Reserve Bank of New Zealand
Te Pūtea Matua

Crisis Management under the Deposit Takers Act 2023

21 August 2024

ISSUES PAPER

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The Reserve Bank of New Zealand – Te Pūtea Matua invites submissions on this Issues Paper by 5.00pm on 22 November 2024. Please note the disclosure on the publications of submissions below.

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Submissions should be made online at https://consultations.rbnz.govt.nz

Email enquiries: dta@rbnz.govt.nz

Publication of submissions

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We will make all information in submissions public unless you indicate you would like all or part of your submission to remain confidential. Please refer to our policies on how we store and may share your information - Reserve Bank website privacy policy and the Consultation privacy information. If you would like part of your submission to remain confidential you should provide both a confidential and a public version of your submission. Apart from redactions of the information to be withheld (i.e., blacking out of text) the two versions should be identical. You should ensure that redacted information is not able to be recovered electronically from the document; the redacted version will be published as received.

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We may also publish an anonymised summary of the submissions received in respect of this Issues Paper.

Contents

Executive summary

1. The crisis management regime in the Deposit Takers Act 2023 (DTA) represents a fundamental shift in the way the Reserve Bank of New Zealand - Te Pūtea Matua (Reserve Bank or we) approaches managing deposit taker distress.

2. The legislation contains a range of new statutory powers, duties and functions for the Reserve Bank, including acting as the operation of the Depositor Compensation Scheme (DCS), and as the resolution authority for distressed deposit takers.

3. However, the legislation only sets out a framework. The operationalisation of this framework requires further substantive policy work on a variety of matters.

4. This Issues Paper seeks feedback on several issues that are key to operationalising our new regime under the DTA.

The importance of crisis management

5. A sound and well-functioning financial system contributes to a productive economy and promotes the prosperity and well-being of New Zealanders. When a deposit taker experiences financial distress or other difficulties, there can be wide-reaching, long term detrimental impacts on consumers and businesses, the financial system, and the broader economy – as we saw in the Global Financial Crisis (GFC). An efficient, effective and transparent crisis management framework can also help to support competition in the deposit taking sector. It does this by facilitating market dynamics, allowing for the orderly exit of failing deposit takers and making space for new entrants.

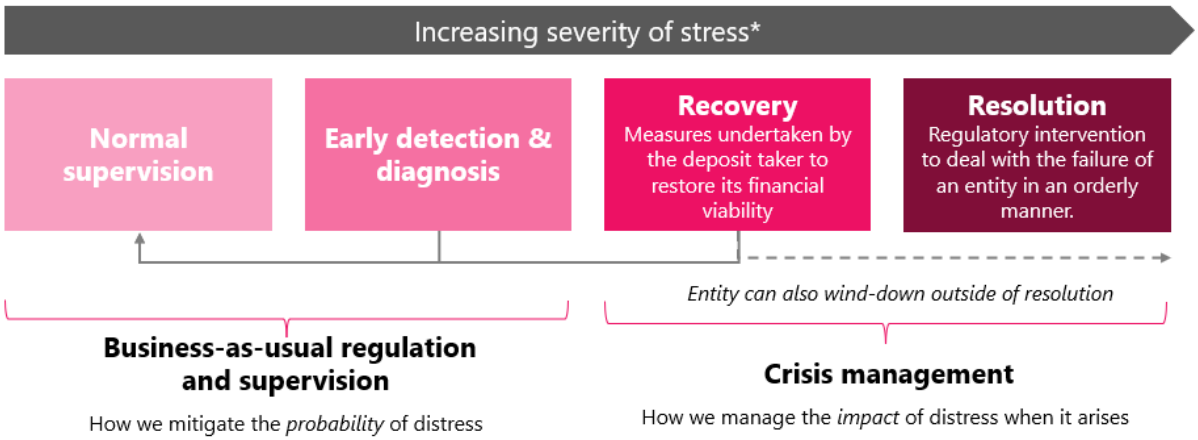
6. Since the GFC, international standard setting bodies have developed best practice crisis management frameworks, while regulators and deposit takers overseas have significantly enhanced their crisis management capabilities. The new crisis management provisions in the DTA reflect many of these developments and enhancements. However, for the new regime to be fully effective, there are a range of new standards, plans and statements that we must now develop. We must also consider the place of bail-in in our crisis management toolkit.

The Reserve Bank's approach to crisis management

7. The Reserve Bank's crisis management framework sits within our broader regulatory and supervisory framework for deposit takers. Our regulatory and supervisory activities seek a low *probability* of distress to promote financial stability.[1] If a registered bank or licensed non-bank deposit taker (NBDT) faces financial distress or other difficulties, we respond to reduce the *impact* of distress to protect the financial system from significant damage. As illustrated in Figure 1, the Reserve Bank's crisis management framework consists of four stages.

