

Reserve Bank of New Zealand (Covered Bonds) Amendment Bill

Government Bill

As reported from the Finance and
Expenditure Committee

Commentary

Recommendation

The Finance and Expenditure Committee has examined the Reserve Bank of New Zealand (Covered Bonds) Amendment Bill, and recommends that it be passed with the amendments shown.

Introduction

The bill aims to support financial stability by improving the ability of New Zealand banks to access the international market for covered bonds, which are considered to be a relatively stable source of long-term funding. Covered bonds are financial instruments which provide their holders with both an unsecured claim on the issuing bank and a secured interest over a specific pool of assets, called the cover pool. Covered bonds are common overseas; New Zealand banks have been issuing them for two years under contractual arrangements, but the absence of a legislative framework in this country has put New Zealand issuers at a disadvantage relative to their counterparts elsewhere.

The bill seeks to amend the Reserve Bank of New Zealand Act 1989 to establish a registration regime for covered bond programmes, supervised by the Reserve Bank, and to provide legal certainty about the treatment of the cover pool assets in the event that an issuing bank was placed into liquidation or statutory management.

The amendments we are recommending to the bill are generally in the nature of clarification; this commentary discusses the more significant of them. It does not discuss minor, technical, or inconsequential amendments.

Meaning of issuer

In clause 9, we recommend amending new section 139C to make the meaning of “issuer” clearer, and to cover the situation where a bank’s registration is cancelled. In the event that a bank with a covered bond programme had its registration cancelled, it would continue to be treated as an issuer under this legislation unless it transferred all the rights and obligations of the programme to another issuer. The proposed new definition would mean that new section 139F(2)(a) was no longer required, and so we recommend its deletion.

Registration of covered bond programmes

We recommend amending clause 9 to extend proposed new section 139D(2)(b) (which requires registration of covered bond programmes) to include reference to assets that have yet to be transferred into the relevant cover pool. This would allow for changes in the cover pool assets without a change to registration requirements, as long as those assets met the eligibility criteria of the covered bond programme as registered.

The amendments we recommend to sections 139D(4) and (5) are mainly for purposes of clarification, but we also recommend the inclusion of a new section 139D(5)(a)(ii), which would enable the Bank to remove a covered bond programme from the register if the security interest over the cover pool had been enforced (subject to the consent of the relevant bond trustee and security trustee).

For clarity, we recommend moving section 139E(1) to become new section 139E(4A), and extending it to include situations where the issuer “permitted” the issue of a covered bond (that is, where a registered bank was not itself effecting the issue of covered bonds, but

was allowing their issue). We also recommend inserting new section 139E(5)(ab) to establish a corresponding new offence, and amending clause 10 (new section 156AB(2)(ga)) to make it clear what the penalty relating to that offence would be.

Determination of application for registration

We recommend amending clause 9 to insert new sections 139F(2)(d) and 139F(2)(da) to make it a requirement of registration that the issuer maintain a register of cover pool assets, and that it specify in the covered bond programme certain procedures and internal controls to ensure the register is accurate and consistent with any asset class designation.

Further to this change, we recommend amending new section 139H(1)(b) to require the issuer to keep the register up-to-date, and section 139I(1)(c) to require a cover pool monitor to assess the issuer's compliance with the requirement to maintain the register, and its associated procedures and internal controls.

Cover pool monitor

The bill as introduced would require the appointment of a cover pool monitor to verify the information provided by the issuer about the cover pool assets (new sections 139F(2)(c) and 139I). While the monitor would be appointed by the issuer under contract, it would have to be independent of the issuer, and either a licensed auditor, a registered audit firm, or a class of persons otherwise approved by the Reserve Bank. We recommend some amendments to section 139I to specify the respective duties of the monitor and of the issuer.

In particular, we recommend amending section 139I(1)(c) to clarify that the onus is on the issuer to ensure that the cover pool monitor provides a report, at specified intervals, on the matters specified in section 139I, namely the arithmetical accuracy of the issuer's calculation of the asset coverage test and compliance with the requirements to maintain an accurate register of cover pool assets. Consequential to these changes, we recommend deleting new sections 139I(2) to (5), as their provisions would be incorporated into the contractual requirements of the issuer vis-à-vis the cover pool monitor.

