by notice in the Gazette, prescribe the information which, on the approval of the notice by the Governor-General by Order in Council under subsection (5) of this section, shall be published by all registered banks or any specified class of registered banks.

(2) The information shall be contained in a document to be known as a ``disclosure statement'' and shall be published in the manner and on such occasions as shall be specified in the notice.

(3) Without limiting the information which may be prescribed, a notice under subsection (1) of this section may prescribe information relating to---

- (a) Directors, principal officers, secretary, auditors, bankers, and solicitors:
- (b) Incorporation and ownership structure:
- (c) Financial and accounting systems and controls:
- (d) Assets and liabilities including asset and liability maturities:
- (e) Income and expenditure:
- (f) Fees and charges including interest rates charged and payable:
- (g) Capital structure:
- (h) Loan concentrations and risk exposures:
- (i) Liquidity:
- (j) Obligations and commitments including contingent liabilities:
- (k) Foreign exchange and interest rate exposures:
- (l) Pending proceedings and arbitrations:
- (m) Acquisitions.

(4) Without limiting subsection (1) or subsection (3) of this section, a notice under subsection (1) of this section may---

- (a) Prescribe information that is required to be contained in accordance with normal accounting principles in financial statements:
- (b) Require the publication of financial statements and notes to those statements for any period or periods specified in the notice:
- (c) Require financial statements and information to be published in consolidated form:
- (d) Require financial information which is required to be published to be taken from audited financial statements:
- (e) Require financial statements and information which are required to be published to be audited and to be accompanied by an auditor's report.

(5) The Governor-General may, by Order in Council,---

- (a) In a case where a notice under subsection (1) of this section prescribes information to be published by all registered banks, approve that notice, and on the coming into force of that order, every registered bank shall publish that information in the form

and in the manner prescribed:

(b) In a case where a notice under that subsection prescribes information to be published by a specified class of registered banks, approve that notice, and on the coming into force of that order, every registered bank which is a member of that class shall publish that information in the form and in the manner prescribed.

(6) A registered bank shall not be required to publish information relating to the affairs of any particular customer or client of the bank.

(7) The Bank shall consult with the Securities Commission before it prescribes information which shall be published and the manner in which it shall be published, in accordance with this section, by registered banks or any specified class of registered banks.

To be read together with s.7 RBNZ Amendment Act 1995:

New sections substituted--The principal Act is hereby amended by repealing section 81, and substituting the following sections: ``81. Public disclosure of financial and other information by registered banks--(1) The Governor-General may from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, prescribe information that shall be published by all registered banks or by any class of registered bank specified in the order. `` (2) Every registered bank to which an Order in Council under subsection (1) of this section applies must publish the information specified in the order in a document to be known as a 'disclosure statement', in the manner, and on the occasions specified in the order. `` (3) Without limiting the information that may be prescribed, an Order in Council under subsection (1) of this section may prescribe information relating to--- `` (a) Directors, principal officers, secretary, auditors, bankers, and solicitors: `` (b) Incorporation and ownership structure: `` (c) Financial and accounting systems and controls: `` (d) Assets and liabilities, including asset and liability maturities: `` (e) Income and expenditure: `` (f) Fees and charges, including interest rates charged and payable: `` (g) Capital structure: `` (h) Loan concentrations and risk exposures: `` (i) Liquidity: `` (j) Obligations and commitments, including contingent liabilities: `` (k) Transactions with related parties: `` (l) Foreign exchange and interest rate exposures: `` (m) Pending proceedings and arbitrations: `` (n) Acquisitions. `` (4) In addition to information relating to the registered bank itself, an Order in Council under subsection (1) of this section may require a registered bank to disclose--- `` (a) Information relating to the holding company of the registered bank, where the information is publicly available in the country in which the holding company is incorporated: `` (b) Information in consolidated form relating to the banking group of which the registered bank is a member. `` (5) Without limiting subsection (1) or subsection (3) of this section, an Order in Council under subsection (1) of this section may--- `` (a) Prescribe 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 financial statements and information to be published in consolidated form: `` (d) Require financial information that is required to be published to be taken from audited financial statements: `` (e) Require financial statements and information that are required to be published to be audited and to be accompanied by an auditor's report: `` (f) Require a disclosure statement to contain such statement by the directors of the registered bank or persons authorised in writing by the directors of the bank relating to the affairs of the bank as may be specified in the order. `` (6) Subject to subsection (7) of this section, a registered bank is not required to publish information relating to the affairs of a particular customer or client of the bank, the holding company of the bank, or a member of the banking group. `` (7) Nothing in subsection (6) of this section applies to the publication of information by a registered bank in relation to the bank or the holding company of the bank for the purposes of paragraph (k) of subsection (3) of this section. `` (8) For the purposes of subsection (6) of this section, the publication pursuant to a requirement imposed under paragraph (h) of subsection (3) of this section of--- `` (a) The amount of any loan or risk exposure (without disclosing the identity of the particular customer or client to whom it relates); or `` (b) The number of loans or risk exposures falling 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 the amounts of which 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 the banking group and the actual amounts thereof-- is not publication of information relating to the affairs of a particular customer or client of the bank, the holding company of the bank, or a member of the banking group. ``9) Every Order in Council made under subsection (1) of this section shall be published in the Gazette. ``10) The Regulations (Disallowance) Act 1989 shall apply to every Order in Council made under subsection (1) of this section as if the order was a regulation within the meaning of section 2 of that Act. ``11) For the purposes of paragraph (k) of subsection (3) of this section, the term `related party' shall have the meaning given to it in the Order in Council under subsection (1) of this section. ``12) For the purposes of paragraph (b) of subsection (4) of this section, the term `banking group' shall have the meaning given to it in the Order in Council under subsection (1) of this section. ``81A. Bank to consult---(1) Before making a recommendation under section 81 (1) of this Act (including a recommendation to amend any Order in Council made under that subsection) the Bank must--- (a) Consult with--- (i) The Securities Commission; and (ii) Registered banks that will be affected by any Order in Council made under that subsection; and (iii) Such other persons as the Bank considers will be substantially affected by any Order in Council made under that subsection or organisations representing those persons; and (b) Ensure that the persons referred to in paragraph (a) of this subsection have a reasonable opportunity to make submissions to the Bank; and (c) Have regard to those submissions. ``2) Failure to comply with subsection (1) of this section does not affect the validity of any Order in Council under section 81 (1) of this Act. ``3) Any action taken by the Bank before the coming into force of the Reserve Bank of New Zealand Amendment Act 1995 that would, if this section had then been in force, have constituted action taken under this section, shall be treated as having been taken under this section."

82. Disclosure statements to be signed---Every disclosure statement which a registered bank is required to publish under section 81 of this Act shall be dated and shall be signed---

- (a) In the case of a body corporate, by every director of the body corporate or by that director's agent authorised in writing; and
- (b) In the case of a partnership, by every member of the partnership or by that member's agent authorised in writing.

83. Bank may require disclosure statement to be corrected---Where the Bank considers that a disclosure statement published by a registered bank---

- (a) Contains information that is false or misleading; or
- (b) Does not contain information which it is required to contain, whether or not the information contained in the disclosure statement is false or misleading as a result of the omission,---

the Bank may, by notice in writing to the registered bank, require the registered bank to---

- (c) Publish a disclosure statement that does not contain false or misleading information; or
- (d) Publish a disclosure statement that contains the information that was omitted; or
- (e) Take such other corrective action as the Bank may specify in the notice.

Advertising by Registered Banks

84. Interpretation---For the purposes of sections 85 to 91 of this Act, unless the context otherwise requires---

``Advertisement'' means a form of communication---

- (a) That is to be, or has been, distributed to any person by any means; and
- (b) That is authorised or instigated by or on behalf of a registered bank or prepared with the co-operation of, or by

arrangement with, a registered bank; and

(c) That contains, or refers to, an offer of debt securities by a registered bank, or is reasonably likely to induce persons to subscribe for debt securities of the registered bank--- and ``advertising'' has a corresponding meaning:

``Debt security'' in relation to a registered bank, means any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, that registered bank (whether or not the interest or right is secured by a charge over any property); and includes---

(a) A debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and

(b) Any renewal or variation of the terms or conditions of any existing debt security; and

(c) Any security that is declared by the Governor-General, by Order in Council, to be a debt security for the purposes of this Act.

85. Content of advertisements by registered banks---(1) Every advertisement by a registered bank shall comply with the requirements prescribed by regulations made under this Act.

(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

86. Regulations---(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank, make regulations for the following purposes---

(a) Regulating advertising and advertisements by registered banks including---

(i) Prescribing the information, statements, certificates, documents, or other matters that shall or shall not be contained in, or endorsed on, or attached to, advertisements:

(ii) Prohibiting or restricting the use in advertisements of prescribed words, information, statements, sounds and images, graphics, or other matters:

(iii) Prescribing requirements as to the layout or presentation of advertisements and the size of printing used in advertisements---

and different matters may be prescribed, prohibited, restricted, specified, or required in respect of different classes of advertisements:

(b) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under paragraph (a) of this subsection, and prescribing the fines, not exceeding, in the case of an individual, \$25,000, and in the case of a body corporate, \$50,000, that may be imposed in respect of any offence.

(2) The bank shall consult with the Securities Commission before it makes a recommendation under subsection (1) of this section.

87. Offence to advertise in contravention of regulations---(1) If an advertisement that does not comply with the requirements prescribed by regulations made under this Act is distributed to any person---

- (a) The registered bank; and
- (b) Every person holding office as a director of the registered bank at the time the advertisement was distributed---

commits an offence.

(2) A registered bank that commits an offence against this section is liable on summary conviction to a fine not exceeding \$50,000.

(3) An individual who commits an offence against this section is liable on summary conviction to a fine not exceeding \$25,000.

(4) It is a defence to a prosecution for an offence against this section by a person referred to in subsection (1) (b) of this section if the defendant proves that the advertisement was published without the defendant's knowledge and consent.

(5) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

88. Bank may prohibit advertisements by registered banks---(1) Where, at any time, the Bank is of the opinion that an advertisement---

- (a) Is likely to deceive, mislead, or confuse with regard to any matter that is material to an offer of debt securities by a registered bank to which it relates; or
- (b) Is inconsistent with the most recent disclosure statement published by that registered bank; or
- (c) Does not comply with regulations made under this Act,---

the Bank may make an order prohibiting the distribution of that advertisement or any advertisement which relates to the offer of those securities.

(2) An order may be made on such terms and conditions as the Bank thinks fit.

(3) Where the Bank makes an order under this section---

- (a) It shall forthwith notify the registered bank that the order has been made and the reasons for making it; and
- (b) It may notify any other person that the order has been made and the reasons for making it.

(4) Every person who contravenes an order made under this section commits an offence and is liable on summary conviction to a fine not exceeding \$25,000.

(5) It is a defence to a charge under subsection (4) of this section if the defendant proves that the advertisement was distributed---

- (a) Without the defendant's knowledge; or
- (b) Without the defendant's knowledge of the order.

(6) At any time after an order has been made under this section, the bank shall be entitled to appear and be represented before the Bank and the Bank, if it is satisfied that the order should not continue in force, may revoke the order.

(7) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.
Cf. 1978, No. 103, s. 44A; 1978, No. 234, s. 49

Provisions Applying to Disclosure Statements and Advertisements

89. Offences in relation to disclosure statements and advertisements---(1) Every registered bank commits an offence against this section, if, without lawful justification or excuse, it fails to publish information that it is required to publish in a disclosure statement under section 81 of this Act.

(2) Where a disclosure statement that includes information that is false or misleading is published by a registered bank, the registered bank and every person holding office as a director of the registered bank at the time of publication of the disclosure statement, commits an offence against this section.

(3) Where an advertisement that contains information that is false or misleading is distributed, the registered bank and every person holding office as a director of the bank at the time of distribution of the advertisement commits an offence against this section.

(4) A registered bank that commits an offence against this section is liable on conviction on indictment to a fine not exceeding \$100,000.

(5) An individual who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding 3 years, or to a fine not exceeding \$25,000.

(6) It is a defence to a prosecution for an offence against subsection (2) or subsection (3) of this section if the defendant proves that the information was immaterial or, in the case of an individual, that the defendant had reasonable grounds to believe and did, up to the publication of the disclosure statement, or the distribution of the advertisement, as the case may be, believe that the information was true.

(7) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

To be read together with s.9 RBNZ Amendment Act 1995 :

New sections substituted---The principal Act is hereby amended by repealing sections 89 to 92 and the heading above those sections, and substituting the following heading and sections: ``Provisions Applying to Disclosure Statements ``89. Offences in relation to disclosure statements---(1) Every registered bank commits an offence against this section if, without lawful justification or excuse, it fails to publish information that it is required to publish in a disclosure statement under section 81 of this Act. `` (2) Where a disclosure statement that includes information that is false or misleading is published by a registered bank, the registered bank and every director of the registered bank who signed the disclosure statement, or on whose behalf the disclosure statement was signed, commits an offence against this section. `` (3) A registered bank that commits an offence against this section is liable on conviction on indictment to a fine not exceeding \$100,000. `` (4) An individual who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 years, or to a fine not

exceeding \$25,000. ``5) It is a defence to a prosecution for an offence against subsection (2) of this section against a registered bank or a person holding office as a director of a registered bank, as the case may be, if the defendant proves that the information was immaterial. ``6) It is a defence to a prosecution for an offence against subsection (2) of this section against a person who is a director of a registered bank if the defendant proves that he or she had reasonable grounds to believe and did, up to the publication of the disclosure statement, believe that the information was true. ``90. Civil liability---Subject to section 91 of this Act, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security issued by a registered bank in reliance on false or misleading information contained in a disclosure statement, namely,--- ``a) The registered bank; and ``b) Every person holding office as a director of the registered bank at the time of publication of the disclosure statement. ``91. Defences---A person is not liable under section 90 of this Act in relation to false or misleading information that is included in a disclosure statement if that person proves that--- ``a) The disclosure statement was published without his or her knowledge or consent and, on becoming aware of the publication, he or she forthwith gave notice to the Bank that it was published without his or her knowledge or consent and, as soon as practicable, also gave reasonable public notice that it was published without his or her knowledge or consent; or ``b) After publication of the disclosure statement and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement, forthwith gave notice to the Bank of the withdrawal of that consent and, as soon as practicable, also gave reasonable public notice of the withdrawal of that consent; or ``c) He or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true. ``92. Fair Trading Act 1986 not affected---Nothing in sections 89 to 91 of this Act limits or affects the Fair Trading Act 1986."

90. Civil liability---(1) Subject to section 91 of this Act, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security or debt securities issued by a registered bank in reliance on false or misleading information contained in a disclosure statement or an advertisement, namely,---

- (a) The registered bank; and
- (b) Every person holding office as a director of the registered bank at the time of publication of the disclosure statement or the distribution of the advertisement, as the case may be.