[1] See our Statement of Prudential Policy https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/statements-of-approaches/statement-of-prudential-policy-2022.pdf
and the Financial Policy Remit. https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/about/financial-policy-remit/mof-letter-to-governor-and-chair-financial-policy-remit-issuance.pdf

Figure 1. A continuum of our responses to address financial distress or other difficulties



8. We operate in a broader financial system regulatory environment, so it is important that we co-ordinate and co-operate with other authorities in New Zealand, as their policies and decision-making have significant implications for our crisis management framework and the deposit taking sector. We do this through the Council of Financial Regulators. We also co-operate with overseas regulators, especially Australian financial authorities, on cross-border crisis management. This is crucial considering our largest banks are subsidiaries of Australian banks.

9. Sometimes, central banks use their balance sheets to provide emergency lending to deposit takers. Powers are provided as part of our central bank functions in the Reserve Bank of New Zealand Act 2021 to provide liquidity facilities to protect or promote the stability of the financial system. However, this aspect of the the Reserve Bank's central bank functions is outside the scope of this Issues Paper.

The Deposit Takers Act 2023

10. The DTA makes significant changes to the crisis management regime for deposit takers, some of the most important of which are set out in Figure 2.

11. In addition, the DTA incorporates significant new safeguards for creditors, such as the 'no creditor worse off' (NCWO) regime.[2] The introduction of the DCS also represents a fundamental change in our crisis management framework, as it provides an upfront guarantee for deposits of up to $100,000 per depositor, per institution.

[2] With the NCWO regime, creditors would be compensated to the extent they are made worse off in resolution compared to their counterfactual position in liquidation.

Figure 2. Key changes introduced by the DTA

Content of this Issues Paper

12. This Issues Paper is divided up into several sections, which are set out in Table A.

Table A. Summary of topics covered in the Issues Paper

Topic	Summary	Section
High level approach	Our proposed high-level approach to **crisis management** (including **crisis preparedness** and **strategies for intervention**) in the **normal operational phase** (pre-planning for recovery or orderly exit), the **recovery phase** (activation of recovery plans and the use of Reserve Bank powers), and the **resolution phase** (formal use of resolution powers, triggered by an Order in Council and potentially involving use of the DCS).	2
Resolution tools	The resolution 'tools' available to give effect to different strategies in our high-level approach, including: 1. **group-level resolution** (in the case of a foreign owned deposit taker) 2. **Open Bank Resolution (OBR)** (to stabilise a deposit taker while identifying a long-term solution) 3. **sale of business** (transferring some or all of the assets and liabilities of a deposit taker to a new entity) 4. **orderly wind-down** of a deposit taker 5. **liquidation of a deposit taker and DCS payout**	3

Topic	Summary	Section
Bail-in instruments	A bail-in resolution tool allocates the costs of both stabilising and recapitalising a failed deposit taker to its creditors by converting their debt into equity. Bail-in has been adopted in some jurisdictions since the GFC. In New Zealand bail-in was considered during the Reserve Bank Act Review as a tool to minimise the need for government bailouts or other taxpayer support. The DTA has provided the Reserve Bank with powers to deliver bail-in (by requiring bail-in terms in relevant contracts, or through the use of transfer powers). Requiring bail-in terms in contracts (which would allow relevant liabilities to be written down or converted into equity) could raise similar issues to those which resulted in these convertible instruments ceasing to be recognised as regulatory capital under our capital framework. We are conscious of this connection and would need to ensure that any bail-in standard mitigated these risks. However, bail-in can be delivered in different ways, including through direct statutory powers ('statutory bail-in'). Statutory bail-in powers are complex and would require a significant amendment to the DTA. We do not yet have a position on whether to recommend a statutory bail-in power and seek feedback to inform our analysis of this issue before making a recommendation to the Minister of Finance.	4
Enhanced crisis preparedness	To support effective crisis management, we are considering whether to develop a new crisis preparedness standard. This standard could include new sets of requirements on recovery and exit planning, and on resolvability. (At a later stage we may also consolidate the crisis preparedness requirements together with outsourcing and OBR pre-positioning standards to create a single Crisis Management Standard.)	5

Next steps

13. We intend to release further documents on specific crisis management topics in the future to inform our new approach to crisis management, which will culminate in new resolution plans, a published Statement of Approach to Resolution (SoAR), and standards to support crisis management.

14. Our high-level timetable for work on the new crisis management framework is set out in Figure 3. The Part 7 (Crisis Management and Resolution) of the DTA will commence on a date set by Order in Council, or otherwise in July 2029. Your feedback will help us design and implement our new crisis management framework under the DTA as we approach commencement.

Figure 3. Process for developing crisis management framework under the DTA

1. Introduction

The purpose of this paper

15. This paper seeks your feedback to help us shape our future crisis management framework under the Deposit Takers Act 2023 (DTA).