As to the specific role of the monitor, we do not believe it was intended that a cover pool monitor should be required to undertake a

higher level of review than an agreed-upon procedures review, or to check and verify the accuracy of every single entry in the register, which would be likely to increase compliance costs without significant benefit to investors. We note that such intensive oversight is not general market practice, but believe it is implied in the wording of the bill as introduced. We therefore recommend amending new section 139I(1)(c) to make it clear that, under its contract of appointment, the role of the cover pool monitor can be adequately performed through an agreed-upon procedures review.

Other amendments we recommend to section 139I are for purposes of clarification. For example, we recommend that new section 139I(1)(c) require the cover pool monitor to assess compliance “at a given point in time”, rather than “at any point in time”, as we do not believe the intention was to require continuous assessment. We do, however, agree that the monitor should be required to report more frequently than usual if it detects any problems; our suggested amendments to section 139I retain the requirement for 3-monthly reporting in such circumstances.

Requirements of registered programmes

The bill would require the Reserve Bank to ensure that covered bond programmes met certain requirements before registering them, including the cover pool assets being owned by a “special purpose vehicle” so that they could be clearly identified and separated from the issuer’s other assets. This segregation of assets is particularly important to provide certainty to investors in the event of a bank’s failure. The bill would also place certain on-going requirements on the issuer, some of which the special purpose vehicle would be contractually required to fulfil in the event that the issuer defaulted.

In the bill as introduced, an issuer would be required to notify the Reserve Bank of any material changes that “may” result in a failure to comply with the requirements. We recommend amending the threshold to “would be likely” to result in a failure to comply, as we consider this a clearer and more appropriate test (clause 9, new section 139H(1)(c); previously numbered as 139H(1)(d)).

We recommend inserting new section 139H(1A) to make it clear that the issuer’s obligations would end in the event that the issuer defaulted; in that event, the special purpose vehicle would be required

to provide the Reserve Bank with any information it requested regarding the covered bond programme.

Transitional provisions

We recommend that the transition period specified in clause 11 be extended from 6 months to 9 months to take into account the 60 working days allowed for the Reserve Bank to consider applications.

Statutory management, etc, of issuer

We recommend amending new section 139J(4), and the Schedule to the bill, to make it clear that a covered bond special purpose vehicle is not an associated person or subsidiary for the purposes of the Insurance (Prudential Supervision) Act 2010.

Other issues considered by the committee

Risks for unsecured creditors

We have given careful thought to the ways in which covered bonds may affect the risks faced by ordinary depositors. Because the holders of covered bonds would have preferential access to certain of the issuing bank's assets in the event of default, this would subordinate the claims of depositors and other unsecured creditors on the assets placed in the cover pool. We have sought to weigh up this increased risk for unsecured creditors against the benefits offered by issuing covered bonds. The main benefit is the reduced likelihood that a bank will default in times of financial market stress, because the ability to issue covered bonds improves banks' access to longer-term, relatively secure funding. Another potential benefit is that the reduced funding costs for banks from issuing covered bonds may be passed on to unsecured creditors if banks can pay higher deposit rates.

On balance, we consider that the risks to unsecured creditors are justified provided their application is limited to a conservative proportion of a bank's assets.

Limit on issuance

Since 2011, the Reserve Bank has imposed a limit of 10 percent on the proportion of a bank's assets that may be encumbered in favour of covered bonds. The limit is imposed as a condition of banks'

registration, under section 74 of the Reserve Bank of New Zealand Act 1989. The bill does not specify any limit, as it is proposed that the current arrangement would continue.

We have considered whether the 10 percent limit on the extent to which assets may be encumbered by covered bonds is sufficiently conservative, and whether the limit should be specified in primary legislation by way of this bill.

We note that Australia imposes a slightly lower limit, at 8 percent, but our examination suggests that this is comparable to the New Zealand requirement as the Australian limit only applies at the time of issuance, whereas New Zealand's applies on an ongoing basis, and banks tend to stop short of 10 percent to ensure they do not exceed the limit. We understand that a low limit of 4 percent, as applied in some countries, such as Canada, would be likely to preclude all but the largest New Zealand banks from issuing covered bonds.

It is of interest that ratings agencies have assessed the issuance of covered bonds by New Zealand banks with a 10 percent limit as "ratings positive" for unsecured debt; that is, that the benefits outweigh any risks to unsecured creditors. After considering all these factors, we have concluded that a 10 percent issuance limit as currently imposed is appropriate.