(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

Cf. 1978, No. 103, s. 56 (1); 1982, No. 147, s. 27

To be read together with s.9 RBNZ Amendment Act 1995:

New sections substituted---The principal Act is hereby amended by repealing sections 89 to 92 and the heading above those sections, and substituting the following heading and sections: ``Provisions Applying to Disclosure Statements ``89. Offences in relation to disclosure statements---(1) Every registered bank commits an offence against this section if, without lawful justification or excuse, it fails to publish information that it is required to publish in a disclosure statement under section 81 of this Act. ``2) Where a disclosure statement that includes information that is false or misleading is published by a registered bank, the registered bank and every director of the registered bank who signed the disclosure statement, or on whose behalf the disclosure statement was signed, commits an offence against this section. ``3) A registered bank that commits an offence against this section is liable on conviction on indictment to a fine not exceeding \$100,000. ``4) An individual who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 years, or to a fine not exceeding \$25,000. ``5) It is a defence to a prosecution for an offence against subsection (2) of this section against a registered bank or a person holding office as a director of a registered bank, as the case may be, if the defendant proves that the information was immaterial. ``6) It is a defence to a prosecution for an offence against subsection (2) of this section against a person who is a director of a registered bank if the defendant proves that he or she had reasonable grounds to believe and did, up to the publication of the disclosure statement, believe that the information was true. ``90. Civil liability---Subject to section 91 of this Act, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security issued by a registered

bank in reliance on false or misleading information contained in a disclosure statement, namely,--- `` (a) The registered bank; and `` (b) Every person holding office as a director of the registered bank at the time of publication of the disclosure statement. ``91. Defences---A person is not liable under section 90 of this Act in relation to false or misleading information that is included in a disclosure statement if that person proves that--- `` (a) The disclosure statement was published without his or her knowledge or consent and, on becoming aware of the publication, he or she forthwith gave notice to the Bank that it was published without his or her knowledge or consent and, as soon as practicable, also gave reasonable public notice that it was published without his or her knowledge or consent; or `` (b) After publication of the disclosure statement and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement, forthwith gave notice to the Bank of the withdrawal of that consent and, as soon as practicable, also gave reasonable public notice of the withdrawal of that consent; or `` (c) He or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true. ``92. Fair Trading Act 1986 not affected---Nothing in sections 89 to 91 of this Act limits or affects the Fair Trading Act 1986."

91. Defences---(1) A person is not liable under section 90 of this Act in relation to false or misleading information that is included in a disclosure statement or an advertisement if that person proves that---

- (a) The disclosure statement was published or the advertisement was distributed, as the case may be, without his or her knowledge or consent, and on becoming aware of the publication or distribution he or she forthwith gave notice to the Bank that it was published or distributed without his or her knowledge or consent, and also gave reasonable public notice that it was published or distributed without his or her knowledge or consent; or
- (b) After publication of the disclosure statement or the distribution of the advertisement, as the case may be, and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement or the advertisement, forthwith gave notice to the Bank of the withdrawal of that consent, and also gave reasonable public notice of the withdrawal of that consent; or
- (c) He or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true.

(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

Cf. 1978, No. 103, s. 56 (3) (a)-(c); 1982, No. 147, s. 27

To be read together with s.9 RBNZ Amendment Act 1995:

New sections substituted---The principal Act is hereby amended by repealing sections 89 to 92 and the heading above those sections, and substituting the following heading and sections: ``Provisions Applying to Disclosure Statements ``89. Offences in relation to disclosure statements---(1) Every registered bank commits an offence against this section if, without lawful justification or excuse, it fails to publish information that it is required to publish in a disclosure statement under section 81 of this Act. `` (2) Where a disclosure statement that includes information that is false or misleading is published by a registered bank, the registered bank and every director of the registered bank who signed the disclosure statement, or on whose behalf the disclosure statement was signed, commits an offence against this section. `` (3) A registered bank that commits an offence against this section is liable on conviction on indictment to a fine not exceeding \$100,000. `` (4) An individual who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 years, or to a fine not exceeding \$25,000. `` (5) It is a defence to a prosecution for an offence against subsection (2) of this section against a registered bank or a person holding office as a director of a registered bank, as the case may be, if the defendant

proves that the information was immaterial. ``6) It is a defence to a prosecution for an offence against subsection (2) of this section against a person who is a director of a registered bank if the defendant proves that he or she had reasonable grounds to believe and did, up to the publication of the disclosure statement, believe that the information was true. ``90. Civil liability---Subject to section 91 of this Act, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security issued by a registered bank in reliance on false or misleading information contained in a disclosure statement, namely,--- ``a) The registered bank; and ``b) Every person holding office as a director of the registered bank at the time of publication of the disclosure statement. ``91. Defences---A person is not liable under section 90 of this Act in relation to false or misleading information that is included in a disclosure statement if that person proves that--- ``a) The disclosure statement was published without his or her knowledge or consent and, on becoming aware of the publication, he or she forthwith gave notice to the Bank that it was published without his or her knowledge or consent and, as soon as practicable, also gave reasonable public notice that it was published without his or her knowledge or consent; or ``b) After publication of the disclosure statement and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement, forthwith gave notice to the Bank of the withdrawal of that consent and, as soon as practicable, also gave reasonable public notice of the withdrawal of that consent; or ``c) He or she had reasonable grounds to believe and did, up to the time of the subscription for the securities, believe that the statement was true. ``92. Fair Trading Act 1986 not affected---Nothing in sections 89 to 91 of this Act limits or affects the Fair Trading Act 1986."

92. Fair Trading Act 1986 not affected---(1) Nothing in sections 89 to 91 of this Act limits or affects the Fair Trading Act 1986.

(2) This section shall come into force on a date to be appointed for the commencement of it by the Governor-General by Order in Council.

To be read together with *s.9 RBNZ Amendment Act 1995*:

New sections substituted---The principal Act is hereby amended by repealing sections 89 to 92 and the heading above those sections, and substituting the following heading and sections: ``Provisions Applying to Disclosure Statements ``89. Offences in relation to disclosure statements---(1) Every registered bank commits an offence against this section if, without lawful justification or excuse, it fails to publish information that it is required to publish in a disclosure statement under section 81 of this Act. ``2) Where a disclosure statement that includes information that is false or misleading is published by a registered bank, the registered bank and every director of the registered bank who signed the disclosure statement, or on whose behalf the disclosure statement was signed, commits an offence against this section. ``3) A registered bank that commits an offence against this section is liable on conviction on indictment to a fine not exceeding \$100,000. ``4) An individual who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 years, or to a fine not exceeding \$25,000. ``5) It is a defence to a prosecution for an offence against subsection (2) of this section against a registered bank or a person holding office as a director of a registered bank, as the case may be, if the defendant proves that the information was immaterial. ``6) It is a defence to a prosecution for an offence against subsection (2) of this section against a person who is a director of a registered bank if the defendant proves that he or she had reasonable grounds to believe and did, up to the publication of the disclosure statement, believe that the information was true. ``90. Civil liability---Subject to section 91 of this Act, the following persons are liable to pay compensation to any person who sustains a loss by reason of subscribing for any debt security issued by a registered bank in reliance on false or misleading information contained in a disclosure statement, namely,--- ``a) The registered bank; and ``b) Every person holding office as a director of the registered bank at the time of publication of the disclosure statement. ``91. Defences---A person is not liable under section 90 of this Act in relation to false or misleading information that is included in a disclosure statement if that person proves that--- ``a) The disclosure statement was published without his or her knowledge or consent and, on becoming aware of the publication, he or she forthwith gave notice to the Bank that it was published without his or her knowledge or consent and, as soon as practicable, also gave reasonable public notice that it was published without his or her knowledge or consent; or ``b) After publication of the disclosure statement and before the securities were subscribed for, he or she, on becoming aware of the false or misleading information, withdrew his or her consent to the disclosure statement, forthwith gave notice to the Bank of the withdrawal of that consent and, as soon as practicable, also gave reasonable public notice of the withdrawal of that consent; or ``c) He or she had reasonable grounds to believe and did, up to

the time of the subscription for the securities, believe that the statement was true. ``92. Fair Trading Act 1986 not affected--Nothing in sections 89 to 91 of this Act limits or affects the Fair Trading Act 1986."

Supply of Information

93. Supply of information for purposes of prudential supervision---(1) For the purposes of this Part of this Act, the Bank may, by notice in writing to any registered bank or by notice in the Gazette applying to any specified class of registered banks, require the bank, or as the case may be, banks of that class, to supply to the Bank such information, data, and forecasts relating to the business, operation, or management of that bank or banks of that class and for such periods and in such form as may be specified in the notice.

(2) Without limiting subsection (1) of this section, a notice may require information and data to be supplied relating to the financial and accounting systems and controls, assets and liabilities, income and expenditure (including interest rates charged and payable), fees and charges, obligations and commitments and risk exposures of, and transactions entered into by, that registered bank or class of registered banks and any associated person and, where specified, in consolidated form, in respect of business carried on in New Zealand or elsewhere and whether as principal, broker, agent or intermediary.

(3) A notice given pursuant to this section may, by a subsequent notice, be revoked, varied or amended by the Bank.

(4) Information, data, and forecasts required to be supplied pursuant to this section shall be supplied to the Bank at such place in New Zealand and at such time as may be specified in the notice.

(5) Every registered bank commits an offence against this Act if, without lawful justification or excuse, it---

- (a) Fails to comply in any respect with any of the provisions of this section or with any of the requirements of the Bank under this section; or
- (b) Supplies any information or data which it is required to supply under this section which is false or misleading in a material particular.

Cf. 1964, No. 134, s. 38L (1), (2), (4)-(6); 1986, No. 131, s. 10; 1989, No. 11, s. 9

94. Requirement that information be audited---(1) The Bank may, by notice in writing to a registered bank, require any information and data which that bank is required to supply pursuant to section 93 of this Act to be audited by an auditor approved by the Bank.

(2) Every registered bank commits an offence against this Act if, without lawful justification or excuse, it fails to comply with this section.

Cf. 1964, No. 134, s. 38L (3); 1986, No. 131, s. 10; 1989, No. 11, s. 10

95. Bank may require report on financial and accounting systems---(1) The Bank may, by notice in writing to a registered bank, require that

registered bank to supply the Bank with a report, prepared by a person approved by the Bank, on the financial and accounting systems and controls of that registered bank.

(2) Every registered bank commits an offence against this Act if, without lawful justification or excuse, it fails to comply with this section.

96. Disclosure of information to Bank by auditors---Every person who holds, or at any time has held, office as required by any enactment, as an auditor of a registered bank, shall disclose to the Bank information relating to the affairs of that registered bank obtained in the course of holding that office if, in the opinion of that person,---

- (a) The registered bank is insolvent or is likely to become insolvent or is in serious financial difficulties; and
- (b) The disclosure of that information is likely to assist, or be relevant to, the exercise by the Bank of its powers under this Part of this Act.

Cf. 1964, No. 134, s. 38M (1); 1986, No. 131, s. 10; 1989, No. 11, s. 13

97. Auditor to inform registered bank of intention to disclose---Every auditor shall, before disclosing any information to the Bank under section 96 of this Act, take reasonable steps to inform the registered bank of the intention to disclose the information and the nature of the information.

Cf. 1964, No. 134, s. 38M (5); 1986, No. 131, s. 10

98. Protection of auditors---(1) No civil, criminal, or disciplinary proceedings shall lie against any auditor arising from the disclosure in good faith of information to the Bank pursuant to section 96 of this Act.

(2) No tribunal, body, or authority, having jurisdiction in respect of the professional conduct of any auditor shall make any order against, or do any act in relation to, that person in respect of such disclosure.

(3) No information received by the Bank pursuant to section 96 of this Act shall be admissible in evidence in any proceedings against the auditor concerned.

(4) Nothing in subsection (3) of this section shall limit the admissibility of any information obtained in any other way.

Cf. 1964, No. 134, s. 38M (2); 1986, No. 131, s. 10; 1989, No. 11, s. 15

Powers to Obtain Information and Documents

99. Powers to obtain information and documents---(1) Where the Bank has reasonable cause to believe---

- (a) That any information or data supplied to the Bank by a registered bank pursuant to section 93 of this Act is false or misleading in a material particular; or
- (b) That a registered bank has failed to comply with any requirement to supply information, data, or forecasts pursuant to section 93

- of this Act; or
- (c) That a registered bank has failed to comply with section 95 of this Act---

it may,---

- (d) By notice in writing to that registered bank, require that registered bank to supply to the Bank, within the time specified in the notice, such information and data relating to the business, operation and management of that registered bank as may be specified in the notice; or
- (e) Appoint, in writing, any person to enter and search any premises and inspect, remove, and take copies of, any documents or extracts from documents relating to the business, operation, and management of that registered bank in the possession, or under the control, of any person, and, where necessary, require the reproduction in usable form of any information recorded or stored in those documents.

(2) Every person commits an offence against this Act who, without lawful justification or excuse, hinders, obstructs, or delays, in the conduct of any inspection pursuant to this section, any person duly authorised to make such inspection.

(3) Every registered bank commits an offence against this Act if, without lawful justification or excuse,---

- (a) It fails to comply with any requirement of the Bank under subsection (1) (d) of this section; or
- (b) It supplies any information or data required to be supplied pursuant to subsection (1) (d) of this section which is false or misleading in a material particular.

Cf. 1964, No. 134, s. 38N (1), (9), (10); 1986, No. 131, s. 10; 1989, No. 11, s. 17

100. Requirements on entering and searching premises---(1) No person appointed pursuant to section 99 (1) (e) of this Act shall enter and search any premises, or inspect, remove, or take copies of any documents, or extracts from documents, in the possession of, or under the 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 of the documents, agrees; or
- (b) That person obtains a warrant under section 106 of this Act.

(2) Every person authorised to enter and search any premises pursuant to a warrant obtained under section 106 of this Act shall, 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.

Cf. 1964, No. 134, s. 38N (2), (7); 1986, No. 131, s. 10; 1989, No. 11, s. 18

Investigations

101. Investigation of affairs of registered bank---Where the Bank is

satisfied that it is necessary or desirable for the purpose of determining whether or not to exercise the powers conferred under section 111 or section 117 of this Act that an investigation of the affairs of any registered bank should be carried out, the Bank may appoint, in writing, any person to carry out an investigation of the affairs of that registered bank.

Cf. 1964, No. 134, s. 380 (1); 1986, No. 131, s. 10; 1989, No. 11, s. 19

102. Powers of person appointed to carry out investigation---(1) Any person appointed under section 101 of this Act may, for the purposes of carrying out an investigation of the affairs of a registered bank,---

- (a) By notice in writing, require that registered bank, or any officer or employee of that registered bank, or any other person, to---
 - (i) Supply any information or data relating to the business, operation, and management of the registered bank:
 - (ii) Produce for inspection any documents of, or relating to, the business, operation, and management of that registered bank in the custody, or under the control, of that registered bank, officer, employee, or person:
 - (iii) Where necessary, reproduce in usable form any information recorded or stored in such documents:
- (b) Take copies of any documents produced for inspection under paragraph (a) of this subsection:
- (c) Require any officer or employee of that registered bank, or any other person, to answer any question relating to the business, operation, and management of that registered bank.

(2) Subject to section 104 of this Act, any person appointed under section 101 of this Act may, for the purposes of carrying out an investigation of the affairs of the registered bank, at any time,---

- (a) Enter and search any premises:
- (b) Inspect, remove, and take copies of any documents, or extracts from documents, relating to the business, operation, and management of that registered bank in the possession, or under the control, of any person:
- (c) If necessary, require any person to reproduce in usable form any information recorded or stored in those documents.

Cf. 1964, No. 134, s. 380 (2), (4); 1986, No. 131, s. 10; 1989, No. 11, s. 21

103. Offences in relation to investigations---(1) Every person commits an offence against this Act who, without lawful justification or excuse,---

- (a) Hinders, obstructs, or delays any person appointed to carry out an investigation under section 101 of this Act in carrying out that investigation; or
- (b) Refuses to answer any question put to him or her by that person under section 102 of this Act; or
- (c) Supplies any information required to be supplied pursuant to section 102 of this Act which is false or misleading in a material particular.

(2) Every registered bank commits an offence against this Act if, without lawful justification or excuse,---

- (a) It fails to comply with any requirement of a person appointed to carry out an investigation under section 101 of this Act; or
- (b) It supplies any information or data required to be supplied pursuant to section 102 (1) of this Act which is false or misleading in a material particular.

(3) A statement made by any person in answer to any question by a person appointed under section 101 of this Act to carry out an investigation into the affairs of a registered bank shall not be admissible in criminal proceedings against the maker of the statement.