16. While crisis management has been a longstanding part of our broader prudential framework, the DTA represents a fundamental shift in the way we approach financial stability, and it expands the Reserve Bank's responsibilities and accountabilities. We need to ensure that we develop an approach to crisis management that will help us meet our statutory objectives under the DTA, and produce a number of key deliverables, including the Statement of Approach to Resolution (SoAR).

17. This paper is the first in a series of consultations that will inform this approach. Throughout this Issues Paper, we explain how changes under the DTA are leading us to consider a number of updates to our crisis management framework.

Structure of this Issues Paper

18. This Issues Paper is divided into six sections and two annexes. Specifically:

    Section 1: Introduction – we explain the purpose and background of this Issues Paper.

    Section 2: Dealing with distressed deposit takers – we outline and seek your feedback on our envisaged approach under the DTA to dealing with a distressed deposit taker, which includes deposit takers' preparation for potential distress during the phase of normal operation.

    Section 3: Updates to our existing resolution toolkit – we explain the existing resolution tools and reasons why we think a bail-in tool (Section 4) could further enhance the existing tools to meet one or more of the DTA purposes. Section 3 covers existing tools (such as group-level resolution, OBR, sale of business, bridge institution and orderly wind-down) along with the liquidation tool that will incorporate a DCS payout once the DCS is in force (expected mid 2025).

    Section 4: Bail-in – we set out our initial policy direction to seek your feedback on the potential role of a bail-in resolution tool under the DTA. Additionally, we explain three different ways to deliver bail-in: structural, contractual and statutory. The DTA would have to be further amended to enable statutory bail-in. Your feedback will help inform our assessment of the need for statutory bail-in powers, in addition to structural and contractual bail-in powers.

    Section 5: Preparations in business-as-usual – we outline and seek your feedback on a potential new Crisis Preparedness standard under the DTA, which would impose more comprehensive preparation requirements on deposit takers. The new requirements could include:

    (i) recovery and exit planning (for all the deposit takers),

    (ii) resolvability (for certain deposit takers), and

    (iii) information provision for our development of resolution plans (for all deposit takers). These requirements would be additional to the OBR and Outsourcing standards

currently proposed as part of the policy consultation on the non-core standards, which has been released alongside this paper. Section 5 also outlines how we are enhancing our own preparedness as the resolution authority.

Section 6: Final remarks

Annex A: Glossary

Annex B: Consolidated consultation questions

What is crisis management?

19. From time to time, deposit takers may face financial distress or other difficulties. When an entity faces distress, it may be able to recover by addressing the issues at hand and restoring its financial viability (for example, through raising more capital). Alternatively, the deposit taker may make a strategic decision to exit the market in an orderly way (for example, by selling all or part of its business to another deposit taker). However, if the distress deteriorates, and the entity does not have a credible path for recovery or orderly exit, it will fail (i.e., by becoming insolvent or otherwise 'non-viable' from a financial, commercial or operational perspective).

Crisis management refers to the responses of the Reserve Bank, deposit takers and other relevant stakeholders to manage the impact of financial distress when it arises. This is both when there is the potential for recovery, and when a deposit taker is likely to fail (or has failed).

Our crisis management framework includes the powers, regulations, policies, tools, strategies and processes in place that inform and enable the Reserve Bank and deposit takers' actions in response to financial distress and potential failure. It also includes business-as-usual preparations and the governance and testing of these arrangements, to ensure they operate effectively in practice.

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20. This Issues Paper focuses on the Reserve Bank's role as a prudential regulator and a resolution authority. As part of crisis management, central banks sometimes use their balance sheets to provide emergency lending to deposit takers facing liquidity shortfalls. However, the Reserve Bank's role in providing emergency liquidity assistance and acting as lender of last resort is outside the scope of this Issues Paper.

The importance of crisis management

21. A sound and well-functioning financial system provides a public benefit shared by society in much the same way as physical infrastructures such as water and power networks. Payments, credit, deposit-taking and other services are critical to the everyday economic lives of most individuals and businesses in New Zealand. It is therefore important that New Zealanders can be confident in the safety and soundness of the deposit takers and the stability of financial system on which they rely.

22. In the first instance, the Reserve Bank aims to protect and promote the stability of the financial system by setting capital and other prudential requirements that reduce the probability of distress or failure. However, this probability cannot be reduced to zero, and the costs of trying

to do so would be too large. As such, we also need to avoid significant damage to the financial system (including public confidence) when distress or failure does occur.