Enforcement of limit

We note that changing market circumstances could make it desirable for the limit to be revised. For example, if funding conditions tightened, it could be considered prudent to allow banks to encumber assets above the limit for a period. We have therefore considered whether the issuance limit should be imposed as a condition of bank registration, as currently enforced by the Reserve Bank, or by means of primary legislation.

Some of us consider that the issuance of covered bonds involves a matter of policy, given the increased risk for ordinary depositors entailed in a bank encumbering assets in favour of covered bonds. Some of us therefore consider that any increase in the limit is a matter that should be authorised by regulation at the direction of the Minister, rather than left to the delegated authority of the Governor of the Reserve Bank; this would provide an appropriate additional check on, and transparency in, such a decision.

The majority of us, however, consider that the current arrangement provides an important element of flexibility, which would prove advantageous in any financial crisis, when rapid responses to market developments are likely to be needed. The majority of us note that the Reserve Bank has been entrusted with discretion in relation to the prudential requirements it places on banks in order to maintain financial stability, and believe a similar situation applies here. We therefore do not recommend any change to the current arrangement for specifying and enforcing the limit.

Appendix

Committee process

The Reserve Bank of New Zealand (Covered Bonds) Amendment Bill was referred to the committee on 22 May 2012. The closing date for submissions was 3 July 2012. We received and considered 6 submissions from interested groups and individuals. We heard 4 submissions.

We received advice from the Reserve Bank of New Zealand.

Committee membership

Todd McClay (Chairperson)

Maggie Barry

David Bennett

Dr David Clark

Hon Clayton Cosgrove

Paul Goldsmith

John Hayes

Dr Russel Norman

Hon David Parker

Rt Hon Winston Peters

Hon Dr Nick Smith

**Reserve Bank of New Zealand (Covered
Bonds) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Bill English

Reserve Bank of New Zealand (Covered Bonds) Amendment Bill

Government Bill

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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 **2012**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act** 10
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: 5
“(7) Subsections (1)(a) and (2) are subject to **section 139J(4)**.”
- 5 Section 122 amended (Moratorium)**
After section 122(9), insert:
“(10) ~~This section~~ Subsection (1) is subject to **section 139J(1) to (3)**.” 10
- 6 Section 126 amended (Prohibition against removal of assets)**
After section 126(3), insert:
“(4) ~~This section~~ Subsection (1) is subject to **section 139J(1) to (3)**.” 15
- 7 Section 127 amended (Statutory manager may suspend payment of money owing)**
After section 127(4), insert:
“(5) ~~This section~~ Subsection (1) is subject to **section 139J(1) to (3)**.” 20
- 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** 25
After section 139, insert:
“Interpretation relating to covered bonds
“139A Interpretation
In **sections 139B to 139J**, unless the context otherwise requires,— 30

“**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

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“**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 issuer’s obligations 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

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“**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**

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“**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** means a covered bond issued under a registered covered bond programme

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“**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

“For the purposes of **sections 139A and 139C to 139J**, **covered bond SPV** means, in relation to a covered bond programme, a person that—

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- “(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

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- “(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 5
- “(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, 139B, and 139D to 139J**, **issuer** means— 10
 - “(a) the person referred to in **section 139F(2)(a)** (**issuer A**); or
 - “(b) if issuer A transfers the benefits and obligations relating to a registered covered bond to another person, that other person. 15
- “(2) However, if the person referred to in **subsection (1)(b)** is not a person of the type referred to in **section 139F(2)(a)**, issuer A is to be treated as the issuer, despite the transfer.

“139C Meaning of issuer

- “(1) For the purposes of **sections 139B to 139J**, **issuer**— 20
 - “(a) means—
 - “(i) a registered bank that issues or intends to issue covered bonds, or guarantees such covered bonds; 25
 - “(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— 30
 - “(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 139B to 139J**. 35

“(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. 5

“(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 10

“(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. 15

“(4) A registered covered bond programme must remain on the register—

“(a) until all obligations under that programme have been fulfilled; and 20

“(b) despite—

“(i) any defects in the registration process; or

“(ii) any failure by an issuer to comply with any of the requirements of **section 139H**. 25

“(5) However, despite **subsection (4)**, the Bank may remove a registered covered bond programme from the register if the issuer—