Cf. 1964, No. 134, s. 380 (11), (12), (13); 1986, No. 131, s. 10; 1989, No. 11, s. 20

104. Requirements to be complied with by person carrying out investigation---(1) Any person who exercises any powers conferred by section 102 (1) of this Act shall, if requested, produce the instrument of that person's appointment under section 101 of this Act.

(2) No person who exercises any powers conferred by section 102 (2) of this Act shall enter and search any premises, or inspect, remove, and take copies of any documents or extracts from documents, or require the reproduction in usable form of any information recorded or stored in documents, unless---

- (a) The occupier of the premises, or the person who has possession of the documents, agrees; or
- (b) That person obtains a warrant under section 106 of this Act.

(3) Every person authorised to enter and search any premises pursuant to a warrant obtained under section 106 of this Act shall, 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.

Cf. 1964, No. 134, s. 380 (3), (5), (9); 1986, No. 131, s. 10; 1989, No. 11, s. 22

Miscellaneous Provisions

105. Confidentiality of information---(1) This section applies to---

- (a) Information, data, and forecasts supplied or disclosed to, or obtained by,---
 - (i) The Bank:
 - (ii) A person appointed under section 99 (1) (e) or section 101 of this Act---
under, or for the purposes of, or in connection with the exercise of powers conferred by, this Part of this Act:
- (b) Information and data derived from or based upon information, data, and forecasts referred to in paragraph (a) of this subsection:
- (c) Information relating to the exercise, or possible exercise, of the powers conferred by this Part of this Act.

(2) Information, data, and forecasts to which this section applies shall not be published or disclosed by the Bank, any officer or employee of the Bank, or a person appointed under section 99 (1) (e) or section 101 of this Act, except---

- (a) With the consent of the person to whom the information relates:
- (b) To the extent that the information is available to the public under any Act, other than the Official Information Act 1982, or in a public document:
- (c) In statistical or summary form arranged in such a manner as to prevent any information published or disclosed from being identified by any person as relating to any particular person:
- (d) For the purposes of, or in connection with, the exercise of powers conferred by this Part of this Act:
- (e) In connection with any proceedings for an offence against this Act:
- (f) To any central bank, authority, or body in any other country which exercises functions corresponding to or similar to those conferred on the Bank under this Part of this Act for the purposes of the exercise by that central bank, authority, or body of those functions:
- (g) To any person whom the Bank is satisfied has a proper interest in receiving such information.

(3) No information, data, or forecasts shall be published or disclosed pursuant to paragraph (f) or paragraph (g) of subsection (2) of this section unless the Bank is satisfied that satisfactory provision exists to protect the confidentiality of the information, data, or forecasts published or disclosed.

(4) No officer or employee of the Bank and no person appointed under section 99 (1) (e) or section 101 of this Act shall use any information, data, or forecasts to which this section applies for a purpose not connected with the purpose for which such information, data, or forecasts was, or were, supplied, disclosed, or obtained.

(5) No person to whom any information, data, or forecasts to which this section applies is or are published or disclosed pursuant to subsection (2) (d) of this section shall publish, disclose, or use such information, data, or forecasts except---

- (a) For the purposes of, or in connection with the exercise of powers conferred by, this Part of this Act; and
- (b) In accordance with such conditions as may be specified by the Bank.

(6) No person to whom any information, data, or forecasts to which this section applies is or are published or disclosed pursuant to subsection (2) (a) or subsection (2) (g) of this section, shall publish, disclose, or use such information, data, or forecasts unless the publication, disclosure, or use is---

- (a) Authorised by the Bank; or
- (b) Necessary or desirable in connection with the exercise of any function or power conferred by any enactment.

(7) Every person who contravenes this section commits an offence against this Act.

(8) Nothing in the Official Information Act 1982 or any other Act, other than this Act, applies to information, data, and forecasts to which this section applies whether or not such information, data, and

forecasts has or have been published or disclosed to any person pursuant to this section.

Cf. 1964, No. 134, s. 38P; 1986, No. 131, s. 10; 1989, No. 11, s. 23

106. Procedure for obtaining warrants---(1) A Judge of the High Court who is satisfied, on application in writing made on oath, that there are reasonable grounds for believing---

- (a) That any information or data supplied to the Bank by a registered bank pursuant to section 93 of this Act is false or misleading in a material particular; or
- (b) That a registered bank has failed to comply with any requirement to supply information, data, or forecasts pursuant to section 93 of this Act; or
- (c) That a registered bank has failed to comply with section 95 of this Act---

may issue a warrant, in terms of section 107 of this Act, to a person appointed pursuant to section 99 (1) (e) of this Act.

(2) A Judge of the High Court who is satisfied, on application in writing made on oath, that there are reasonable grounds for believing that it is necessary for the purpose of determining whether to exercise the powers conferred under section 111 or section 117 of this Act that an investigation of the affairs of a registered bank should be carried out, may issue a warrant, in terms of section 107 of this Act, to a person appointed under section 101 of this Act.

(3) Every warrant issued under subsection (1) of this section shall state whether it is issued under paragraph (a) or paragraph (b) of that subsection.

Cf. 1964, No. 134, ss. 38N (3), (5), 38O (6); 1986, No. 131, s. 10; 1989, No. 11, s. 24

107. Effect of warrant---(1) Every warrant issued under section 106 of this Act authorises the person named in it, at any time and, if necessary, by force, to---

- (a) Enter and search the premises named in it;
- (b) Inspect, remove, and take copies of documents or extracts from documents relating to the business, operation and management of the registered bank in the possession, or under the control, of any person;
- (c) Where necessary, require any information recorded or stored in those documents to be reproduced in usable form.

(2) The warrant shall continue 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 shall, as soon as practicable after removing any documents or extracts from documents from any premises, supply a copy of the documents or extracts to the person from whom the documents or extracts were removed.

Cf. 1964, No. 134, ss. 38N (4), (6), (8), 38O (7), (8), (10)

108. Effect of proceedings---(1) Where any person commences any

proceedings in any court in respect of the exercise of any powers conferred by section 99 or section 101 or section 102 of this Act, until a final decision in relation to those proceedings is given, the powers may be, or may continue to be, exercised as if no such proceedings had been commenced, and no person shall be excused from fulfilling any obligation under those sections by reason of those proceedings.

(2) This section shall apply notwithstanding the provisions of any other Act or any rule of law.

Cf. 1964, No. 134, ss. 38N (11), 38O (14); 1986, No. 131, s. 10; 1989, No. 11, s. 26

109. Effect of final decision that exercise of powers under section 99 unlawful---In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by section 99 of this Act that the exercise of any powers conferred by that section is unlawful, to the extent to which the exercise of those powers is declared unlawful,---

(a) The Bank shall ensure that forthwith after the decision of the Court is given---

(i) Any information and data supplied by the registered bank pursuant to subsection (1) (c) of that section is destroyed:

(ii) Any documents or extracts from documents obtained pursuant to an inspection made under subsection (1) (d) of that section are returned to the person previously having possession of those documents or previously having them under his or her control and any copies of such documents or extracts are destroyed:

(iii) Any information derived from or based upon any such information and data or documents or extracts is destroyed:

(b) No information and data supplied by the registered bank pursuant to subsection (1) (c) of that section, and no documents or extracts from documents obtained pursuant to an inspection made under subsection (1) (d) of that section, shall be---

(i) Admissible in evidence in any proceedings:

(ii) Used in connection with the exercise of any power conferred by section 111 or section 117 of this Act.

Cf. 1964, No. 134, s. 38N (12); 1986, No. 131, s. 10; 1989, No. 11, s. 27

110. Effect of final decision that exercise of powers under section 101 or section 102 unlawful---In any case where it is declared in a final decision given in any proceedings in respect of the exercise of powers conferred by section 101 or section 102 of this Act that the exercise of any powers conferred by those sections is unlawful, to the extent to which the exercise of those powers is declared unlawful,---

(a) The Bank shall ensure that forthwith after the decision of the Court is given---

(i) Any information or data obtained pursuant to section 102 (1) (a) of this Act is destroyed:

(ii) Any documents produced for inspection pursuant to section 102 (1) (a) of this Act are returned to the person previously having possession of the documents or previously having the documents under his or her control and any copies of such documents or extracts from documents are destroyed:

(iii) Any documents or extracts from documents obtained pursuant to an inspection made under section 102 (2) of this Act are returned to the person previously having possession of those documents or previously having them under his or her control and any copies of such documents or extracts from documents are destroyed:

(iv) Any information derived from or based upon any such information, documents, or extracts is destroyed:

(b) No information or data obtained or documents produced for inspection pursuant to section 102 (1) (a) of this Act and no documents or extracts from documents obtained pursuant to an inspection made under section 102 (2) of this Act shall be---

(i) Admissible in evidence in any proceedings:

(ii) Used in connection with the exercise of any power conferred by section 111 or section 117 of this Act.

Cf. 1964, No. 134, s. 380 (15); 1986, No. 131, s. 10; 1989, No. 11, s. 28

Registered Banks may be Required to Consult with Reserve Bank

111. Bank may require registered bank to consult---(1) If the Bank has reasonable grounds to believe that---

- (a) A registered bank is insolvent or is likely to become insolvent; or
- (b) A registered bank is about to suspend payment or is unable to meet its obligations as and when they fall due; or
- (c) The affairs of a registered bank are being conducted in a manner prejudicial to the soundness of the financial system; or
- (d) The circumstances of a registered bank are such as to be prejudicial to the soundness of the financial system; or
- (e) The business of a registered bank has not been, or is not being, conducted in a prudent manner; or
- (f) A registered bank has failed to comply with any requirement imposed by or under this Act or regulations made under this Act; or
- (g) A registered bank has been convicted of an offence against this Act; or
- (h) A registered bank has failed to comply with a condition of its registration---

the Bank may, by notice in writing, require the registered bank and any associated person of the registered bank, while the notice is in force, forthwith and from time to time, to consult with the Bank as to the circumstances of that registered bank and methods of resolving any difficulties facing it.

(2) If the Bank has reasonable grounds to believe that---

- (a) An associated person of a registered bank is insolvent or is likely to become insolvent; or
- (b) An associated person of a registered bank is about to suspend payment or is unable to meet its obligations as and when they fall due; or
- (c) The affairs of an associated person of a registered bank are being conducted in a manner prejudicial to the soundness of the financial system; or

- (d) The circumstances of an associated person of a registered bank are such as to be prejudicial to the soundness of the financial system---

the Bank may, by notice in writing, require that associated person, the registered bank, and any other associated person of the registered bank while the notice is in force, forthwith and from time to time, to consult with the Bank as to the circumstances of that associated person and methods of resolving any difficulties facing it.

(3) Every notice under subsection (1) or subsection (2) of this section shall state the grounds on which it is given.

(4) A registered bank or an associated person, as the case may be, that fails to comply with a notice under this section commits an offence against this Act.

(5) The Bank may, at any time, revoke a notice given under this section.

Cf. 1964, No. 134, s. 38Q (1)-(4), (7); 1986, No. 131, s. 10; 1989, No. 11, ss. 30, 31

112. Bank may give advice and assistance---(1) While a notice under section 111 (1) of this Act is in force in relation to a registered bank or an associated person, the Bank may, from time to time,---

- (a) Give advice to the registered bank or associated person concerning its affairs:
- (b) Give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that registered bank or associated person:
- (c) Give advice and assistance in connection with any scheme for resolving the difficulties of that registered bank:
- (d) With the consent of the Minister, by notice in writing to the parties, approve the sale or other disposition of the whole or any part of the capital, or business undertaking, of the registered bank or associated person to any person specified in the notice.

(2) While a notice under section 111 (2) of this Act is in force in relation to an associated person of a registered bank or the registered bank, the Bank may, from time to time,---

- (a) Give advice to the associated person or the registered bank concerning its affairs:
- (b) Give advice and assistance in connection with the negotiation of any sale or other disposition of the whole or any part of the capital or business undertaking of that associated person or the registered bank:
- (c) Give advice and assistance in connection with any scheme for resolving the difficulties of that associated person:
- (d) With the consent of the Minister, by notice in writing to the parties, approve the sale or other disposition of the whole or any part of the capital, or business undertaking, of the associated person or the registered bank to any person specified in the notice.

Cf. 1964, No. 134, s. 38Q (5); 1986, No. 131, s. 10; 1989, No. 11, s. 32

113. Bank may give directions---(1) While a notice under section 111 (1) of this Act is in force in relation to a registered bank or an associated person, the Bank may, with the prior consent of the Minister, give a direction in writing---

- (a) Requiring that registered bank or associated person to carry on business, or any part of its business, in accordance with the direction:
- (b) Requiring that registered bank or associated person to cease to carry on its business, or any part of its business, in accordance with the direction:
- (c) Requiring that registered bank or associated person to 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:
- (d) Requiring the registered bank or associated person in general meeting to remove or replace a director:
- (e) Requiring that registered bank or associated person to take such other action as may be specified in the notice.

(2) While a notice under section 111 (2) of this Act is in force in relation to an associated person of a registered bank or a registered bank, the Bank may, with the prior consent of the Minister, give a direction in writing---

- (a) Requiring that associated person or the registered bank to carry on business, or any part of its business, in accordance with the direction:
- (b) Requiring that associated person or the registered bank to cease to carry on its business, or any part of its business, in accordance with the direction:
- (c) Requiring the associated person or registered bank to ensure that any officer or employee of the associated person or the registered bank 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:
- (d) Requiring that associated person or the registered bank in general meeting to remove or replace a director:
- (e) Requiring that associated person or the registered bank to take such other action as may be specified in the notice.

(3) The Bank may, from time to time, with the consent of the Minister, amend or modify a direction given under this section or revoke a direction and give another direction in its place, and may, at any time, revoke a direction.

Cf. 1964, No. 134, s. 38Q (8), (9), (10); 1986, No. 131, s. 10; 1989, No. 11, s. 33

114. Offence to contravene directions---(1) Every person commits an offence against this Act who, being a registered bank or associated person, without lawful justification or excuse, contravenes, or fails to comply with, a direction under section 113 of this Act.

(2) Every person commits an offence against this Act who, being an officer or employee of a registered bank or of an associated person, without lawful justification or excuse, obstructs, hinders or prevents that registered bank or associated person giving effect to any direction given under section 113 of this Act.

Cf. 1964, No. 134, s. 38Q (11), (12); 1986, No. 134, s. 10; 1989, No. 11, s. 35

115. Offence to disclose giving of notice---(1) Subject to subsections (2) and (3) of this section, every person commits an offence against this Act who discloses 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.

(2) Nothing in subsection (1) of this section applies to the disclosure or publication of the fact that a notice or direction has been given where the disclosure or publication is made---

(a) To any professional or financial adviser of the registered bank or associated person to which the notice or direction relates:

(b) With the written consent of the Bank, for the purposes of the sale or other disposition, or the possible sale or other disposition, of the whole or any part of the capital, or business undertaking, of the registered bank or associated person:

(c) By the Bank or with the written consent of the Bank,---

(i) To the public; or

(ii) To any person who has a proper interest in knowing that the notice or direction has been given.

(3) Nothing in subsection (1) of this section applies to the disclosure or publication of the fact that a direction has been given under subsection (1) (c) or (d) or subsection (2) (c) or (d) of section 113 of this Act for the purpose of giving effect to that direction.

Cf. 1964, No. 134, s. 38Q (14), (15); 1986, No. 131, s. 10; 1989, No. 11, s. 36

116. Miscellaneous provisions with respect to notices and directions---(1) A notice given under section 111 of this Act and a direction given under section 113 of this Act shall be deemed to have been given on delivery to the head office, registered office or principal place of business in New Zealand of the registered bank or associated person.