23. When a deposit taker is in financial distress or at risk of failure, it risks a loss of confidence in the financial system by the public and by financial market participants. A loss of confidence can cause behaviour that increases the speed, scale and scope of damage to the system. For example, when the public fears they would lose their money saved in a severely distressed deposit taker, the public may start quickly withdrawing their deposits. This 'run' on deposits can create a contagion effect and spread fear to other depositors and market participants. The interconnectedness of financial institutions, both within New Zealand and globally, adds to the risk of this contagion.

24. Without suitable alternatives, the potential for widespread detrimental effects on society means that governments may have incentives to bail-out distressed deposit takers (i.e., to step in and provide the funds needed to preserve the deposit taker's operations). This option can preserve financial stability, however the costs created by the actions and risk-taking of an individual entity fall on the government, with implications for taxpayers and society more broadly. Additionally, the expectation that governments will step in can result in 'moral hazard' where deposit takers are incentivised to increase their exposure to risk.

25. Finally, it is important to note that an effective crisis management framework can also help to support competition in the deposit taking sector. In particular, by helping to facilitate the orderly exit of failing deposit takers, it can support a more efficient and dynamic sector, where deposit takers can enter and exit the market in a timely efficient manner and without significant damage to the financial system.

Lessons of crisis management

26. During the GFC, the failure of financial institutions in the United States and Europe triggered financial instability and an economic downturn that spread across the globe. It showed that financial institutions and public authorities alike were not sufficiently prepared for crisis management. More recently, a series of overseas bank failures in 2023 highlighted the speed at which distress can unfold in the modern financial system.

27. There are several lessons that authorities can learn from these events. The Financial Stability Board (**FSB**), an international body that monitors and makes recommendations about the global financial system, has undertaken research and produced guidance for recovery and resolution to promote more effective management of future crises.

28. One lesson is the importance of having measures to address distress early, help the entity recover, and avoid disorderly failure. This is often the most effective way to protect depositors, mitigate a loss of confidence, ensure the continuity of critical services, and promote financial stability. Both regulators and regulated entities need to have policies, plans and processes in place for the recovery and orderly market exit of distressed deposit takers.

29. Another lesson is the importance of having credible options to deal with the failure of a deposit taker if recovery efforts are not successful. If a deposit taker fails, there are standard insolvency procedures that can be applied, as with any other type of business. These include

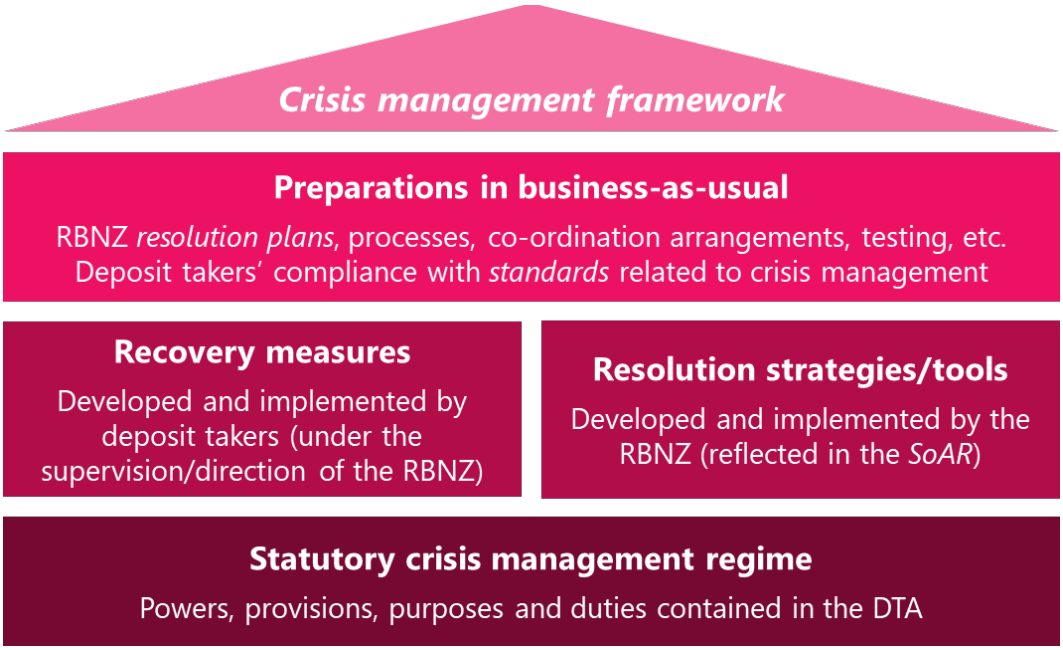
liquidation, receivership and voluntary administration.[3] However, standard insolvency procedures do not address risks specific to the role that deposit takers play in our economy. These procedures generally disregard broader financial stability and economic concerns, prevent continuity of critical services, and may not be available on a sufficiently timely basis.