“(a) requests the removal; and

“(b) provides the Bank with evidence, acceptable to the Bank, that both the relevant bond trustee and security trustee consent to the removal. 30

“(4) A registered covered bond programme must remain on the register despite—

“(a) any defects in the registration process; or 35

“(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 5
- “(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. 10
- “(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: 15
- “(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: 20
- “(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. 25
- “139E Requirement, and application, for registration of covered bond programme**
- ~~“(1) An issuer must not issue a covered bond other than under a registered covered bond programme.~~ 30
- “(2) ~~An issuer must~~ Only an issuer may apply to the Bank to register a covered bond programme.
- “(3) 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*. 35

- “(4) The issuer must provide the Bank with any information that the Bank requires to enable it to determine the application.
- “(4A) 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
 - “(ab) permits the issue of a covered bond other than under a registered covered bond programme; or
 - “(b) 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) ~~the issuer is either—~~
 - “(i) ~~a registered bank that—~~
 - “(A) ~~issues, or intends to issue, covered bonds; or~~
 - “(B) ~~guarantees the covered bonds issued under a registered covered bond programme; or~~
 - “(ii) ~~an entity, or a class of entity, specified in regulations made under **subsection (3)**; and~~
 - “(b) 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
 - “(c) ~~a cover pool monitor has been appointed to the covered bond programme; and~~
 - “(d) ~~if, in accordance with **section 139D(2)(b)**, the covered bond programme is to be designated to a particular~~

- class; that programme provides appropriate constraints to ensure that the cover pool remains consistent with that designation; and
- “(c) that a cover pool monitor has been appointed; and
- “(d) that a register of cover pool assets will be maintained; 5
and
- “(da) that the covered bond programme specifies procedures and internal controls that ensure—
- “(i) the up-to-date and accurate keeping of that register; and 10
- “(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 15
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 20
performed on its behalf, the requirements of **section 139H(1)(a) (b), (e), and (f) and (b)(i)** in the case event that any amounts become due and payable by the covered bond SPV under the covered bond programme;
- and 25
- “(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)**. 30
- “(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 **subsection (2)(a)(ii) section 139C(1)(a)(ii)**; 35
- “(b) specifying persons or partnerships, or classes of persons or partnerships, for the purposes of **subsection 2(b)(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)**. 5
- “**139G Bank must approve or decline application**
- “(1) Having considered an application made under **section 139E(2)(3)**, 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. 10
- “(3) The Bank must otherwise decline the application.
- “(4) If the Bank approves the application, it must give its decision to the issuer— 15
- “(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,— 20
- “(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 25
- “(c) take account of any submissions and further information it receives from the issuer; and
- “(d) give its final decision to the issuer— 30
- “(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). 35

“(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**

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“(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

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“(b) ensure that a register of assets is maintained in accordance with any procedures specified in the covered bond programme; and

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“(c) notify the Bank of every covered bond issued under the registered covered bond programme; and provide the Bank with any information it requests in relation to those covered bonds; and

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“(d) ensure that it continues to comply with the requirements of **section 139F(2)**; including notifying the Bank of any material changes to the registered covered bond programme that may result in the registered covered bond programme no longer meeting the requirements of **section 139F(2)**; and

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“(e) ensure that the report referred to in **section 139I(3)** is provided to any bond trustee and security trustee appointed under the covered bond programme; and

“(f) ensure that the Bank is provided with a copy of—

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“(i) every report prepared by the cover pool monitor in accordance with **section 139I(4)**; and

“(ii) if requested by the Bank, any other report prepared by the cover pool monitor in accordance with **section 139I(3)**.

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“(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)(da)**; 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 5
- “(iii) if the covered bond programme or the cover pool no longer complies with any asset class designation under **section 139D(2)(b)**; and 10
- “(d) provide the Bank with any further information it requests in relation to the covered bond programme; and
- “(e) ensure that— 15
- “(i) it 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 20
- “(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 25
- “(B) if requested by the Bank, any other report prepared by the cover pool monitor in accordance with **section 139I(1)(c)(ii)**.
- “(1A) However, if any amounts become due and payable by the covered bond SPV under the covered bond programme,— 30
- “(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. 35
- “(2) 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.