(2) Where the Bank approves the sale or other disposition under section 112 of this Act of the whole or any part of the capital, or business undertaking, of a registered bank or any associated person to any person, the provisions of any enactment requiring any consent, licence, permission, clearance or other authority shall not apply in relation to that sale or disposition.

Cf. 1964, No. 134, s. 38Q (6), (13); 1986, No. 131, s. 10; 1989, No. 11, s. 37 (1)

Statutory Management of Registered Banks

117. Statutory management of registered banks and associated

persons---(1) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,---

(a) Declare that---

(i) Any registered bank:

(ii) Any associated person of a registered bank---
is subject to statutory management; and

(b) Appoint one or more persons as statutory manager or statutory managers of that registered bank or associated person.

(2) Where an Order in Council is made under subsection (1) of this section 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, shall be subject to statutory management and the statutory manager or statutory managers so appointed shall be the statutory manager or statutory managers of every such subsidiary.

(3) Where a registered bank or an associated person of a registered bank that is declared to be subject to statutory management or a subsidiary of a registered bank that becomes subject to statutory management under subsection (2) of this section, is incorporated outside New Zealand or is an unincorporated body having its head office or principal place of business outside New Zealand, the provisions of this Part of this Act relating to statutory management shall apply to the property, rights, assets and liabilities relating to its New Zealand business.

Cf. 1964, No. 134, s. 38R (2), (3); 1986, No. 131, s. 10; 1989, No. 11, s. 38

To be read together with s.2 RBNZ Amendment Act 1999:

Statutory management of registered banks and associated persons---Section 117 of the principal Act is amended by adding the following subsections: ``(4) Every Order in Council made under subsection (1) must specify the date on which, and the time at which, the Order in Council comes into force. ``(5) The date and time as specified must not be earlier than the date on which, and the time at which, the Order in Council is made."

118. Grounds on which registered bank may be declared to be subject to statutory management---(1) The Bank shall not make a recommendation under section 117 of this Act unless it is satisfied on reasonable grounds that---

(a) The registered bank is insolvent or is likely to become insolvent;
or

(b) The registered bank has suspended, or is about to suspend, payment or is unable to meet its obligations as they fall due; or

(c) The registered bank or any associated person has failed to consult with the Bank pursuant to section 111 of this Act; or

(d) The registered bank or any associated person has failed to comply with a direction under section 113 of this Act; or

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

(f) The circumstances of the registered bank or any associated person are such as to be prejudicial to the soundness of the financial system.

(2) The Bank shall, as soon as practicable after the making of an Order in Council declaring a registered bank or associated person to be subject to statutory management, give written notice to the registered bank or associated person stating the grounds on which the recommendation made by the Bank was made.

Cf. 1964, No. 134, s. 38R (4), (6); 1986, No. 131, s. 10; 1989, No. 11, s. 39

119. Advisory committee---(1) Where an Order in Council is made under section 117 of this Act declaring a registered bank or an associated person to be subject to statutory management, the Minister may, by notice in the Gazette, on the recommendation of the Bank, appoint the persons specified in the recommendation as an advisory committee.

(2) The functions of an advisory committee shall be---

- (a) To advise the statutory manager on the conduct of the statutory management, including the exercise of the powers conferred by this Part of this Act:
- (b) To do such other things as may be specified by the Minister, from time to time, by notice in the Gazette.

(3) The members of an advisory committee shall be appointed for such period as is specified in the notice of appointment.

(4) The Minister may, by notice in the Gazette, on the recommendation of the Bank, extend the term of appointment of a member of an advisory committee.

(5) The Minister may, by notice in the Gazette, on the recommendation of the Bank, appoint a person to be an additional member of an advisory committee.

(6) The Minister may terminate the appointment of a member of an advisory committee for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.

(7) A member of an advisory committee may resign office by notice in writing to the Minister.

Cf. 1964, No. 134, s. 38S (1)-(8); 1986, No. 131, s. 10; 1989, No. 11, s. 60

120. Statutory manager to comply with directions of Bank---Subject to section 142 of this Act, every statutory manager of a registered bank shall comply with any directions given in writing by the Bank relating to the exercise of the powers of that statutory manager under this Part of this Act.

Cf. 1964, No. 134, s. 38U; 1986, No. 131, s. 10

121. Considerations affecting exercise of powers by statutory manager---(1) In exercising the powers conferred by this Part of this Act a statutory manager of a registered bank shall have regard to---

- (a) The need to maintain public confidence in the operation and soundness of the financial system:
- (b) The need to avoid significant damage to the financial system:
- (c) To the extent not inconsistent with the considerations referred to

in paragraphs (a) and (b) of this subsection, the need to resolve as quickly as possible the difficulties of that registered bank:

- (d) To the extent not inconsistent with the considerations referred to in paragraphs (a), (b) and (c) of this subsection, preserving the position of creditors and maintaining the ranking of claims of creditors:
- (e) The advice of the Bank.

(2) Every statutory manager shall---

- (a) Consult with the Bank, to the extent required by the Bank, as to the exercise of those powers:
- (b) Provide such reports as the Bank may require as to the state of the affairs and business of the registered bank.

Cf. 1964, No. 134, s. 38T; 1986, No. 131, s. 10; 1989, No. 11, s. 41

122. Moratorium---(1) Where a registered bank is declared under section 117 of this Act to be subject to statutory management, no person shall---

- (a) Commence or continue any action or other proceedings, including proceedings by way of counterclaim, against that registered bank:
- (b) Issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of that registered bank:
- (c) Petition or resolve to wind up that registered bank:
- (d) Foreclose, enter into possession, sell, or appoint a receiver of the property of that registered bank or property in respect of which the registered bank has an equity of redemption:
- (e) Exercise or continue any power or rights under, or in pursuance of, any mortgage, charge, debenture, instrument, or other security over the property of that registered bank:
- (f) Claim or recover, pursuant to any retention of title clause, hire purchase agreement, mortgage, lease, or security, any property in the possession of the registered bank:
- (g) Determine or forfeit any tenancy, distrain for rent, retake or re-enter any premises, or exercise or continue any power or rights under or in pursuance of any lease, against that registered bank:
- (h) Exercise any right of set-off against that registered bank.

(2) Notwithstanding subsection (1) of this section, an action or proceeding may be commenced or continued against a registered bank for the purpose of determining whether any right or liability exists if the leave of the statutory manager or the High Court is first obtained.

(3) Notwithstanding subsection (1) of this section, a statutory manager may waive the application in whole or in part of that subsection (except paragraph (c) of that subsection) to any creditor or class of creditors in respect of the whole or part of any claim of, or security held by, that creditor or class of creditors.

(4) Subject to this Act, nothing in subsection (1) of this section affects the existence of any security over the property of any registered bank or its priority over other debts.

(5) Nothing in paragraph (a) of subsection (1) of this section limits or prevents any person commencing or continuing any action or other proceedings, including proceedings by way of counterclaim, against a registered bank in respect of any contract entered into, or obligation incurred, by that registered bank after the date on which that registered bank was declared to be subject to statutory management.

(6) Nothing in paragraph (b) of subsection (1) of this section limits or prevents any person issuing any execution, attaching any debt, or otherwise enforcing or seeking to enforce any judgment or order obtained against a registered bank in respect of any contract entered into, or obligation incurred, by that registered bank after the date on which that registered bank was declared to be subject to statutory management.

Cf. 1964, No. 134, s. 38V; 1986, No. 131, s. 10; 1989, No. 11, s. 42

To be read together with s.3 RBNZ Amendment Act 1999:

Moratorium---(1) Section 122 of the principal Act is amended by inserting in subsections (5) and (6), after the word "which" in each place where it appears, the expression "and the time at which,". (2) Section 122 of the principal Act is amended by adding the following subsection: "(7) In the case of a netting agreement to which sections 310A to 310O of the Companies Act 1993 or sections 93A to 93I of the Insolvency Act 1967 apply,--- (a) Nothing in subsection (1) (h) applies to any right of set-off provided for in the netting agreement; and (b) Nothing in subsection (1) limits or prevents the exercise of any of the following rights under the netting agreement: (i) The termination, in accordance with the netting agreement, of all or any transactions that are subject to the netting agreement by reason of the occurrence of an event specified in the netting agreement, being an event (including the appointment of a statutory manager) occurring not later than the commencement of statutory management; or (ii) The taking of an account, in accordance with the netting agreement, of all money due between the parties to the netting agreement in respect of transactions affected by the termination; and (c) Nothing in subsection (1) limits or prevents the exercise, by a recognised clearing house (within the meaning of section 310A of the Companies Act 1993), of any right referred to in subsection (1) (d) to (f) in respect of any property of that registered bank if the right that is exercised 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 a recognised multilateral netting agreement (within the meaning of that section)."

123. Statutory manager may incorporate company under Companies Act 1955 to acquire business of branch of foreign institution---(1) Where a registered bank, which is a branch of a body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand, is declared to be subject to statutory management, the statutory manager may---

- (a) Form and register a body corporate under the Companies Act 1955 or any other Act:
- (b) Subscribe, as trustee for that body corporate or unincorporated body, as the case may be, for all or any of the shares of the body corporate:
- (c) Allot all or any of the shares in that body corporate as fully or partly paid, as the case may be, up to the value, after deducting the value of any liabilities vested, of any property, rights, and assets vested in that body corporate pursuant to subsection (2) of this section.

(2) The Governor-General may, by Order in Council, on the advice of the Minister, given in accordance with a recommendation of the Bank,

declare that the whole or any part of any property, rights, assets, and liabilities of any such branch relating to the business carried on by that branch shall vest in that body corporate on a date specified in the order and the property, rights, assets, and liabilities shall vest in that body corporate on the date specified.

(3) Nothing in subsection (2) of this section shall reduce, extinguish, or affect any obligation or liability of a body corporate incorporated outside New Zealand or, as the case may be, an unincorporated body having its head office or principal place of business outside New Zealand.

(4) Every body corporate formed and registered under subsection (1) of this section shall, for the purposes of this Part of this Act, be deemed to be a registered bank subject to statutory management as if that body corporate had been declared to be subject to statutory management pursuant to section 117 of this Act, and the statutory manager of it, in its capacity as a branch, shall be the statutory manager of that body corporate as if that statutory manager had been appointed pursuant to that section and the provisions of this Part of this Act shall apply accordingly.

Cf. 1964, No. 134, s. 38W (1), (3)-(5); 1986, No. 131, s. 10

124. Vesting of property subject to security---(1) An order may be made under section 123 of this Act vesting any property, rights, and assets of a branch in a body corporate formed and registered pursuant to that section notwithstanding the existence, or the terms and conditions, of any security over that property, or those rights or assets, in favour of any other person.

(2) Any property, rights or assets which are declared to vest pursuant to an order made under that section in the body corporate, being property, rights or assets subject to a security in favour of any other person, shall continue to be subject to that security.

Cf. 1964, No. 134, s. 38W (6), (7); 1986, No. 131, s. 10

125. Proof of vesting---(1) No Registrar of Deeds, or District Land Registrar, or any other person charged with the keeping of any books or registers, shall be obliged solely by reason of section 123 of this Act to change the name of any body corporate or unincorporated body referred to in that section to that of any company formed and registered pursuant to that section in those books or registers or in any document.

(2) The presentation to any registrar or other person of any instrument, whether or not comprising an instrument of transfer, by the company---

- (a) Executed or purporting to be executed by the company; and
- (b) Relating to any property held before the date specified in an Order in Council made pursuant to that section by that body corporate or unincorporated body; and
- (c) Containing a recital that the property has become vested in the company, by virtue of the provisions of that section---

shall, in the absence of evidence to the contrary, be sufficient proof that the property is vested in the company.

Cf. 1964, No. 134, s. 38W (8), (9); 1986, No. 131, s. 10

126. Prohibition against removal of assets---(1) Except with the consent of the statutory manager, no person shall transfer or remove from New Zealand any property or assets of a registered bank which is declared to be subject to statutory management.

(2) Every person who contravenes subsection (1) of this section commits an offence against this Act and is liable on conviction on indictment,---

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

(b) In the case of a body corporate, to a fine not exceeding \$250,000.

(3) Nothing in subsection (2) of this section shall prevent the issue of an injunction or the making of any order to prevent any property or assets being removed from New Zealand.

Cf. 1964, No. 134, s. 38X; 1986, No. 131, s. 10; 1989, No. 11, s. 43

127. Statutory manager may suspend payment of money owing---(1) The statutory manager of a registered bank may, notwithstanding the terms of any contract, 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.

(2) The suspension by a statutory manager in whole or in part, of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person pursuant to subsection (1) of this section shall not constitute a breach or repudiation of any contract entered into by the registered bank with any person.

(3) Nothing in subsection (1) of this section shall authorise the suspension by the statutory manager of the repayment of any deposit, or the payment of any debt, or the discharge of any obligation, to any person where the obligation to repay the deposit, or to pay the debt, or the obligation, was incurred by the registered bank, or by the statutory manager, after the date upon which the registered bank became subject to statutory management.

Cf. 1964, No. 134, s. 38Y; 1986, No. 131, s. 10; 1989, No. 11, s. 44

To be read together with *s.4 RBNZ Amendment Act 1999*:

Statutory manager may suspend payment of money owing---(1) Section 127 (3) of the principal Act is amended by inserting, after the word "which", the expression "and the time at which,". (2) Section 127 of the principal Act is amended by adding the following subsection: "(4) Nothing in subsection (1) authorises the suspension by the statutory manager of the payment of any amount that would be included in the calculation of a netted balance in accordance with section 310 of the Companies Act 1993 or section 93C of the Insolvency Act 1967, as the case may be. However, subsection (1) applies to the payment of the netted balance."

128. Management of registered bank to vest in statutory manager---(1) Subject to this Part of this Act, where a registered bank is declared to be subject to statutory management, the management of that registered bank shall, on and after the date specified in the order, vest in the statutory manager.

(2) Where a registered bank is declared to be subject to statutory management, it shall not be lawful or competent for any director,

manager, or other person to be engaged in the management or conduct of its business, or to act as an officer or as the agent, or servant, of the registered bank, except with the permission of the statutory manager and so far as that permission extends.

Cf. 1964, No. 134, s. 38Z; 1986, No. 131, s. 10; 1989, No. 11, s. 45

To be read together with *s.5 RBNZ Amendment Act 1999*:

Management of registered bank to vest in statutory manager---Section 128 (1) of the principal Act is amended by inserting, after the word "date", the expression "", and at and from the time,".

129. Powers of statutory manager---(1) Subject to this Part of this Act, a statutory manager shall have all such powers, rights, and authorities as may be necessary for the purposes of this Part of this Act.

(2) Without limiting subsection (1) of this section, a statutory manager has, and may exercise,---

(a) All the powers, rights, and privileges that the registered bank has under any contract or otherwise:

(b) In the case of a body corporate, all the powers of the members in general meeting and the board of directors of that body corporate:

(c) In the case of a partnership, all the powers exercisable by a partner or partners.

(3) Without limiting subsection (1) of this section, a statutory manager has, and may exercise, all of the powers conferred on a liquidator of a company by section 312 of the Companies Act 1955 in the same manner as if the statutory manager was the liquidator of a company being wound up under that Act, and all the provisions of that section shall apply in respect of the disclaimer of any property of the registered bank as if that property was property of a company to which that section applied.

Cf. 1964, No. 134, s. 38AB; 1986, No. 131, s. 10; 1989, No. 11, s.

46

130. Statutory manager empowered to carry on business of registered bank---Subject to this Part of this Act, a statutory manager of a registered bank may carry on all or any part of the business of the registered bank and has, and may exercise, in relation to the registered bank, all such powers, rights, and authorities as may be necessary to carry on that business.

Cf. 1964, No. 134, s. 38AC; 1986, No. 131, s. 10; 1989, No. 11, s.