30. Resolution provides alternative options that avoid the trade-offs between bail-outs and liquidation. In contrast to standard insolvency procedures, resolution can be used to help manage the impact that a failure of a non-viable regulated entity may have on financial stability, banking services, and broader economic activity. Resolution seeks to allocate costs to deposit takers, their investors or industry more broadly, rather than relying on public money from the government, thereby reducing the risk of moral hazard and improving market efficiency.

What our crisis management framework covers

31. As illustrated in Figure 4 below, our crisis management framework comprises three key layers.

Figure 4. Key components of our crisis management framework



Statutory crisis management regime

32. The first layer is the statutory regime for crisis management. This provides the underlying statutory purposes, powers, responsibilities and safeguards for crisis management. Part 7 of the DTA will replace our existing statutory regime, including the statutory management regime in the BPSA.

33. The Reserve Bank currently has crisis management powers in respect of registered banks (namely the existing direction powers and statutory management regime provided under Part 5 of the BPSA). In contrast, we currently do not have any functions or powers to directly

[3] Statutory management under the Corporations (Investigations and Management) Act 1989 may also be possible in certain circumstances. See Part 3 of that Act: https://www.legislation.govt.nz/act/public/1989/0011/latest/whole.html#DLM144941

intervene and manage the failure of a non-bank deposit taker (**NBDT**) other than the direction powers in the Non-bank Deposit Takers Act 2013.

34. A **resolution power** is an underlying statutory power contained in Part 7 of the DTA. For example, we have powers to replace directors (section 270 of the DTA), and to appoint a Resolution Manager to exercise the usual powers of the deposit taker, its shareholders, and its board (section 305 of the DTA). We would consider using these (and other) powers to help address the causes of failure and deliver an orderly resolution.

How we deal with distress

35. The second layer involves how authorities use their respective powers to meet the statutory purposes. This includes:

- **Recovery:** Recovery refers to measures undertaken by deposit takers to restore their financial health following a severe stress. This is for scenarios where a deposit taker has not yet met the grounds for resolution. While recovery is primarily the responsibility of deposit takers, the Reserve Bank has a number of powers to support recovery (see Section 2 below);

- **Resolution**: Once a deposit taker is placed into resolution, authorities would exercise their statutory resolution powers to pursue the relevant statutory purposes. In this paper we use two key terms to describe the resolution process:

  - A **resolution tool** is a process that combines one or more statutory powers to create a defined process for a defined result, and other related actions, to give effect to a specific outcome in resolution. For example, we currently have the OBR tool available for ten of the largest locally incorporated banks.

  - A **resolution strategy** is a plan of actions applying one or more resolution powers/tools (either combined or sequentially) to deal with the deposit taker in resolution. A resolution strategy covers the *end-to-end* process from entry into resolution until the final outcome for the failed deposit taker and its creditors is delivered. Table B provides an illustrative example of how multiple powers and tools could combine to deliver a hypothetical resolution strategy.

Table B. Illustrative example of key resolution concepts (not an exhaustive list)

High-level resolution strategy	Resolution tools applied	Key DTA resolution powers applied
• Stabilise deposit taker • Apply partial freeze to uninsured deposits • Identify acquirer for good parts of the business • Place remaining entity into liquidation.	• OBR • Sale of business • Liquidation	• Reserve Bank suspends payment (section 330) • Reserve Bank appoints Resolution Manager (section 357) • Resolution Manager exercises rights of deposit taker and its shareholders and board (section 305) • DCS fund contribution (section 230) • Reserve Bank waives moratorium and restriction on resolution trigger on certain claims (section 289) • Reserve Bank transfers assets/liabilities (section 320) • Reserve Bank applies to court to place deposit taker into liquidation (section 422)

Preparations in business-as-usual

36. The final layer of our crisis management framework includes the preparations for recovery and resolution undertaken in business-as-usual operations. Planning, pre-positioning, and testing by the Reserve Bank, deposit takers and other relevant stakeholders during business-as-usual is crucial to enabling us to meet our statutory purposes in a crisis. This takes many forms. For example, we currently have Outsourcing (BS11)[4] and OBR pre-positioning requirements (BS17)[5] for certain registered banks (which we are separately proposing to update in our non-core standards consultation).[6] We also have arrangements in place with other authorities in New Zealand and Australia to enhance co-operation in a crisis.

Institutional arrangements

37. As resolution authority, the Reserve Bank is responsible for ensuring that a resolution of a deposit taker is carried out in a way that furthers the purposes of the crisis management regime in the DTA (these purposes are discussed further below, and include avoiding significant damage to the financial system that could result from a deposit taker being in financial distress or other difficulties, and enabling a deposit taker that is in resolution to be dealt with in an orderly manner).

