



Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013

Public Act 2013 No 103
Date of assent 3 December 2013
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013.
- 2 Commencement**
This Act comes into force on the 7th day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Reserve Bank of New Zealand Act 1989 (the **principal Act**).

**Part 1
Amendments to principal Act****4 Section 117 amended (Statutory management of registered banks and associated persons)**

After section 117(6), insert:

“(7) Subsections (1)(a) and (2) are subject to section 139J(4).”

5 Section 122 amended (Moratorium)

After section 122(9), insert:

“(10) Subsection (1) is subject to section 139J(1) to (3).”

6 Section 126 amended (Prohibition against removal of assets)

After section 126(3), insert:

“(4) Subsection (1) is subject to section 139J(1) to (3).”

7 Section 127 amended (Statutory manager may suspend payment of money owing)

After section 127(4), insert:

“(5) Subsection (1) is subject to section 139J(1) to (3).”

8 Section 128 amended (Management of registered bank to vest in statutory manager)

After section 128(2), insert:

“(3) Subsection (2) is subject to section 139J(1) to (3).”

9 New sections 139A to 139J and cross-headings inserted

After section 139, insert:

“Interpretation relating to covered bonds

“139A Interpretation

In this section and in sections 139B to 139J, unless the context otherwise requires,—

“**cover pool**, in relation to a covered bond programme, means assets that—

- “(a) are owned by the relevant covered bond SPV; and
- “(b) secure the obligations of that SPV under the covered bond programme

“**cover pool monitor** means a person that meets the requirements of section 139I(1)

“**covered bond** means a bond, note, or other debt security that has the following features:

- “(a) it represents an unsecured obligation of the issuer; and
- “(b) the principal and interest owing under the bond, note, or other debt security are guaranteed by a covered bond SPV; and
- “(c) the obligations under that guarantee are secured by assets that are owned by that SPV

“**covered bond programme** means any programme of covered bonds under which, on the security of a single cover pool, covered bonds may be issued

“**covered bond SPV** has the meaning given to it by section 139B

“**issuer** has the meaning given to it by section 139C

“**own** includes holding a beneficial, or legal, interest or entitlement, and **owned** and **owner** have corresponding meanings

“**registered covered bond programme** means a covered bond programme that has been registered under section 139G

“**SPV** means a special purpose vehicle.

“139B Meaning of covered bond SPV

“In sections 139A to 139J, **covered bond SPV** means, in relation to a covered bond programme, a person that—

- “(a) is, or will be, the owner of an asset that has been, or will be, sold, assigned, or otherwise transferred to it by, or on behalf of, an issuer or an associated person of an issuer; and
- “(b) has granted, or may grant, a security interest in that asset for the benefit of the secured creditors under the covered bond programme; and

- “(c) carries on a business of acting as covered bond guarantor under the covered bond programme (including any business incidental to that purpose); and
- “(d) (other than as described in paragraph (c)) does not carry on any other kind of business.

“139C Meaning of issuer

- “(1) For the purposes of sections 139A to 139J, **issuer**—
 - “(a) means—
 - “(i) a registered bank that issues or intends to issue covered bonds, or guarantees such covered bonds:
 - “(ii) an entity, or a member of a class of entities, specified in regulations made under section 139F(3)(a) that issues or intends to issue covered bonds, or guarantees such covered bonds; and
 - “(b) includes a bank referred to in paragraph (a)(i) that—
 - “(i) has had its registration cancelled under section 77; and
 - “(ii) has a registered covered bond programme.
- “(2) However, if an issuer (**issuer A**) transfers all of the rights and obligations relating to a covered bond programme to another issuer (**issuer B**), issuer B is, from the time of the transfer, the issuer for the purposes of sections 139A to 139J.
- “(3) To avoid doubt, subsection (2) does not affect the rights or obligations of issuer A before the transfer.

“Registration of covered bond programmes

“139D Register of registered covered bond programmes

- “(1) The Bank must keep a public register of registered covered bond programmes.
- “(2) The Bank—
 - “(a) must determine the form and content of the register and may amend that form and content as it considers necessary; and
 - “(b) may, based on the assets in, or that may be included in, the relevant cover pool, designate registered covered