47

131. Statutory manager may pay creditors and compromise claims---Subject to this Part of this Act, a statutory manager of a registered bank shall, for the purposes of carrying on the business of the registered bank, have power to---

(a) Pay, in whole or in part, any creditor or class of creditors of the registered bank:

(b) Make any compromise or arrangement with any creditor, or person claiming to be a creditor, of the registered bank:

(c) Compromise all calls, debts and claims subsisting, or supposed to subsist, between the registered bank and any other person, and

all questions relating to the assets of the registered bank, and give a complete or partial discharge.

Cf. 1964, No. 134, s. 38AD; 1986, No. 131, s. 10; 1989, No. 11, s.

48

132. Sale of registered bank---(1) Subject to this Part of this Act, the statutory manager of a registered bank may sell or otherwise dispose of the whole or any part of the business undertaking of the registered bank to such person and upon such terms and conditions as the statutory manager thinks fit.

(2) Without limiting any other powers of the statutory manager, for the purposes of subsection (1) of this section, the statutory manager shall have power to---

- (a) Form and register a body corporate under the Companies Act 1955 or any other Act:
- (b) Subscribe for all or any of the shares of that body corporate:
- (c) Transfer to that body corporate the whole or any part of the business undertaking of the registered bank:
- (d) Allot all or any of the shares in that body corporate to any person, credited as fully or partly paid, as the case may be, up to the value of the business undertaking transferred to that body corporate:
- (e) Sell all or any of the shares, or the whole or any part of the business undertaking, of that body corporate to such person and upon such terms and conditions as the statutory manager thinks fit.

(3) The statutory manager shall not sell or otherwise dispose of---

- (a) The whole or any substantial part of the business undertaking of a registered bank pursuant to subsection (1) of this section:
- (b) Any of the shares of any body corporate formed and registered pursuant to subsection (2) (a) of this section:
- (c) The whole or any substantial part of the business undertaking of any body corporate formed and registered pursuant to subsection (2) (a) of this section,---

unless the statutory manager has consulted with the Bank and the Bank, with the consent of the Minister, has given approval in writing to the sale or other disposition and the terms and conditions of it.

Cf. 1964, No. 134, s. 38AE (1)-(3); 1986, No. 131, s. 10; 1989, No. 11, s. 50 (1), (2)

133. Consents not required under other Acts---The provisions of any enactment or agreement requiring any consent, licence, permission, clearance or other authority shall not have any application in respect of---

- (a) The sale or other disposition of the whole or any part of the business undertaking of a registered bank pursuant to section 132 (1) of this Act:
- (b) The sale or other disposition pursuant to section 132 (2) (e) of this Act of any of the shares of any body corporate formed and registered pursuant to subsection (2) (a) of that section:
- (c) The sale or other disposition pursuant to section 132 (2) (e) of this Act of the whole or any part of the business undertaking of

that body corporate---

being a sale or disposition to which the Bank has, with the consent of the Minister, given its approval under section 132 (3) of this Act.

Cf. 1964, No. 134, s. 38AE (4); 1986, No. 131, s. 10; 1989, No. 11, s. 50 (3)

134. Sale of property or assets subject to a security---(1) A statutory manager may---

- (a) Sell or otherwise dispose of any property or assets of a registered bank pursuant to section 132 (1) of this Act; or
- (b) Sell or otherwise dispose of any property or assets of a registered bank to any body corporate formed and registered pursuant to section 132 (2) (a) of this Act; or
- (c) Sell or otherwise dispose of any shares, or property or assets, of a body corporate formed and registered pursuant to section 132 (2) (a) of this Act---

notwithstanding the existence, or the terms and conditions, of any security over the property or those assets in favour of any other person.

(2) Where the statutory manager of a registered bank sells or otherwise disposes of any property or assets of that bank pursuant to section 132 (1) of this Act, being property or assets subject to a fixed charge in favour of any person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.

(3) Where a statutory manager of a registered bank sells or otherwise disposes of any property or assets of that registered bank to any body corporate formed and registered pursuant to section 132 (2) (a) of this Act, being property or assets subject to a security in favour of any other person, the property or those assets shall continue to be subject to that security.

(4) Where a statutory manager of a registered bank sells or otherwise disposes of any shares in a body corporate formed and registered pursuant to section 132 (2) (a) of this Act any property or assets of which are subject to a fixed charge in favour of any other person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the shares.

(5) Where a statutory manager of a registered bank sells or otherwise disposes of any property or assets of a body corporate formed and registered pursuant to section 132 (2) (a) of this Act, being property or assets subject to a fixed charge in favour of any other person, the person entitled to the charge shall be paid out of the proceeds of sale or other disposition in priority to all other claims other than the costs of the statutory manager in selling or disposing of the property or assets.

Cf. 1964, No. 134, s. 38AE (5)-(9); 1986, No. 131, s. 10; 1989, No. 11, s. 51

135. Proof of transactions---(1) The presentation to any Registrar of Deeds, or District Land Registrar, or any other person charged with the keeping of any books or registers, of any instrument transferring or otherwise disposing of any property or assets of a registered bank or any shares in, or property or assets of, any company incorporated pursuant to section 132 (2) (a) of this Act---

- (a) Executed or purporting to be executed by or on behalf of the registered bank or company; and
- (b) Containing a recital that the transfer or other disposition of the property or assets of the registered bank, or the shares in, or property or assets of, the company, is made pursuant to section 132 of this Act---

shall, in the absence of evidence to the contrary, be sufficient proof that the transfer or other disposition is made under the authority of that section.

(2) The presentation to any Registrar of Deeds, or District Land Registrar, or any other person charged with the keeping of any books or registers of a certificate signed by the statutory manager that the amount secured by a charge over any property or assets of a registered bank or any company formed and registered pursuant to section 132 (2) (a) of this Act has been paid shall, in the absence of evidence to the contrary, be sufficient proof that the amount secured by the charge has been repaid.

Cf. 1964, No. 134, s. 38AE (10), (11); 1986, No. 131, s. 10; 1989, No. 11. s. 72

136. Statutory manager may petition to wind up registered bank---(1) Subject to this Part of this Act, a statutory manager of a registered bank may, with the prior approval of the Bank,---

- (a) In the case of a registered bank which may be wound up under the Companies Act 1955, petition under that Act to wind up that registered bank:
- (b) In the case of a registered bank which is an individual, petition under the Insolvency Act 1967 to have that registered bank declared bankrupt:
- (c) In the case of a registered bank constituted under any other Act, take such steps as are provided for in that Act for the winding up or dissolution of that registered bank.

(2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of a statutory manager of a registered bank, not being a registered bank referred to in subsection (1) of this section, order that the registered bank to which the recommendation relates shall be wound up in such manner as may be specified in the order and, in any such case, the registered bank shall be wound up in the manner specified.

(3) A statutory manager shall not make a recommendation under subsection (2) of this section without the prior approval of the Bank.

(4) Nothing in this section limits or affects any other enactment which provides for the winding up, or dissolution, of any body corporate

or any class of body corporate.

Cf. 1964, No. 134, s. 38AF; 1986, No. 131, s. 10; 1989, No. 11, s.

52

To be read together with s.2 RBNZ Amendment Act 1993:

Liquidation of registered banks---The principal Act is hereby amended by repealing section 136, and substituting the following section: ``136. (1) Subject to this Part of this Act, a statutory manager of a registered bank may, with the prior approval of the Bank,--- ``(a) In the case of a registered bank which may be put into liquidation under the Companies Act 1955 or the Companies Act 1993, apply under either of those Acts to put the registered bank into liquidation: ``(b) In the case of a registered bank which is an individual, petition under the Insolvency Act 1967 to have that registered bank declared bankrupt: ``(c) In the case of a registered bank constituted under any other Act, take such steps as are provided for in that Act for the winding up, liquidation, or dissolution of that registered bank. `` (2) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of a statutory manager of a registered bank, not being a registered bank referred to in subsection (1) of this section, order that the registered bank to which the recommendation relates shall be wound up in such manner as may be specified in the order and, in any such case, the registered bank shall be wound up in the manner specified. `` (3) A statutory manager shall not make a recommendation under subsection (2) of this section without the prior approval of the Bank. `` (4) Nothing in this section limits or affects any other enactment which provides for the winding up, liquidation, or dissolution, of any body corporate or any class of body corporate."

137. Provisions applying where liabilities included in sale---(1) Where all or any part of any liability of a registered bank is included in the sale or other disposition of the business undertaking of that registered bank, or any part of it, pursuant to section 132 of this Act---

- (a) The registered bank shall, as from the date of such sale or other disposition, be relieved from all its obligations in respect of that liability, or part of it; and
- (b) The person entitled to performance in respect of that liability shall be entitled to enforce performance of that liability or part of it against the person to whom the business undertaking is sold or otherwise disposed of in the same manner and to the same extent as that person was entitled to enforce performance against the registered bank; and
- (c) The inclusion of part of a liability shall not relieve the registered bank from any obligation in respect of any part of the liability not included in the sale or other disposition.

(2) Where all or any part of any liability of a body corporate formed and registered under section 123 (1) of this Act, or all or any part of any liability relating to the business carried on by a branch of any body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand, is included in such a sale or other disposition, nothing in subsection (1) (a) of this section shall relieve any body corporate incorporated outside New Zealand or, as the case may be, any unincorporated body having its head office or principal place of business outside New Zealand from any obligation in respect of that liability.

Cf. 1964, No. 134, s. 38AG; 1986, No. 131, s. 10; 1989, No. 11, s.

53

138. Power to trace property improperly disposed of---(1) In any case where, whether before or after the passing of this Act,---

- (a) Any property has been acquired by a person in circumstances which cause it to be just and equitable that that person should hold it upon trust for any registered bank that has been declared to be subject to statutory management; or
- (b) Any property has been improperly disposed of, whether or not the property has become subject to a trust,---

the Court may, if it thinks fit, make an order---

- (c) That the property be transferred or delivered to the statutory manager:
- (d) That any person who acquired or received the property, or his or her administrator, shall pay to the statutory manager a sum not exceeding the value of that property.

(2) For the purpose of giving effect to any such order, the Court may make such further order as it thinks fit.

(3) No order made pursuant to this section shall deprive any other person of any estate or interest in the property if the estate or interest was acquired in good faith and for valuable consideration.

(4) Nothing in this section restricts the operation of section 309 of the Companies Act 1955.

Cf. 1989, No. 11, s. 54

To be read together with s.3 RBNZ Amendment Act 1993:

Power to trace property improperly disposed of--Section 138 of the principal Act is hereby amended by repealing subsection (4), and substituting the following subsection: "(4) Nothing in this section restricts the operation of the Companies Act 1955 or the Companies Act 1993."

139. Application of certain provisions of Companies Act 1955--Sections 308 (except subsection (1) (d)), 309 to 311C, and 319 to 321 of the Companies Act 1955 shall apply to a registered bank that is a company and that is subject to statutory management under this Act in all respects, and with such modifications as may be necessary, as if---

- (a) The registered bank were a company that was being wound up under that Act; and
- (b) The statutory manager of the registered bank was the liquidator of the company; and
- (c) The date on which the registered bank became subject to statutory management was the date of the commencement of the winding-up.

Cf. 1989, No. 11, s. 55

To be read together with s.4 RBNZ Amendment Act 1993:

Application of certain provisions of Companies Act 1993--The principal Act is hereby amended by repealing section 139, and substituting the following section: "139. (1) Sections 292 to 301 and 312 of the Companies Act 1993 shall apply to a registered bank that is subject to statutory management under this Act in all respects, and with such modifications as may be necessary, as if-- "(a) The registered bank was a company in liquidation under that Act; and "(b) The statutory manager of the registered bank was the liquidator of the company; and "(c) The date on which the registered bank became subject to statutory management was the date on which the liquidation commenced. "(2) Nothing in section 263 of the Companies Act 1993 shall apply to a registered bank by virtue of the application of section 312 of that Act."

Miscellaneous Provisions

140. Application of this Part to joint statutory managers, associated persons, and subsidiaries---(1) Where an Order in Council is made under section 117 of this Act appointing 2 or more persons as statutory managers of a registered bank, the order shall state whether the powers conferred by this Part of this Act shall be exercised by those persons acting together or may be exercised individually.

(2) For the purposes of this Part of this Act, unless the context otherwise requires,---

(a) References to a statutory manager shall, where 2 or more persons are appointed as statutory managers include references to those statutory managers:

(b) Where an associated person of a registered bank is declared to be subject to statutory management, or a subsidiary of a registered bank becomes subject to statutory management under section 117 (2) of this Act, references in sections 119 to 139 and in sections 141 to 156 of this Act to a registered bank shall be read as references to that associated person or subsidiary, as the case may be.

Cf. 1964, No. 134, s. 38R (11), (12); 1986, No. 131, s. 10; 1989, No. 11, s. 56

141. Termination of appointment of statutory manager---(1) The Governor-General may, by Order in Council, terminate the appointment of a statutory manager of a registered bank for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(2) A statutory manager of a registered bank may resign office by notice in writing to the Minister.

(3) Where the appointment of a statutory manager is terminated under subsection (1) of this section or a statutory manager resigns office, or dies, 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.

(4) Where a statutory manager resigns office that statutory manager shall continue in office until a successor is appointed.

Cf. 1964, No. 134, s. 38AH; 1986, No. 131, s. 10; 1989, No. 11, s. 57

To be read with s.2 RBNZ Amendment Act 1992:

Termination of appointment of statutory manager---Section 141 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection: ``(3A) Where an Order in Council is made under subsection (3) of this section appointing 2 or more persons as statutory managers, the order shall state whether the powers conferred by this Part of this Act shall be exercised by those persons acting together or may be exercised individually."'

142. Statutory manager may apply to High Court for directions---(1) A statutory manager of a registered bank may apply to the High Court for directions concerning the business or property of the registered bank or the management or administration of that business or property, or the exercise of any powers under this Part of this Act.

(2) On any application under subsection (1) of this section the High Court may give directions concerning the business or property of the registered bank, or the management or administration of that business or property, or the exercise of any powers under this Part of this Act and every person shall be bound by any such directions.

Cf. 1964, No. 134, s. 38AI; 1986, No. 131, s. 10; 1989, No. 11, s.

58

143. Prior winding up or receivership to cease---(1) Where a registered bank, or any subsidiary or associated person of a registered bank, becomes subject to statutory management, and that registered bank, subsidiary, or associated person is already being wound up or is already in receivership,---

- (a) The winding up or receivership of that registered bank, subsidiary, or associated person shall, for so long as it continues to be subject to statutory management, cease; and
- (b) The person appointed as liquidator or receiver shall be discharged.

(2) Where the statutory management of any registered bank, subsidiary, or associated person referred to in subsection (1) of this section is terminated by, or as the result of the making of, an Order in Council under section 144 (1) of this Act, the liquidation or receivership of that registered bank, subsidiary, or associated person shall, unless the Order in Council terminating the statutory management otherwise provides, and subject to such terms and conditions as the order may specify, revive as if it had not ceased by reason of this section.

(3) Where any liquidation or receivership revives pursuant to subsection (2) of this section, the person specified in the order as such shall be the liquidator or receiver of that registered bank, subsidiary, or associated person for the time being.

Cf. 1989, No. 11, s. 61

To be read together with s.6 RBNZ Amendment Act 1993:

Prior winding up, liquidation, or receivership to cease---Section 143 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: ``(1) Where a registered bank, or any subsidiary or associated person of a registered bank, becomes subject to statutory management, and that registered bank, subsidiary, or associated person is already being wound up or is already in liquidation or receivership,--- ``(a) The winding up or liquidation or receivership of that registered bank, subsidiary, or associated person shall, for so long as it continues to be subject to statutory management, cease; and ``(b) The person appointed as liquidator or receiver shall be discharged."