38. However, crisis management has many dimensions and there are a variety of other organisations that will have an interest in how the financial distress or other difficullties of a deposit taker are being managed. In particular:

    - The Treasury: As adviser to the Minister of Finance, and the organisation responsible for management and oversight of public finances;
    - The Financial Markets Authority: As the organisation responsible for monitoring and enforcing compliance with conduct regulation in New Zealand's financial markets;
    - Overseas regulators (such as the Australian Prudential Regulation Authority (APRA)), where the distressed deposit taker is foreign owned or has significant business in another jurisdiction.

39. In addition, the Minister of Finance has a number of important roles in the crisis management framework. These include:

    - On the recommendation of the Reserve Bank, advising the Governor-General that an Order in Council be made placing a deposit taker into resolution;

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[4] Our existing outsourcing requirements aim to ensure that any outsourcing arrangements do not compromise the effective administration and operation of a registered bank under statutory management. They also aim to enable the operational separation of a foreign-owned bank from its overseas parent. This policy currently applies to locally incorporated banks with over $10 billion of liabilities net of amounts due to related parties. See https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/banks/banking-supervision-handbook/bs11-sept-2022.pdf

[5] Our existing OBR pre-positioning requirement require certain registered banks to have systems and processes to implement key aspects of the OBR process such as freezing access to deposits, unfreezing a portion of deposit and restoring customer access channels. This policy currently applies to registered banks with over $1billion in retail deposits. See https://www.rbnz.govt.nz/regulation-and-supervision/oversight-of-banks/standards-and-requirements-for-banks/open-bank-resolution

[6] https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

- Where a resolution involves public funds and prescribed conditions are met, issuing directions to the Reserve Bank under section 350 of the DTA to avoid, minimise, or otherwise manage a risk to public funds;

- Where a deposit taker is insolvent or otherwise in financial difficulties, and certain conditions are met, authorise the incurring of expenses or capital expenditure under the Public Finance Act 1989; and

- Where OBR is the agreed resolution tool, entering into a guarantee on behalf of the Crown under the Public Finance Act 1989 (this guarantee would cover the unfrozen portion of the deposit taker's liabilities, and any new liabilities incurred by the deposit taker).

Statutory context to crisis management and resolution under the DTA

40. The DTA modernises our regulatory regime to help ensure the safety and soundness of deposit takers, and sets out revised expands the purposes and accountabilities that apply to the Reserve Bank when managing the financial distress and other difficulties of a deposit taker.

Statutory deliverables

41. Section 260 of the DTA requires the Reserve Bank to prepare and maintain a 'resolution plan', in relation to each licensed deposit taker, to facilitate dealing with the deposit taker in an orderly manner if it were to enter into resolution.

42. It also requires us to publish a SoAR on our website (following consultation with the Minister of Finance) (section 261). The SoAR is required to set out:

    - our expected resolution strategy or strategies for dealing with licensed deposit takers under Part 7;
    - our intended approach to the following in connection with dealing with licensed deposit takers under Part 7:
        - co-operating with relevant law enforcement or regulatory agencies, Australian financial authorities, and overseas supervisors; and
        - engaging with the Minister and relevant law enforcement or regulatory agencies about the use of powers under this Part; and
        - otherwise performing or exercising functions, powers, or duties under subparts 3 to 8 of Part 7.

43. The first SoAR is required to be published within one year of Part 7 coming into force. We currently expect that Part 7 will come into force in mid-2028. If so, the first SoAR will need to be published by mid-2029.[7]

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[7] The timeframe for publishing the first SoAR is set out in Schedule 1 of the DTA, at section 18. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS528498.html
We are also required, under section 263 of the DTA, to review the SoAR at intervals of not more than 5 years, with these reviews having to consider whether any amendments to the statement are necessary or desirable, and report to the Minister on the finding of these reviews. These reports must also be published on our website. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS538664.html

Purposes

44. In exercising powers under Part 7 we are required to act for statutory purposes set out in the DTA.

45. The main purpose of the DTA is to promote the prosperity and well-being of New Zealanders and contribute to a sustainable and productive economy by protecting and promoting the stability of the financial system (section 3(1)). To that end, the DTA also has the following additional purposes:

- To promote the safety and soundness of each deposit taker (section 3(2)(a));
- To promote public confidence in the financial system (section 3(2)(b));
- To the extent not inconsistent with the main purpose or the other additional purposes, to support New Zealanders having reasonable access to financial products and services (section 3(2)(c));
- To avoid or mitigate the adverse effect of the following risks:
  - to the stability of the financial system;
  - from the financial system that may damage the broader economy (section 3(2)(d)).