- bond programmes to particular classes of registered covered bond programmes, as specified by the Bank.
- “(3) The Bank must take all reasonable steps to ensure that the information contained in the public register is available to members of the public at all reasonable times.
- “(4) A registered covered bond programme must remain on the register despite—
- “(a) any defects in the registration process; or
 - “(b) any failure by an issuer to comply with any of the requirements of section 139H.
- “(5) However, despite subsection (4), the Bank may remove a registered covered bond programme from the register—
- “(a) if—
 - “(i) all obligations under that programme have been fulfilled; or
 - “(ii) the security interest over the cover pool has been enforced; or
 - “(iii) the issuer has requested the removal; and
 - “(b) if, in all cases, the Bank has received evidence, acceptable to the Bank, that both the relevant bond trustee and security trustee consent to the removal.
- “(6) To avoid doubt,—
- “(a) registration occurs at the time and date that the Bank enters the details relating to the covered bond programme on the register:
 - “(b) a defect in the registration process of a covered bond programme does not affect a person’s ability to enforce his, her, or its rights in relation to that covered bond programme or any covered bond issued under that covered bond programme:
 - “(c) the failure of an issuer to register a covered bond programme or to comply with any requirement under section 139H does not affect any other person’s ability to enforce his, her, or its rights in relation to that covered bond programme or any covered bond issued under that covered bond programme.

“139E Requirement, and application, for registration of covered bond programme

- “(1) Only an issuer may apply to the Bank to register a covered bond programme.
- “(2) An application must be—
- “(a) made in the manner specified by the Bank; and
 - “(b) accompanied by a fee (if any), as determined by the Bank and approved by the Minister by notice in the *Gazette*.
- “(3) The issuer must provide the Bank with any information that the Bank requires to enable it to determine the application.
- “(4) An issuer must not issue, or permit the issue of, a covered bond other than under a registered covered bond programme.
- “(5) An issuer commits an offence if, without lawful justification or excuse, the issuer—
- “(a) issues a covered bond other than under a registered covered bond programme; or
 - “(b) permits the issue of a covered bond other than under a registered covered bond programme; or
 - “(c) provides information for the purposes of an application that is false or misleading in any material particular.
- “(6) The penalty for an offence against this section is set out in section 156AB.

“139F Determination of application for registration of covered bond programme

- “(1) The Bank must not register a covered bond programme unless it is satisfied that the requirements set out in subsection (2) are met.
- “(2) The requirements are as follows:
- “(a) that the cover pool assets are, or will be, owned by an identified covered bond SPV that—
 - “(i) is a company (within the meaning given in section 2(1) of the Companies Act 1993); or
 - “(ii) is a person or partnership specified in regulations made under subsection (3); and
 - “(b) that a cover pool monitor has been appointed; and

- “(c) that a register of cover pool assets will be maintained; and
 - “(d) that the covered bond programme specifies, or refers to documents that specify, procedures and internal controls that ensure—
 - “(i) the up-to-date and accurate keeping of that register; and
 - “(ii) that the assets in the cover pool remain consistent with any asset class designation under section 139D(2)(b); and
 - “(e) that the covered bond programme specifies a test, or tests, to determine, in accordance with any procedures specified in that programme, whether the value of the cover pool assets is at least equal to the principal amount outstanding on the covered bonds; and
 - “(f) that the covered bond programme provides for the covered bond SPV to perform, or arrange to have performed on its behalf, the requirements of section 139H(1)(a) and (b)(i)—
 - “(i) in the event that any amounts become due and payable by the covered bond SPV under the covered bond programme; and
 - “(ii) until the security interest over the cover pool assets has been enforced; and
 - “(g) that the issuer is in compliance with all other requirements imposed in relation to covered bonds by, or under,—
 - “(i) section 74; or
 - “(ii) regulations made under subsection (3).
- “(3) 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—
- “(a) specifying entities, or classes of entities, for the purposes of section 139C(1)(a)(ii):
 - “(b) specifying persons or partnerships, or classes of persons or partnerships, for the purposes of subsection (2)(a)(ii):
 - “(c) prescribing additional requirements for the purposes of subsection (2)(g)(ii):

- “(d) prescribing conditions in relation to the entities, persons, or partnerships referred to in paragraphs (a) and (b).

“139G Bank must approve or decline application

- “(1) Having considered an application made under section 139E(2), the Bank must either approve or decline the application.
- “(2) If the Bank is satisfied that an issuer meets the requirements of section 139F(2), the Bank must approve the application and register the covered bond programme.
- “(3) The Bank must otherwise decline the application.
- “(4) If the Bank approves the application, it must give its decision to the issuer—
 - “(a) in writing; and
 - “(b) within 60 working days after receiving all of the information required by the Bank to determine the application.
- “(5) If the Bank proposes to decline the application, the Bank must, within 60 working days after receiving all of the information required to determine the application,—
 - “(a) give the issuer notice, in writing, of that proposed decision and the reasons for it; and
 - “(b) invite the issuer to provide, within 10 working days after the date of the notice, submissions or further information in response to that proposed decision; and
 - “(c) take account of any submissions and further information it receives from the issuer; and
 - “(d) give its final decision to the issuer—
 - “(i) in writing; and
 - “(ii) within 5 working days after the expiry of the time specified in paragraph (b) (whether or not the Bank receives any submissions or further information).
- “(6) Nothing in this section prevents the Bank and the issuer from agreeing to modify the time limits specified in subsections (4) and (5).