144. Termination of statutory management---(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 that---

- (a) Any registered bank:
- (b) Any associated person of a registered bank:
- (c) Any subsidiary of a registered bank,---

subject to statutory management, shall cease to be subject to statutory management.

(2) Any registered bank, or associated person of a registered bank, or subsidiary of a registered bank shall cease to be subject to statutory management if a winding-up order is made in respect of that registered bank, or associated person, or subsidiary, as the case may be, on the petition of the statutory manager.

(3) Any person who is affected by the making of an Order in Council under section 117 of this Act may, at any time, request the Bank to make a recommendation under subsection (1) of this section.

(4) Where an Order in Council is made under subsection (1) of this section or, a winding-up order is made in respect of a registered bank, associated person, or subsidiary---

- (a) That person shall cease to be subject to statutory management on the specified date; and
- (b) The appointment of any statutory manager appointed in respect of that person shall terminate on the specified date; and
- (c) The appointment of any person as a member of an advisory committee under section 119 of this Act in relation to the statutory management of that person shall terminate on the specified date.

(5) For the purposes of subsection (4) of this section ``specified date'' means,---

- (a) In any case where an Order in Council is made pursuant to subsection (1) of this section, the date specified in the order;
- (b) In any case where a winding-up order is made, the date of the winding-up order.

(6) Where an Order in Council is made under subsection (1) of this section declaring that a registered bank shall cease to be subject to statutory management,---

- (a) Every subsidiary of that registered bank, except any subsidiary specified in the order, shall cease to be subject to statutory management on the same date as that specified as the date upon which the registered bank ceases to be subject to statutory management;
- (b) The appointment of any person appointed as a statutory manager of every such subsidiary shall terminate on the date referred to in paragraph (a) of this subsection;
- (c) The appointment of any person appointed as a member of an advisory committee under section 119 of this Act in relation to the statutory management of that subsidiary shall terminate on the date referred to in paragraph (a) of this subsection.

Cf. 1964, No. 134, s. 38AJ; 1986, No. 131, s. 10; 1989, No. 11, s.

62

To be read together with s.7 RBNZ Amendment Act 1993:

Termination of statutory management---(1) Section 144 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection: ``(2) Any registered bank, or associated person of a registered bank, or subsidiary of a registered bank shall cease to be subject to statutory management if that registered bank, or associated person, or subsidiary, as the case may be, is put into liquidation on the application of the statutory manager." (2) Section 144 (4) of the principal Act is hereby amended by omitting the words ``a winding-up order is made in respect of a registered bank, associated person, or subsidiary'', and substituting the words ``a registered bank, associated person, or subsidiary is put into liquidation". (3) Section 144 (5) of the principal Act is

hereby amended by repealing paragraph (b), and substituting the following paragraph: "(b) In any case where a liquidator is appointed, the date of the liquidator's appointment."

145. Priority for certain debts in winding up---In the winding up 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, shall be paid in priority to all other debts.

To be read together with s.8 RBNZ Amendment Act 1993:

Priority for certain debts---The principal Act is hereby amended by repealing section 145, and substituting the following section: "145. 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, shall be paid in priority to all other debts."

146. Indemnity---(1) The Bank, every statutory manager of a registered Bank, every person appointed under section 99 or section 101 of this Act and every member of an advisory committee shall be indemnified by the Crown in respect of any liability arising from the exercise or purported exercise of, or omission to exercise, any power conferred by this Part of this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was in bad faith.

(2) Any money required for the purposes of this section shall be paid out of the Crown Bank Account without further appropriation than this section.

(3) The indemnity conferred by subsection (1) of this section extends to legal costs incurred in defending a proceeding.

(4) Within 12 sitting days of the making of any payment under this section, the Minister shall lay before the House of Representatives a report which shall contain 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.

Cf. 1989, No. 11, s. 63 (1)-(3)

147. Registered bank not entitled to be informed about exercise of powers---Except as otherwise provided in this Part of this Act, no registered bank, associated person, or subsidiary, and no director, officer, or employee of a registered bank, associated person, or subsidiary, has a right to be consulted or informed as to the exercise, or possible exercise, of any powers conferred by this Part of this Act or to make representations to any person as to the exercise, or possible exercise, of those powers.

Cf. 1989, No. 11, s. 64

148. Expenses of statutory management---All costs, charges, and expenses properly incurred by a statutory manager or a member of an advisory committee in the exercise of the manager's or the member's

functions and powers under this Part of this Act (including such remuneration as may be approved by the Bank) shall be payable out of the property of the registered bank in respect of which the statutory manager or member is appointed in priority to all other claims.

Cf. 1964, No. 134, s. 38AL; 1986, No. 131, s. 10; 1989, No. 11, s.

65

149. Advances to statutory manager and members of advisory committee---(1) With the consent of the Minister, there may be advanced out of the Crown Bank Account, without further appropriation than this section, to a statutory manager of a registered bank or a member of an advisory committee, such amounts as the Minister may approve in respect of costs, charges, and expenses (including remuneration) due to, or incurred by, that person.

(2) All money so advanced to that person shall be refunded to the Crown out of money payable to that person, and the Crown shall have all the rights of the person to whom the advance was made to receive and recover that money. Money refunded to the Crown shall be credited upon receipt to the Crown Bank Account.

Cf. 1989, No. 11, s. 66

150. Duty to deliver books and property to statutory manager---(1) Every person having possession and control of any books, or records, or documents, or other property belonging to any registered bank subject to statutory management, shall forthwith after it becomes subject to statutory management, deliver or give possession of those books, records, documents, or other property to the statutory manager.

(2) If any person fails for 7 days to comply with the requirements of subsection (1) of this section, that person commits an offence against this Act 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.

(3) If any person fails to comply with subsection (1) of this section, the statutory manager may, at any time, certify the failure to the Court (whether or not an offence has been committed under subsection (2) of this section), and the Court may inquire into the matter and, after hearing any witnesses who may be produced against, or by, or on behalf of the alleged offender, and after hearing any statement which may be offered in defence, may punish the offender as if the offender had been guilty of contempt of Court.

(4) It shall not be a defence to any proceedings under this section that the person in possession or control of any property is, or was, a trustee of the property for the registered bank, or entitled to a lien or other charge over the property, or was a receiver or manager of the property.

Cf. 1989, No. 11, s. 67

151. Offence to destroy, alter, or conceal records---(1) Every person commits an offence against this Act, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000, who---

- (a) With intent to defeat the purposes of this Part of this Act, destroys, alters, or conceals any book, document, or record of, or relating to, a registered bank that is subject to statutory management or sends or attempts to send out of New Zealand any such book, document, or record; or
- (b) Fails or refuses to answer, to the best of that person's knowledge and ability, any question which that person may be asked by the statutory manager in relation to any such book, or document, or record, or any property, or wilfully gives a false answer to that question.

(2) If, in any prosecution for an offence alleged to have been committed against this section, it is proved that the person charged with the offence has destroyed, altered, or concealed any book, document, or record, or has sent, or attempted to send, out of New Zealand, any such book, document, or record, the onus of proving that in so doing that person had not acted in contravention of this section shall lie on that person.

Cf. 1989, No. 11, s. 68

152. Regulations relating to powers of Bank and statutory manager---(1) The Governor-General may, from time to time, by Order in Council, make regulations under section 173 of this Act conferring on the Bank, or a statutory manager of a registered bank, ancillary or additional powers necessary or desirable for the purposes of this Part of this Act.

(2) The regulations shall be laid before the House of Representatives within 12 sitting days after the date on which they are made if the House of Representatives is then in session, and, if not, shall be laid before the House of Representatives within 12 days after the commencement of the next ensuing session.

(3) Regulations laid before the House of Representatives in any session pursuant to subsection (2) of this section shall expire on the close of the earlier of---

- (a) The end of the session in which the regulations are made:
- (b) The end of the calendar year following the year in which the regulations were made---

unless the regulations are expressly validated or confirmed by an Act of Parliament passed before they expire.

(4) Unless otherwise provided, the repeal of any Act passed pursuant to subsection (3) of this section shall not, of itself, affect the validity of any regulations validated or confirmed by the Act repealed.

Cf. 1964, No. 134, s. 38AM; 1986, No. 131, s. 10

153. Application of other Acts---(1) Subject to subsection (2) of this section, all the provisions of the Companies Act 1955 and all rules and regulations under that Act, shall, so far as they are applicable, and with the necessary modifications, apply to a registered bank that is a company within the meaning of section 2 of that Act and that is subject to statutory management.

(2) Nothing in sections 41, 130 to 135, 152 to 167 and Part VII of the Companies Act 1955 shall apply to a company that is subject to statutory management.

(3) Subject to subsection (4) of this section, all the provisions of the Building Societies Act 1965 and all rules and regulations under that Act, shall, so far as they are applicable, and with the necessary modifications, apply to a registered bank that is a building society within the meaning of section 2 of that Act and that is subject to statutory management.

(4) Nothing in sections 76 and 91 to 106 of the Building Societies Act 1965 shall apply to a building society that is subject to statutory management.

(5) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with the recommendation of the Bank, declare that the provisions of any Act under which any other registered bank that is subject to statutory management is incorporated, constituted, or registered corresponding with the provisions referred to in subsections (2) and (4) of this section shall not apply to that registered bank.

To be read together with s.9 RBNZ Amendment Act 1993:

Application of other Acts---The principal Act is hereby amended by repealing section 153, and substituting the following section: ``153. (1) Subject to subsection (2) of this section, all the provisions of the Companies Act 1955 and all rules and regulations under that Act shall, so far as they are applicable, and with the necessary modifications, apply to a registered bank that is a company within the meaning of section 2 of that Act and that is subject to statutory management. `` (2) Nothing in sections 41, 130 to 135, and 152 to 167 of the Companies Act 1955 shall apply to a company that is subject to statutory management. `` (3) Subject to subsection (4) of this section, all the provisions of the Companies Act 1993 and all rules and regulations made under that Act shall, so far as they are applicable and with the necessary modifications, apply to a registered bank that is a company within the meaning of section 2 of that Act and that is subject to statutory management. `` (4) Nothing in sections 120, 196 to 210, and 214 of the Companies Act 1993 shall apply to a registered bank that is subject to statutory management. `` (5) Nothing in the Receiverships Act 1993 shall apply to a company that is subject to statutory management. `` (6) Subject to subsection (7) of this section, all the provisions of the Building Societies Act 1965 and all rules and regulations under that Act shall, so far as they are applicable, and with the necessary modifications, apply to a registered bank that is a building society within the meaning of section 2 of that Act and that is subject to statutory management. `` (7) Nothing in sections 76 and 91 to 106 of the Building Societies Act 1965 shall apply to a building society that is subject to statutory management. `` (8) The Governor-General may, from time to time, by Order in Council, on the advice of the Minister given in accordance with the recommendation of the Bank, declare that the provisions of any Act under which any other registered bank that is subject to statutory management is incorporated, constituted, or registered corresponding with the provisions referred to in subsections (2), (4), and (7) of this section shall not apply to that registered bank."

154. Appointment of auditors---(1) The statutory manager of a registered bank shall appoint one or more persons (whether as individuals or as the members from time to time of any firm or firms), being persons qualified for appointment as auditors of a company under the Companies Act 1955, to be the auditor of the registered bank.

(2) Every such appointment shall be for a term not exceeding 2 years, but any person appointed as auditor shall continue in office until a successor comes into office.

(3) Any person appointed as auditor shall be eligible for reappointment.

(4) Any auditor may be removed from office at any time by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General in Council.

(5) The auditor shall be paid such fees as are fixed by the statutory manager with the approval of the Bank.

(6) Every auditor shall have a right of access at all times to the books and papers of the registered bank, and shall be entitled to require from its officers and employees such information and explanations as the auditor thinks necessary for the performance of the auditor's duties.

(7) Any person holding office as auditor of a registered bank at the time that it is declared to be subject to statutory management shall cease to hold that office but may be appointed under this section as auditor of the registered bank.

155. Annual accounts---(1) Within 3 months after the end of each financial year or such later date as may be approved by the Bank, the statutory manager of a registered bank shall prepare the following statements showing the financial position of the registered bank and its subsidiaries at the end of that year and the results of their trading for that year:

- (a) A balance sheet and profit and loss statement of the registered bank; and
- (b) A consolidated statement of assets and liabilities and consolidated statement of trading of the registered bank and its subsidiaries.

(2) The balance sheet, and the consolidated statement of assets and liabilities, shall each be signed by the statutory manager.

(3) The accounts specified in subsection (1) of this section shall be audited and reported on by the auditor.

156. Annual report by statutory manager---(1) The statutory manager of a registered bank shall, after the end of each financial year, prepare a report on the conduct of the management and the affairs of the registered bank and its subsidiaries.

(2) The report, together with the accounts and the auditor's report on them, shall be submitted to the Minister and the Bank within 7 days after the completion of the auditor's report.

(3) The report, accounts, and the auditor's report on them shall within 14 days after submission to the Minister be filed---

- (a) In the case of a registered bank which is a company, with the Registrar of Companies:
- (b) In the case of a registered bank which is a building society, with

- the Registrar of Building Societies:
- (c) In the case of any other body corporate, with the person exercising functions corresponding with those of the Registrar of Companies or the Registrar of Building Societies.

To be read together with *s.2 RBNZ (No.2) Amendment Act 1995:*

New Part inserted---The principal Act is hereby amended by inserting, after Part V, the following Part: ``PART VA
``Retention of Documents by Banks ``156A. Retention of documents by banks---(1) For the purposes of this section, `bank' means--- ``(a) A registered bank: ``(b) The Reserve Bank of New Zealand: ``(c) Any other person carrying on in New Zealand the business of banking. ``(2) Subject to this section, every bank--- ``(a) Shall retain, until the expiration of the period specified in subsection (3) (a) of this section, every cheque or bank draft that is drawn on that bank and that is presented to it for payment; and may thereafter destroy it: ``(b) Shall retain, until the expiration of the period specified in subsection (3) (a) of this section, every bill of exchange or promissory note that is made payable at that bank and that is presented to it for payment; and may thereafter destroy it: ``(c) Shall retain, until the expiration of the period specified in subsection (3) (b) of this section, every voucher used in connection with account transactions at a bank or branch of a bank (including every deposit or withdrawal slip); and may thereafter destroy it. ``(3) For the purposes of subsection (2) of this section,--- ``(a) The period applicable in respect of a document to which paragraph (a) or paragraph (b) of that subsection applies shall be,--- ``(i) In the case of a document payable on demand, the period of 7 years beginning with the date of the document; and ``(ii) In the case of any other document, the period of 7 years beginning with the due date of the document; and ``(b) The period applicable in respect of a voucher to which paragraph (c) of that subsection applies, shall be the period of 7 years beginning with the date of the transaction to which the voucher relates. ``(4) It is sufficient compliance with the duty to retain imposed by subsection (2) of this section if--- ``(a) A copy of the document has been made by the bank on microfilm, microfiche, tape, disc, electronic or photographic storage media, or other means; and ``(b) The copy is able to be reproduced therefrom in a form that can be produced in evidence under section 47B of the Evidence Act 1908; and ``(c) The copy is retained by the bank for the same period as the document is required to be retained pursuant to that subsection. ``(5) It is sufficient compliance with the duty to retain imposed by subsection (2) of this section, in the case of a cheque that has been presented for payment in accordance with section 7D (1) (b) (iii) of the Cheques Act 1960, if--- ``(a) The paying bank arranges, in accordance with the rules of an inter-bank clearing system (within the meaning of section 7A of that Act), for the retention, on behalf of the paying bank, of the cheque or a copy of it in accordance with subsection (4) of this section; and ``(b) The paying bank is entitled to obtain possession of the cheque or the copy; and ``(c) The cheque or copy is retained on behalf of the paying bank for the period specified in subsection (3) (a) of this section. ``(6) No document shall be destroyed pursuant to this section at any time after a demand for the delivery of the document has been made to the bank by the person entitled to it. ``(7) A copy of a document made pursuant to this section is admissible in evidence in legal proceedings to the same extent as the document of which it is a copy would have been admissible. ``(8) This section applies to cheques, drafts, bills, and promissory notes received by a bank and vouchers in the possession of a bank either before or after the coming into operation of this section." This Act is administered by the Reserve Bank of New Zealand.