- “(3) An issuer commits an offence if the issuer, without lawful justification or excuse, fails to comply with a notice issued under **subsection (2)**.
- “(4) The penalty for an offence against this section is set out in section 156AB. 5

“Cover pool monitor

“139I Cover pool monitor

- “(1) ~~The cover pool monitor~~ **A cover pool monitor** must be—
- “(a) independent of the issuer; and
- “(b) 1 or more of the following: 10
- “(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: 15
- “(iii) a member of any other class of persons or firms that has been approved by the Bank; and 20
- “(c) ~~required, under its contract of appointment, to verify, at any point in time and in accordance with the procedures specified in the covered bond programme,—~~
- “(i) ~~the arithmetical accuracy of the tests carried out in accordance with **section 139H(1)(a)**; and~~ 25
- “(ii) ~~the accurate keeping of the register referred to in **section 139H(1)(b)**.~~
- “(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,— 30
- “(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 35

- “(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— 5
- “(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 10
- “(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 15
- “(v) report on any other matters required by regulations made under **subsection (6)**.
- “(2) ~~The cover pool monitor must also report on any matters required by regulations made under **subsection (6)**.~~
- “(3) ~~The cover pool monitor must provide the issuer with reports on the matters required under **subsection (1)(c)** at intervals of not more than 12 months.~~ 20
- “(4) ~~However, if the cover pool monitor finds that the issuer has not complied with the matters referred to in **subsection (1)(c)**, the monitor must, until those matters have been complied with, provide reports at intervals of not more than 3 months.~~ 25
- “(5) ~~The cover pool monitor’s obligation to provide reports under this section ceases if the covered bond SPV is subject to—~~
- “(a) ~~liquidation; or~~
- “(b) ~~receivership; or~~ 30
- “(c) ~~statutory management; or~~
- “(d) ~~voluntary administration.~~
- “(6) ~~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 (2) (1)(c)(v)**.~~ 35

- “(7) For the purposes of this section, **independent** means independent of both the issuer and any associated person of the issuer.
- “(8) However, to avoid doubt, ~~a person is not to be considered independent merely because of that person’s appointment as auditor.~~ a person’s appointment as auditor does not affect his, her, or its independence. 5

“Statutory management, etc, of issuer

- “**139J Limitation on application of statutory management, etc, provisions to covered bond SPV** 10
- “(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. 15
- “(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: 20
- “(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: 25
- “(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. 30
- “(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**. 35
- “(4) A covered bond SPV is not—

- “(a) an associated person for the purposes of section 117(1)(a) of this Act ~~or~~ 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 5
- “(b) a subsidiary for the purposes of section 117(2) of this Act ~~or~~ 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

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): 15
- “(ga) **section 139E(5)(ab)** (which relates to permitting the issue of a covered bond other than under a registered covered bond programme): 20
- “(h) **section 139E(5)(b)** (which relates to providing false or misleading information to the Bank in relation to an application to register a covered bond programme):
- “(i) **section 139H(3)** (which relates to failing to comply with a notice issued by the Bank in relation to the requirements ~~of registration of a~~ relating to a registered covered bond programme).” 25

Part 2

Transitional provisions and amendments to other Acts

30

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 ~~6 months~~ 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 35

under **section 139E** (as inserted by **section 9** of this Act) at any time on or after the commencement of this Act and, in that case, all other amendments made by this Act apply in relation to that application.

- (3) To avoid doubt,— 5
- (a) ~~section 139E(1) and 5(a) (4A) and (5)(a) and (ab)~~ do not apply in relation to a covered bond issued, on or after the date that this Act comes into force, under an existing covered bond programme unless registration of that programme has been declined: 10
- (b) all existing covered bond programmes must be registered under **section 139G** (as inserted by **section 9** of this Act) before the date specified in **subsection (1)**, after which time all amendments made by this Act (including ~~section 139E(1)~~) apply. 15
- (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** 20
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.” 5

After ~~subsection~~ 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)

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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”. 15

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) ~~This section~~ Subsection (1) is subject to **section 139J(1) to (3)** of the Reserve Bank of New Zealand Act 1989.” 20

After section 43(3), insert:

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

After section 44(4), insert:

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“(5) ~~This section~~ 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.” 30

**Reserve Bank of New Zealand (Covered
Bonds) Amendment Bill**

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

After section 170(3), insert:

“(5) 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
22 May 2012

Introduction (Bill 19-1)
First reading and referral to Finance and
Expenditure Committee