“139H Requirements relating to registered covered bond programmes

- “(1) Every issuer must, in relation to a registered covered bond programme,—
- “(a) ensure that the test or tests specified in section 139F(2)(e) are carried out at intervals of not more than 12 months and notify the Bank if the result of such test or tests is that the value of the cover pool assets is less than the principal amount outstanding on the covered bonds; and
 - “(b) ensure that—
 - “(i) a register of cover pool assets is maintained; and
 - “(ii) it complies with the procedures and internal controls referred to in section 139F(2)(d); and
 - “(c) notify the Bank—
 - “(i) of every covered bond issued; and
 - “(ii) of any material changes to the registered covered bond programme that would be likely to result in the registered covered bond programme failing to comply with the requirements of section 139F(2); and
 - “(iii) if the covered bond programme or the cover pool no longer complies with any asset class designation under section 139D(2)(b); and
 - “(d) provide the Bank with any further information it requests in relation to the covered bond programme; and
 - “(e) ensure that—
 - “(i) the registered covered bond programme complies with the requirements of section 139F(2); and
 - “(ii) the reports referred to in section 139I(1)(c)(ii) are provided to any bond trustee and security trustee appointed under the covered bond programme; and
 - “(iii) the Bank is provided with a copy of—
 - “(A) every report prepared by the cover pool monitor in accordance with section 139I(1)(c)(iii) and (iv); and

- “(B) if requested by the Bank, any other report prepared by the cover pool monitor in accordance with section 139I(1)(c)(ii).
- “(2) However, if any amounts become due and payable by the covered bond SPV under the covered bond programme,—
- “(a) the issuer is not required to comply with subsection (1); and
- “(b) the covered bond SPV must provide the Bank with any information it requests in relation to that covered bond programme.
- “(3) If an issuer fails to comply with any of the requirements of subsection (1), the Bank may, by notice in writing to the issuer, require the issuer to take such corrective action as the Bank may specify in the notice.
- “(4) An issuer commits an offence if the issuer, without lawful justification or excuse, fails to comply with a notice issued under subsection (3).
- “(5) The penalty for an offence against this section is set out in section 156AB.

“Cover pool monitor

“139I Cover pool monitor

- “(1) A **cover pool monitor** must be—
- “(a) independent of the issuer; and
- “(b) 1 or more of the following:
- “(i) a licensed auditor under the Auditor Regulation Act 2011;
- “(ii) (if the issuer ensures that appropriate arrangements are in place to ensure that the functions of the cover pool monitor are performed by, or under the supervision of, a licensed auditor) a registered audit firm under the Auditor Regulation Act 2011;
- “(iii) a member of any other class of persons or firms that has been approved by the Bank; and
- “(c) required, under its contract of appointment, to—

- “(i) assess, at a given point in time, and in accordance with any agreed procedures specified in the covered bond programme,—
 - “(A) the arithmetical accuracy of the tests carried out in accordance with section 139H(1)(a); and
 - “(B) the issuer’s compliance with the requirements of section 139H(1)(b); and
 - “(ii) provide the issuer with reports on the matters required under paragraph (c)(i) at intervals of not more than 12 months; and
 - “(iii) provide reports at intervals of not more than 3 months if the cover pool monitor is not satisfied—
 - “(A) as to the arithmetical accuracy of the tests carried out in accordance with section 139H(1)(a); or
 - “(B) that the issuer has complied with the requirements of section 139H(1)(b); and
 - “(iv) if subparagraph (iii) applies, continue to provide 3-monthly reports until the cover pool monitor is satisfied that the issuer has remedied those matters; and
 - “(v) report on any other matters required by regulations made under subsection (2).
- “(2) 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 specifying additional matters that the cover pool monitor must be required to report on, and the information to be provided with such a report, for the purposes of subsection (1)(c)(v).
- “(3) For the purposes of this section, **independent** means independent of both the issuer and any associated person of the issuer.
- “(4) However, to avoid doubt, a person’s appointment as auditor does not affect his, her, or its independence.