**PART VI
FINANCIAL AND OTHER MATTERS**

157. Financial year---The Bank's financial year shall end on the 31st day of March in each year or on such other date as the Board may from time to time decide.

Cf. 1964, No. 134, s. 39

Income and Expenditure

158. ``Notional surplus income'' defined---For the purposes of section 162 of this Act, ``notional surplus income'', in relation to a financial year of the Bank, means the gross income of the Bank in that year, after---

- (a) Deducting the amount of income estimated to be paid or applied in meeting the expenditure (other than interest expenditure) of the Bank in carrying out the functions and exercising the powers referred to in section 159 (1) of this Act---
 - (i) As determined under the relevant funding agreement; or
 - (ii) If a funding agreement has not been ratified in accordance with section 161 of this Act, as determined under the funding agreement applying to the immediately preceding financial year; or
 - (iii) If a funding agreement applying to the financial year of the Bank that commences in 1990 has not been ratified in accordance with section 161 of this Act, as determined under the funding agreement applying to that financial year laid before the House of Representatives under that section:
- (b) Deducting the expenditure (other than interest expenditure) incurred by the Bank in respect of that year in carrying out the other functions of the Bank:
- (c) Deducting interest expenditure incurred by the Bank in carrying out any of its functions:
- (d) Deducting any provisions made in accordance with generally accepted accounting practice (other than those taken into account under paragraphs (a) and (b) of this section):
- (e) Deducting any net income derived by the Bank from its other functions as shown in the financial statements of the Bank for that financial year:
- (f) Adding any net loss incurred by the Bank from its other functions as shown in the financial statements of the Bank for that financial year.

159. Funding agreements---(1) Funding agreements shall be entered into from time to time by the Minister and the Governor which shall specify the amount of income of the Bank to be paid or applied in meeting the expenditure incurred by the Bank in each financial year in carrying out the functions imposed and exercising the powers conferred by:

- (a) Part II of this Act (except sections 16, 32, 34, and 35):
- (b) Part III of this Act:
- (c) Part IV of this Act:
- (d) Part V of this Act:
- (e) Sections 163, 166, 167, and 190 of this Act:
- (f) With the prior agreement of the Minister and the Governor, any other provision of this Act:
- (g) Any other Act.

(2) There shall be a funding agreement applying for every financial year and each funding agreement shall apply to a period that comprises 5 consecutive financial years.

(3) The Minister and the Governor may, from time to time, by agreement---

- (a) Vary the provisions of a funding agreement; or

- (b) Terminate a funding agreement and enter into a new funding agreement.

160. Contents of funding agreements---Every funding agreement shall be in writing and---

- (a) Shall make provision for the total expenditure to be incurred by the Bank in carrying out the functions and exercising the powers set out in paragraphs (a) to (f) of subsection (1) of section 159 of this Act:
- (b) Shall make provision for such items as may, in accordance with generally accepted accounting practice, properly be taken into account in determining the expenditure applicable to those functions and powers:
- (c) May provide for the extent, if any, to which any material change in the nature or extent of the work undertaken by the Bank in respect of any of those functions or powers shall require the total level of expenditure to be redetermined between the Governor and the Minister:
- (d) May make provision for such other matters, not being matters that are inconsistent with this section, as the Governor and the Minister may think fit.

161. Funding agreements to be ratified by House of Representatives---(1) Within 12 sitting days after a funding agreement is entered into, or a funding agreement is varied, the Minister shall lay a copy of the agreement or the variation before the House of Representatives.

(2) No funding agreement, and no variation of a funding agreement, shall be effective for the purposes of this Act unless it is ratified by a resolution of the House of Representatives.

162. Application of surplus income---(1) The amount by which, in any financial year, the actual net income of the Bank as shown in the financial statements of the Bank for that year exceeds the notional surplus income for that year, calculated in accordance with section 158 of this Act, shall be paid or credited to the reserves of the Bank.

(2) The amount by which in any financial year the notional surplus income for that year, calculated in accordance with section 158 of this Act, exceeds the actual net income of the Bank for that year, as shown in the financial statements of the Bank for that year, shall be deducted from the reserves of the Bank.

(3) An amount equal to the amount of the notional surplus income calculated in accordance with section 158 of this Act for each financial year shall be paid or credited, at the direction of the Minister, after consultation with the Bank,---

- (a) To the reserves of the Bank or to the Crown; or
- (b) To both the reserves of the Bank and to the Crown in proportions determined by the Minister after consultation with the Bank.

(4) In determining the amount of the notional surplus income to be credited to the reserves of the Bank, the Minister shall have regard to---

- (a) The capital requirements of the Bank; and
- (b) The views of the Board of the Bank; and
- (c) Any other relevant matters.

162. Application of surplus income---(1) The amount by which, in any financial year, the actual net income of the Bank as shown in the financial statements of the Bank for that year exceeds the notional surplus income for that year, calculated in accordance with section 158 of this Act, shall be paid or credited to the reserves of the Bank.

(2) The amount by which in any financial year the notional surplus income for that year, calculated in accordance with section 158 of this Act, exceeds the actual net income of the Bank for that year, as shown in the financial statements of the Bank for that year, shall be deducted from the reserves of the Bank.

(3) An amount equal to the amount of the notional surplus income calculated in accordance with section 158 of this Act for each financial year shall be paid or credited, at the direction of the Minister, after consultation with the Bank,---

- (a) To the reserves of the Bank or to the Crown; or
- (b) To both the reserves of the Bank and to the Crown in proportions determined by the Minister after consultation with the Bank.

(4) In determining the amount of the notional surplus income to be credited to the reserves of the Bank, the Minister shall have regard to---

- (a) The capital requirements of the Bank; and
- (b) The views of the Board of the Bank; and
- (c) Any other relevant matters.

163. Annual report and accounts---(1) Within 3 months after the end of each financial year the Bank shall deliver to the Minister---

- (a) A report on the operations of the Bank during that financial year:
- (b) Audited financial statements for that financial year:
- (c) The auditor's report on those financial statements:
- (d) A statement of the projected income and expenditure for the next financial year.

(2) The report referred to in subsection (1) (a) of this section shall contain such information as is necessary, in conjunction with policy statements published under section 15 of this Act, to enable an informed assessment to be made of the Bank's performance in carrying out its functions during that year.

(3) The documents referred to in subsection (1) of this section shall, by virtue of this section, stand referred to---

- (a) The House of Representatives; and
- (b) The committee of the House of Representatives responsible for the overall review of financial management in government departments and other public bodies.

(4) Nothing in Part V of the Public Finance Act 1989 applies to the Bank.

Cf. 1964, No. 134, ss. 42, 44

164. Contents of financial statements---(1) The financial statements shall be prepared in accordance with generally accepted accounting practice and shall include---

- (a) A statement of the Bank's financial position at its balance date:
- (b) An operating statement reflecting the revenue and expenses of the Bank for that year by reference to the functions carried out by the Bank:
- (c) A statement of cash flows reflecting the Bank's cash flow for that year:
- (d) A statement of the Bank's commitments as at the balance date:
- (e) A statement of the Bank's contingent liabilities as at the balance date:
- (f) A statement of accounting policies:
- (g) Such other statements as are necessary to fairly reflect the financial operations of the Bank for that year and its financial position at the end of that year:
- (h) Comparative actual figures for the previous financial year for paragraphs (a) to (e) and, where appropriate, paragraph (g) of this section.

(2) The financial statements shall show separately---

- (a) Any payments made by the Bank under section 21 (1) of this Act; and
- (b) Any payments made by the Minister to the Bank under section 21 (2) of this Act.

165. Management statements---(1) The financial statements of the Bank shall be accompanied by a management statement signed by the Governor and the Deputy Chief Executive.

(2) The management statement shall comprise:

- (a) A statement of the management's responsibility for the preparation of the annual financial statements and the judgments used in them:
- (b) A statement of the management's responsibility for establishing and maintaining a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting:
- (c) A statement that, in the opinion of the management, the annual financial statements for the financial year fairly reflect the financial position and operations of the Bank.

166. Auditors---(1) The Minister may, from time to time, appoint one or more persons (whether as individuals or as the members from time to time of any firm or firms), being persons qualified for appointment as auditors of a company under the Companies Act 1955, to be the auditor or auditors of the Bank.

(2) Every appointment shall be for a term not exceeding 2 years, but any person appointed as auditor shall continue in office until a successor comes into office.

(3) Any person appointed as auditor shall be eligible for reappointment.

(4) The auditor or auditors shall be entitled to receive from the funds of the Bank such fees as the Board from time to time determines.

(5) The persons in office as the auditors of the Bank on the commencement of this Act shall continue in office as if they had been appointed under this section, until the expiry of the term of office for which they were appointed.

Cf. 1964, No. 134, s. 43; 1971, No. 125, s. 2

167. Performance audit---(1) The Minister may, from time to time, appoint one or more persons (whether as individuals or as members from time to time of any firm or firms) to carry out an assessment of the performance by the Bank of its functions and of the exercise by the Bank of its powers under this Act.

(2) As soon as practicable after completing an assessment the person appointed shall submit a report to the Minister setting out the results of that assessment.

(3) The report shall, by virtue of this section, stand referred to---

(a) The House of Representatives; and

(b) Any committee of the House of Representatives responsible for the overall review of financial management in government departments and other public bodies.

(4) A person appointed to conduct an assessment under this section, for the purpose of conducting that assessment,---

(a) Shall have full access to all books and documents that are the property of or that are under the control of any person relating to the Bank or its affairs:

(b) May require any director, officer or employee of the Bank or any other person to answer any question relating to the Bank or its affairs:

(c) May, by notice in writing to any person, require that person to deliver any books or documents relating to the Bank or its affairs in the possession or under the control of that person and may take copies of them or extracts from them.

(5) Nothing in subsection (4) of this section limits or affects section 105 of this Act.

(6) The fees of the person appointed to carry out an assessment under this section shall be paid out of the funds of the Bank.

PART VII MISCELLANEOUS PROVISIONS

168. Bank to be ``good employer''---The Bank shall operate a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring---

(a) Good and safe working conditions; and

(b) An equal opportunities employment programme; and

(c) The impartial selection of suitably qualified persons for

appointment; and
(d) Opportunities for the enhancement of the abilities of individual employees.

Cf. 1986, No. 124, s. 4 (1) (b), (2)

169. Bank to exhibit sense of social responsibility---It shall be an objective of the Bank to exhibit a sense of social responsibility in exercising its powers under this Act.

Cf. 1986, No. 124, s. 4 (1) (c)

170. Application of Banking Act 1982 to Bank---Sections 5 to 12 of the Banking Act 1982, but no other provisions of that Act, shall apply to the Bank.

Cf. 1964, No. 134, s. 47; 1982, No. 144, s. 14

171. Conflict with other Acts---If there is any conflict between this Act and the provisions of the Banking Act 1982, or of any other Act relating to any bank or to the business of banking, the provisions of this Act shall prevail.

Cf. 1964, No. 134, s. 48

172. Obligations under this Act not limited---An obligation or limitation imposed on a person by any other Act or instrument or by any trust or agreement shall not prevent or excuse that person from complying with any provision of this Act or any regulation made under it or with any direction, notice, requirement or condition given or imposed under that provision.

Cf. 1964, No. 134, s. 49

173. Regulations---The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Providing for such matters as are necessary to enable the Minister or the Bank to exercise any powers and functions conferred on the Minister or the Bank by this Act or by any regulations made for any of the purposes of this Act:
- (b) Providing for the granting, refusal, and revocation of consents, permissions, and exemptions in respect of any matters to which any regulations made under this Act relate; and authorising the imposition, variation, and revocation of conditions subject to which such consents, permissions, and exemptions may be granted:
- (c) Providing for the furnishing of information and the production of books or documents to the Minister or the Bank or any other person for any of the purposes of any such regulations (whether or not the effect of doing so may be to require the furnishing of information, or the production of books or documents, that will reveal the identity or affairs of any particular person); and providing for the verification of any such information; and providing that any such books or documents may be copied, and may be retained or impounded, by any person or persons to whom they are produced:
- (d) Authorising the Minister or the Bank or any other person to

exercise any discretionary power or authority for the purposes of any such regulations:

- (e) Providing for the delegation of any of the powers or functions of the Minister (including the power of delegation) or the Bank under any such regulations:
- (f) Providing for and regulating the issue, registration, transfer, control, and redemption of any securities issued by the Bank:
- (g) Prescribing forms for the purposes of this Act or of any such regulations, in any case where a form is not prescribed by this Act:
- (h) Providing for and regulating the giving or service of notices for the purposes of this Act or of any such regulations, and the effect of such notices:
- (i) Prescribing fees to be charged by the Bank in respect of any matter under this Act:
- (j) Prescribing offences against any such regulations, and prescribing fines not exceeding in respect of any such offence \$5,000 and, in the case of a continuing offence, \$200 for every day on which the offence has continued:
- (k) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

Cf. 1964, No. 134, s. 50; 1977, No. 68, s. 6

174. Consents under regulations---(1) If a transaction is entered into or an instrument is executed without the prior consent of the Minister or the Bank required by any regulations made under this Act, the Minister or the Bank, as the case may be, may, at any time, consent to the entry into the transaction or the execution of the instrument.

(2) Subject to the terms of the consent, any transaction, or instrument, and any relationship, or interests created by it, which would be invalid or unenforceable without that consent, shall, on the giving of that consent, be valid or enforceable as if the consent had been given before the transaction was entered into or the instrument executed.

(3) Consent may be given---

- (a) In respect of such transactions, instruments, or persons or classes of transactions, instruments, or persons as the Minister or the Bank may determine, or in respect of any specified transaction, instrument, or person:
- (b) Wholly or partly and either unconditionally or subject to such conditions as the Minister or the Bank thinks fit.

(4) A consent to the entry into any transaction or the execution of any instrument shall be deemed to be a consent given under the regulations requiring consent.

Cf. 1964, No. 134, s. 50A; 1968, No. 135, s. 3; 1970, No. 2, s. 3

175. Offences against regulations---(1) Every person commits an offence against this Act who---

- (a) With intent to deceive, makes any false or misleading statement or any material omission in---
 - (i) Any offer or declaration made for the purposes of any

regulations under this Act; or

- (ii) Any communication with, or application to, the Minister or the Bank or any other person (whether in writing or otherwise) for the purposes of those regulations:
- (b) Resists, obstructs, or deceives any person who is exercising or attempting to exercise any power or function under any such regulations:
- (c) Without lawful excuse, acts in contravention of, or fails to comply in any respect with, any provision of any such regulations or any direction, notice, requirement, or condition given or imposed under any such regulations.

(2) Nothing in subsection (1) of this section limits section 173 (j) of this Act.

Cf. 1964, No. 134, s. 51

176. Penalties for offences---Every person who commits an offence against this Act for which no penalty is provided except in this section is liable on conviction on indictment---

- (a) In the case of an individual, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$10,000:
 - (b) In the case of a body corporate, to a fine not exceeding \$25,000.
- Cf. 1964, No. 134, s. 52 (1); 1977, No. 68, s. 7 (1)

To be read together with *s.10 RBNZ Amendment Act 1995*:

Penalties for offences---Section 176 of the principal Act is hereby amended by omitting the words "conviction on indictment", and substituting the words "summary conviction".