46. Section 259 of the DTA also provides specific statutory purposes for Part 7 (in addition to the purposes of the DTA set out above). These significantly expand upon the purposes applicable to the statutory management regime under BPSA. They capture matters that are currently considerations a statutory manager must have regard to, as well as other matters like the use of public money. Specifically, Part 7 has the following purposes:

a) to avoid significant damage to the financial system that could result from a licensed deposit taker being in financial distress or other difficulties, including
   - by maintaining the continuity of systemically important activities undertaken by licensed deposit takers in New Zealand; and
   - by mitigating, or otherwise managing, any loss of confidence in the financial system resulting from a licensed deposit taker being in financial distress or other difficulties; and

b) to enable a licensed deposit taker that is in resolution to be dealt with in an orderly manner; and

c) to support the purpose of Part 6 (which deals with the establishment and operation of the DCS); and

d) to the extent not inconsistent with any of paragraphs (a), (b), and (c), to minimise the costs of dealing with, or costs or losses otherwise incurred in connection with, a licensed deposit taker that is in financial distress or other difficulties by:
   - preserving the interests of creditors and maintaining the ranking of claims of creditors; and
   - dealing with the financial distress or other difficulties as quickly as is reasonably practicable; and

e) to the extent not inconsistent with any of paragraphs (a), (b), and (c), to support the effective and efficient management of public financial resources by avoiding or minimising, and otherwise managing, the need to rely on public money to deal with a licensed deposit taker that is in financial distress or other difficulties.

47. When acting as the resolution authority our function is to ensure that a resolution of a licensed deposit taker is carried out in a way that furthers the purposes set out in section 259.

Principles

48. In achieving the purposes of the DTA the Bank must take into account the following principles that are relevant to the performance or exercise of the functions, powers, and duties conferred or imposed on the Bank:

    - the desirability of taking a proportionate approach to regulation and supervision (section 4 (a)(i));
    - the desirability of consistency in the treatment of similar institutions (section 4 (a)(ii));
    - the desirability of the deposit-taking sector comprising a diversity of institutions to provide access to financial products and services to a diverse range of New Zealanders (section 4 (a)(iii));
    - the need to maintain competition within the deposit-taking sector (section 4(b));
    - the need to avoid unnecessary compliance costs (section 4(c));
    - the desirability of maintaining awareness of, and responding to, the practices of overseas supervisors that perform functions in relation to any licensed deposit taker or any holding company of any licensed deposit taker; and guidance or standards of international organisations (section 4(d)(i) and (ii));
    - the desirability of ensuring that the risks referred to in section 3(2)(d) are managed (including long-term risks to the stability of the financial system) (section 4(e));
    - the desirability of sound governance of deposit takers (section 4(f));
    - the desirability of deposit takers effectively managing their capital, liquidity, and risk (section 4(g)); and
    - the desirability of depositors having access to timely, accurate, and understandable information to assist them to make decisions relating to debt securities issued by deposit takers (section 4(h)).

49. Our Proportionality Framework is relevant to when we develop standards to support crisis management.[8] However, the Proportionality Framework does not directly apply to our exercising of powers under Part 7.

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[8] Reserve Bank of New Zealand *Proportionality Framework* (2024). https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/dta-and-dcs/the-proportionality-framework-under-the-dta.pdf

Our approach to updating our crisis management framework

50. In light of the DTA we are considering (but have yet to decide on) updates and additions across all three layers of the crisis management framework, including:

    - updating existing tools (Section 3);
    - potentially introducing a new bail-in tool (Section 4), including whether additional statutory powers to deliver bail-in are needed;
    - additional regulatory standards on deposit takers to support preparedness for recovery and resolution (Section 5); and
    - enhancing our own preparedness to deal with distressed deposit takers in an orderly manner (Section 5).

51. Table C shows how the potential new features we are considering build upon our current framework and the changes that will be introduced by the DTA or have been proposed as part of our recent DTA standards consultation.

Table C. Crisis Management components of current and future frameworks

Layer	Current framework[9]	Future framework	
		Already proposed or in place	Features under consideration
Statutory regime	Statutory management regime under BPSA	Crisis management and resolution regime under DTA	Additional bail-in powers (i.e., statutory bail-in)
Resolution tools	• Group-level solutions • OBR • Sale of Business • Bridge bank • Orderly Wind Down • Liquidation	Additional preparations to support: • OBR/DCS integrated solution • Liquidation and DCS payout	• Additional bail-in resolution tools*
Requirements on deposit takers	• OBR prepositioning • Outsourcing	• OBR prepositioning • Outsourcing • Single Depositor View	• Recovery and exit planning • Resolvability requirements • Additional loss absorbing capacity for resolution

* NB: For foreign-owned deposit takers, bail-in could either take place as part of, or separately to, a group-level solution.

52. The DTA's purposes and principles guide the design of our future crisis management framework for deposit takers. To this end, the following characteristics capture our vision for our future crisis management framework.