*“Statutory management, etc, of issuer***“139J Limitation on application of statutory management, etc, provisions to covered bond SPV**

- “(1) Subsections (2) and (3) apply in relation to the following provisions:
- “(a) sections 122(1), 126(1), 127(1), and 128(2) of this Act:
 - “(b) section 248 of the Companies Act 1993:
 - “(c) sections 42(1), 43(1), 44(1), and 45(2) of the Corporations (Investigation and Management) Act 1989.
- “(2) Nothing in a provision referred to in subsection (1)—
- “(a) prevents the transfer of the legal title to assets in a cover pool from an issuer to a covered bond SPV:
 - “(b) prevents the transfer, under a contract, of any documentation or data relating to assets in a cover pool from the issuer to a covered bond SPV or a person acting on behalf of that SPV:
 - “(c) prevents a covered bond SPV, or a person acting on behalf of that SPV, from exercising a power of attorney granted by the issuer in relation to assets in a cover pool:
 - “(d) affects the issuer’s obligation to pay moneys collected on behalf of, and held on trust for, a covered bond SPV, to that SPV:
 - “(e) prevents the enforcement of any of the above rights by, or on behalf of, a covered bond SPV.
- “(3) However, subsection (2) applies only if—
- “(a) the covered bond SPV is the owner of the assets in the cover pool; and
 - “(b) the covered bond programme is registered under section 139G.
- “(4) A covered bond SPV is not—
- “(a) an associated person for the purposes of section 117(1)(a) of this Act, section 38(1)(a) of the Corporations (Investigation and Management) Act 1989, or section 170(1)(b) of the Insurance (Prudential Supervision) Act 2010; or
 - “(b) a subsidiary for the purposes of section 117(2) of this Act, section 38(2) of the Corporations (Investigation and Management) Act 1989, or section 170(2) of the Insurance (Prudential Supervision) Act 2010; or

“(c) a related company for the purposes of section 271 of the Companies Act 1993.”

10 Section 156AB amended (Penalty for offences relating to supply of information, etc)

After section 156AB(2)(f), insert:

“(g) section 139E(5)(a) (which relates to issuing a covered bond other than under a registered covered bond programme):

“(h) section 139E(5)(b) (which relates to permitting the issue of a covered bond other than under a registered covered bond programme):

“(i) section 139E(5)(c) (which relates to providing false or misleading information to the Bank in relation to an application to register a covered bond programme):

“(j) section 139H(4) (which relates to failing to comply with a notice issued by the Bank in relation to the requirements relating to a registered covered bond programme).”

Part 2

Transitional provisions and amendments to other Acts

11 Transitional provisions

(1) The amendments made by this Act apply in relation to existing covered bond programmes and issuers on and from the date that is 9 months after this Act comes into force.

(2) However, despite subsection (1), an issuer may, in relation to an existing covered bond programme, make an application under section 139E of the principal Act (as inserted by section 9 of this Act) at any time on or after the date on which this Act comes into force and, in that case,—

(a) section 139E(4) and (5)(a) and (b) of the principal Act (as inserted by section 9 of this Act) apply on and from the date on which the application is approved or declined under section 139G of the principal Act (as inserted by section 9 of this Act); and

- (b) all other amendments made by this Act apply on and from the date of the application.
- (3) To avoid doubt, on and from the date specified in subsection (1),—
 - (a) all amendments made by this Act apply in relation to existing covered bond programmes; and
 - (b) covered bonds must not be issued under an existing covered bond programme unless the programme is registered under section 139G of the principal Act (as inserted by section 9 of this Act).
- (4) In this section, **existing covered bond programme** means a covered bond programme that was established before this Act came into force.

12 Consequential amendments to other Acts

Amend the Acts specified in the Schedule as set out in that schedule.

Schedule

s 12

Consequential amendments to other Acts**Companies Act 1993 (1993 No 105)**

After section 248(2), insert:

“(3) This section is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.”

After section 271(2), insert:

“(3) This section is subject to section 139J(4) of the Reserve Bank of New Zealand Act 1989.”

Corporations (Investigation and Management) Act 1989 (1989 No 11)

In section 8(1), insert in its appropriate alphabetical order:

“**covered bond SPV** has the meaning given to it by section 139B of the Reserve Bank of New Zealand Act 1989”.

In section 8(3), replace “any licensed insurer or registered bank” with “any licensed insurer, registered bank, or covered bond SPV”.

After section 38(4), insert:

“(5) Subsections (1)(a) and (2) are subject to section 139J(4) of the Reserve Bank of New Zealand Act 1989.”

After section 42(8), insert:

“(8A) Subsection (1) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.”

After section 43(3), insert:

“(4) Subsection (1) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.”

After section 44(4), insert:

“(5) Subsection (1) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.”

After section 45(2), insert:

“(3) Subsection (2) is subject to section 139J(1) to (3) of the Reserve Bank of New Zealand Act 1989.”

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

After section 170(3), insert:

“(4) Subsections (1)(b) and (2) are subject to section 139J(4) of the Reserve Bank of New Zealand Act 1989.”

Legislative history

10 May 2012	Introduction (Bill 19–1)
22 May 2012	First reading and referral to Finance and Expenditure Committee
24 September 2012	Report of the Finance and Expenditure Committee (Bill 19–2)
27 February 2013	Second reading
19 November 2013	Committee of the whole House, third reading
3 December 2013	Royal assent

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