177. Time for laying information for certain offences---Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, an information for an offence against section 28 or section 29 or section 30 of this Act may be laid within 2 years from the time when the matter of the information arose.

Cf. 1964, No. 134, s. 52A; 1968; No. 135, s. 5

178. Evidence---(1) A copy of a resolution of the Bank certified by the Governor to be correct shall, in the absence of proof to the contrary, be sufficient evidence of the resolution in any proceedings.

- (2) A certificate signed by the Governor to the effect that---
- (a) Any approval or consent required under any Act has or has not been given by the Bank, or is or is not for the time being in force; or
- (b) Any document has been duly signed by, or on behalf of, the Bank or the Governor---

shall, in the absence of proof to the contrary, be sufficient evidence of the matters stated in it in any proceedings.

(3) Any certificate purporting to have been signed by the Governor shall, in the absence of proof to the contrary, be deemed for all purposes to have been duly signed by the Governor.

Cf. 1964, No. 134, s. 52B; 1977, No. 68, s. 8

179. Directors and employees not personally liable---A director or

employee of the Bank is only personally liable in his or her capacity as a director or employee for---

- (a) Exercising or purporting to exercise, in bad faith, a power conferred by this Act:
- (b) Omitting, in bad faith, to exercise a power conferred by this Act.
Cf. 1964, No. 134, s. 16

180. Amendment to Income Tax Act 1976---Section 61 of the Income Tax Act 1976 is hereby amended by adding the following subsection:

``(63) Income derived by the Reserve Bank of New Zealand.''

181. Amendments to Securities Act 1978---(1) Section 5 of the Securities Act 1978 (as amended by section 12 (1) of the Reserve Bank of New Zealand Amendment Act 1986, sections 39 and 40 of the Trustee Banks Restructuring Act 1988 and section 31 of the Superannuation Schemes Act 1989) is hereby amended by repealing subsections (2), (2A), (2B), and (2C) and substituting the following subsections:

``(2) Nothing in sections 33 (2), 45 to 52, and section 54 of this Act shall apply in respect of any debt security the issuer of which is a private savings bank as defined in section 2 of the Private Savings Banks Act 1983.

``(2A) Nothing in sections 33 (3), 37, 37A, 39 to 44, and 44B to 54 of this Act shall apply in respect of an interest in a unit trust as defined in section 2 (1) of the Unit Trusts Act 1960.''

(2) Section 5 of the Securities Act 1978 (as so amended) is hereby amended by inserting, after subsection (2A) (as substituted by subsection (1) of this section), the following subsection:

``(2B) Nothing in sections 33 (3), 37, 37A, 39 to 44, and 44B to 54 of this Act shall apply in respect of an interest in a superannuation scheme which is approved under the Superannuation Schemes Act 1976 or is registered under the Superannuation Schemes Act 1989.''

(3) Subsection (2) of this section shall expire with the close of the 31st day of March 1990.

(4) Section 5 of the Securities Act 1978 (as so amended) is hereby amended by inserting, after subsection (2A) (as substituted by subsection (1) of this section), the following subsection:

``(2B) Nothing in sections 33 (3), 37, 37A, 39 to 44, and 44B to 54 of this Act shall apply in respect of an interest in a superannuation scheme which is registered under the Superannuation Schemes Act 1989.''

(5) Subsection (4) of this section shall come into force on the 1st day of April 1990.

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

``(2C) Nothing in sections 33 (2), 45 to 52, and section 54 of this Act shall apply in respect of any debt security the issuer of which is a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989.''

(7) Subsection (6) of this section shall expire on the close of a date appointed by the Governor-General by Order in Council for its expiry.

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

``(2C) Nothing in Part II of this Act or in regulations made under this Act shall apply in respect of any debt security the issuer of which is a registered bank as defined in section 2 of the Reserve Bank of New Zealand Act 1989.''

(9) Subsection (8) of this section shall come into force on a date to be appointed for the commencement of that subsection by the Governor-General by Order in Council.

(10) Section 38 of the Securities Act 1978 is hereby amended by repealing the proviso (as substituted by section 48 of the Securities Amendment Act 1988), and substituting the following proviso:

``Provided that paragraphs (a) to (c) of this section shall not apply in respect of any advertisement relating only to securities exempted from certain provisions of this Act by virtue of subsections (2A), (2B), (3), and (4) of section 5 and subsection (1) of section 7A of this Act.''

(11) Section 48 of the Securities Amendment Act 1988 is hereby consequentially repealed.

182. Amendments to Superannuation Schemes Act 1989---The Superannuation Schemes Act 1989 is hereby amended---

- (a) By omitting from the Third Schedule the item relating to the Securities Act 1978; and
- (b) By omitting from the Fourth Schedule the item relating to the Securities Act 1978.

183. Amendments to Trustee Banks Restructuring Act 1988---The Trustee Banks Restructuring Act 1988 is hereby consequentially amended---

- (a) By repealing section 39; and
- (b) By omitting from the First Schedule the item relating to the Securities Act 1978.

184. Amendment to Securities Amendment Act 1988---The Securities Amendment Act 1988 is hereby amended by inserting after section 6, the following section:

``6A. Application of Part I to Reserve Bank of New Zealand---Nothing in section 7 or section 11 of this Act applies to the purchase or sale by the Reserve Bank of New Zealand of securities issued by the Reserve Bank of New Zealand or by the Crown.''

185. Consequential amendments---The enactments listed in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

186. Repeals and savings---(1) The enactments listed in the Second Schedule to this Act are hereby repealed.

(2) The regulations and the proclamation specified in the Second Schedule to this Act are hereby revoked.

(3) Without limiting the Acts Interpretation Act 1924, the repeal of those enactments does not affect any document made or any thing done under any of the provisions of those enactments, and every document or thing subsisting or in force at the commencement of this Act shall continue to have effect as if it had been made or done under this Act.

(4) Without limiting the Acts Interpretation Act 1924 it is hereby declared that the repeal, by subsection (1) of this section, of the Reserve Bank of New Zealand Amendment Act 1986 does not affect the amendment made by section 11 of that Act.

187. References to trading banks to be read as references to registered banks---Every reference in any other Act to the expression ``trading bank'' shall be read as a reference to a registered bank.

Cf. 1986, No. 131, s. 15

188. Savings---(1) Notwithstanding the repeal, by section 186 of this Act, of the Reserve Bank of New Zealand Act 1964,---

- (a) The provisions of that Act, and in particular Part VC of that Act, shall continue in force and apply to any person that was, immediately before the commencement of this Act, subject to statutory management under that Act, in all respects as if they had not been repealed; and
- (b) Any person empowered under that Act to exercise any power or function in respect of any such person shall continue to have, in respect of that person, the same powers and functions that he or she had before the repeal of that Act.

(2) This section shall apply unless an Order in Council has been made in respect of that person pursuant to section 189 of this Act.

189. Procedure for applying this Act to persons subject to statutory management under Reserve Bank of New Zealand Act 1964---(1) The Governor-General may, by Order in Council, on the advice of the Minister given in accordance with a recommendation of the Bank,---

- (a) Declare that any person that is subject to statutory management under the Reserve Bank of New Zealand Act 1964 shall become subject to statutory management under this Act:
- (b) Provide in that order or in any subsequent Order in Council, such transitional provisions as are necessary for giving effect to any such declaration.

(2) Where any such order is made, the following provisions shall apply on and after the commencement of the order:

- (a) The Reserve Bank of New Zealand Act 1964 shall cease to apply to that person; and
- (b) Any person who holds office as a statutory manager of that person under the Reserve Bank of New Zealand Act 1964 shall be deemed to have been appointed as statutory manager of that person under this Act; and
- (c) Any such statutory manager shall have in respect of that person all the powers, rights, authorities, and privileges conferred by this Act on a statutory manager; and
- (d) Any advisory committee appointed under section 38S of the Reserve Bank of New Zealand Act 1964 shall be deemed to have been appointed under this Act.

190. Transitional provisions in relation to Part VA and Part VC of Reserve Bank of New Zealand Act 1964---(1) Subject to subsection (2) of this section, Part VC of the Reserve Bank of New Zealand Act 1964 (as substituted by section 10 of the Reserve Bank of New Zealand Amendment Act 1986) shall, notwithstanding the repeal of that Act, continue in force and apply for a period of 12 months from and after the commencement of this Act to every person that was, immediately before the commencement of this Act, a specified institution within the meaning of section 38K of that Act.

(2) Any application for registration as a registered bank, made under section 38C of the Reserve Bank of New Zealand Act 1964 (as inserted by section 10 of the Reserve Bank of New Zealand Amendment Act 1986) and not determined before the commencement of this Act shall be determined under this Act.

(3) Nothing in subsection (1) of this section applies to:

- (a) A registered bank;
- (b) A person that is exempted from the application of that subsection by the Bank by notice in the Gazette.

191. Transitional provisions in relation to office holders---(1) The person holding office at the commencement of this Act as Governor of the Bank shall be deemed to have been appointed under section 40 of this Act for the balance of the term for which that person was appointed.

(2) The person holding office at the commencement of this Act as Deputy Governor of the Bank shall be deemed to have been appointed under section 43 of this Act for the balance of the term for which that person was appointed.

(3) Any other person holding office as a director of the Bank immediately before the commencement of this Act shall vacate office on the commencement of this Act.

(4) No director of the Bank who vacates office under subsection (3) of this section is entitled to compensation for loss of office as a director.

(5) Nothing in subsection (3) of this section prevents a person who vacates office under that subsection from being appointed under section 54 of this Act as a director of the Bank.

192. Transitional provision in relation to accounts of Bank---The provisions of sections 40 to 45 and section 46 of the Reserve Bank of New Zealand Act 1964 shall, notwithstanding the repeal of that Act by section 186 (1) of this Act, continue in force in relation to the financial year of the Bank ending on the 31st day of March 1990.

SCHEDULES

FIRST SCHEDULE

Section 185

ENACTMENTS AMENDED

Title of Enactment	Amendment
1961, No. 3---The International Finance Agreements Act 1961. (R.S. Vol. 16, p. 207)	By repealing section 4 (2) (as added by section 4 of the International Finance Agreements Amendment Act 1976), and substituting the following subsection: ``(2) The Reserve Bank of New Zealand shall have power from time to time to acquire, hold, and deal with special drawing rights in accordance with the Fund Agreement; and, without limiting the generality of the expression `foreign exchange' in the Reserve Bank of New Zealand Act 1989, special drawing rights shall be deemed to be foreign exchange for the purposes of that Act.''
1971, No. 51---The Stamp and Cheque Duties Act 1971	By repealing paragraph (q) of section 11 (2) (as added by section 14 of the Reserve Bank of New Zealand Amendment Act 1986), and substituting the following paragraph: ``(q) Paragraph (c) of subsection (2) of section 38AE of the Reserve Bank of New Zealand Act 1964 or paragraph (c) of subsection (2) of section 132 of the Reserve Bank of New Zealand Act 1989:'. .
1973, No. 14---The Overseas Investment Act 1973	By repealing section 13, and substituting the following section: ``13. Services for Commission---The Commission may enter into an agreement with the Reserve Bank or any other person for the provision of secretarial and clerical services.''
1974, No. 19---The Housing Corporation Act 1974	By repealing section 34, and substituting the following section: ``34. Registration of stock---(1) The Corporation may, with the approval of the Minister of Finance, appoint a person engaged in the business of providing securities registry services to be the registrar of

1989, No. 11---The
Corporations
Investigation and
Management Act 1989

stock issued by the Corporation under section 30 of this Act.

``(2) The terms and conditions on which the stock is registered shall be terms and conditions approved by the Minister of Finance.''

By repealing section 8 and substituting the following section:

``8. Consultation with Reserve Bank---(1)
For the purposes of this section---

``Registered bank'' means a registered bank within the meaning of section 2 of the Reserve Bank of New Zealand Act 1989:

``Specified institution'' means a person that continues to be subject to Part VC of the Reserve Bank of New Zealand Act 1964 by virtue of section 190 of the Reserve Bank of New Zealand Act 1989.

``(2) The Registrar shall consult with the Reserve Bank before---

``(a) Giving a written notice requiring any registered bank or specified institution to supply any information under section 9 of this Act:

``(b) Appointing any person to carry out an investigation of the affairs of any registered bank or specified institution under section 19 of this Act:

``(c) Giving a written notice to any registered bank or specified institution that it is considered to be a corporation at risk.

``(3) The Securities Commission shall consult with the Reserve Bank before making a recommendation to the Minister under section 38 of this Act in respect of any registered bank or specified institution.''

SECOND SCHEDULE

Section 186 (1)

ENACTMENTS REPEALED

1964, No. 27---The Decimal Currency Act 1964: The definitions of the terms ``approved machine'', ``board'', and ``prescribed'' in section 2 (1); Parts III, IV, and V and the Schedule. (R.S. Vol. 2, p. 277.)

1964, No. 134---The Reserve Bank of New Zealand Act 1964. (R.S. Vol. 16, p. 455.)

1965, No. 124---The Decimal Currency Amendment Act 1965: The definition of the term ``transitional period'' in section 3;

- sections 4, 5, 8, and 14 (2) and the First Schedule.
(R.S. Vol. 2, p. 294.)
- 1967, No. 3---The Decimal Currency Amendment Act 1967: Sections 2, 3,
4, and 7. (R.S. Vol. 2, p. 301.)
- 1968, No. 135---The Reserve Bank of New Zealand Amendment Act 1968.
(R.S. Vol. 16, p. 509.)
- 1970, No. 2---The Reserve Bank of New Zealand Amendment Act 1970. (R.S.
Vol. 16, p. 510.)
- 1971, No. 125---The Reserve Bank of New Zealand Amendment Act 1971.
(R.S. Vol. 16, p. 510.)
- 1973, No. 16---The Reserve Bank of New Zealand Amendment Act 1973.
(R.S. Vol. 16, p. 511.)
- 1973, No. 56---The Decimal Currency Amendment Act 1973. (R.S. Vol. 2,
p. 302.)
- 1974, No. 118---The Reserve Bank of New Zealand Amendment Act 1974.
(R.S. Vol. 16, p. 513.)
- 1975, No. 19---The Reserve Bank of New Zealand Amendment Act 1975.
(R.S. Vol. 16, p. 514.)
- 1976, No. 25---The International Finance Agreements Amendment Act 1976:
Section 4. (R.S. Vol. 16, p. 374.)
- 1977, No. 68---The Reserve Bank of New Zealand Amendment Act 1977.
(R.S. Vol. 16, p. 514.)
- 1980, No. 138---The Reserve Bank of New Zealand Amendment Act 1980.
(R.S. Vol. 16, p. 517.)
- 1982, No. 168---The Reserve Bank of New Zealand Amendment Act 1982.
(R.S. Vol. 16, p. 517.)
- 1986, No. 131---The Reserve Bank of New Zealand Amendment Act 1986.

REGULATIONS REVOKED

Title	Statutory Regulations Serial Number
The Exchange Control Regulations 1985 ..	1985/4
The Exchange Control Regulations 1985, Amendment No. 7	1986/294
The Exchange Control Regulations 1985, Amendment No. 9	1987/60
The Reserve Bank of New Zealand Act (Fees) Regulations 1987	1987/108
The Reserve Bank of New Zealand Amendment Act Commencement Order 1988	1988/77
The Exchange Control Regulations 1985, Amendment No. 15	1988/84
The Reserve Bank of New Zealand Order 1988	1988/192

PROCLAMATION REVOKED

Proclamation	Statutory Regulations Serial Number
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The Decimal Currency (End of Transitional
Period) Proclamation 1968

| 1968/86
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