    - Effectiveness: We need to be well placed to manage future crises in a way that meets the relevant statutory purposes of the DTA. In short, this entails protecting financial stability

[9] We currently do not have any functions or powers to directly intervene and manage the failure of an NBDT other than the direction powers in the Non-bank Deposit Takers Act 2013.

and insured depositors, while (to the extent not inconsistent with the purposes in section 259(1)(a)-(c) of the DTA) also seeking to minimise the costs and losses associated with distress, and avoiding reliance on public money.

- Flexibility and optionality: Having optionality and flexibility in our available resolution strategies enables us to adapt to a broad range of circumstances and ensure we meet the DTA purposes. We cannot predict in advance exactly how or when a deposit taker may become distressed or fail. Optionality and flexibility will help us adapt to the prevailing circumstances in real time and determine which resolution strategy will best protect and promote the stability of the financial system.

- Timeliness: Timely action helps protect financial stability by limiting contagion and loss of confidence. It also helps avoid further deterioration in the situation, limiting the overall costs and losses associated with the distress. Failures of US banks such as Silicon Valley Bank in 2023 illustrated how quickly failure can arise and emphasised the importance of acting swiftly to address distress or failure to limit a broader loss of confidence and further instability.

- Preparedness: To ensure we can respond in an effective, flexible, and timely way during a crisis, it is crucial that we, and deposit takers, adequately prepare during business-as-usual for the possibility of distress or failure. Preparations can help reduce the uncertainty that a deposit taker faces during financial distress, enabling better decision-making.

- Co-operation: Foreign-owned banks play a major role in our deposit-taking sector. In particular, the four largest banks in New Zealand are subsidiaries of Australian-owned banks, which makes cross-border co-operation a vital part of our approach. We also recognise the role that other New Zealand authorities play in crisis management, and the need for co-operation domestically.

53. Finally, we are not revisiting our capital requirements as part of our review. This includes ratio requirements, and eligbility requirements including in relation to the use of contractual bail-in terms. We have consulted separately on our proposed Capital standard.[10]

Q1	Do you have any views on our proposed approach to implementing the crisis management framework under the DTA? Are there any factors we should, or should not, take into account when implementing the framework?

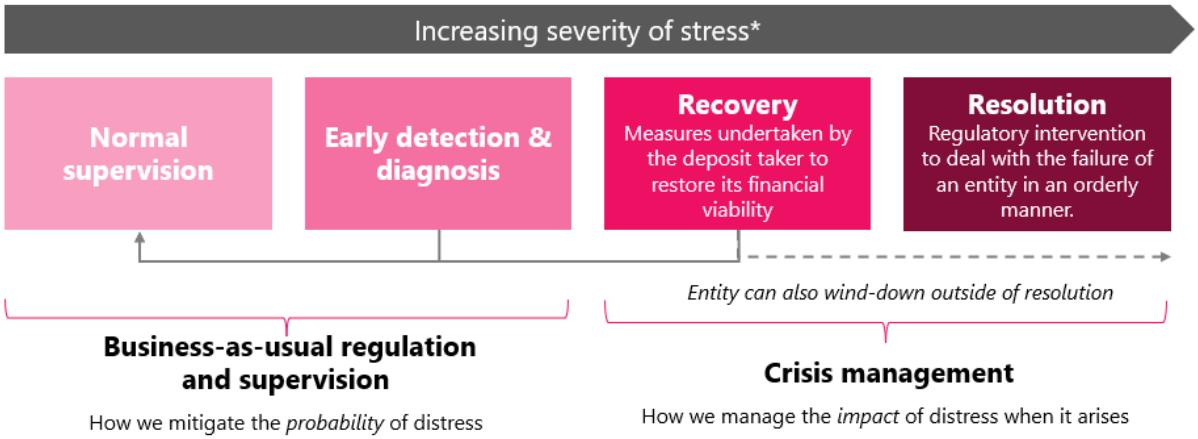
[10] https://consultations.rbnz.govt.nz/dta-and-dcs/deposit-takers-core-standards/user_uploads/deposit-takers-core-standards-consultation-paper-1.pdf

2. Dealing with distressed deposit takers under the DTA

54. This Section outlines the high-level approach that we would take in the future under the DTA to dealing with distressed deposit takers in each phase of our staged responses. This Section also signals where we are looking to potentially update our current approach.

55. The Reserve Bank's crisis management framework will continue to sit within our broader regulatory and supervisory framework for deposit takers. Broadly, our staged responses will continue to have four stages (See Figure 1).[11]

Figure 1. A continuum of our staged responses to address financial distress or other difficulties



Phase 1. Normal supervision - Preparation

56. Normal supervision is undertaken when a deposit taker operates as usual. Supervisory engagements are risk-based and forward-looking and seek a low *probability* of distress to protect and promote financial stability.[12]

57. Under the DTA, both deposit takers and the Reserve Bank will prepare for a potential crisis scenario during this normal phase to respond swiftly to a deposit taker's potential distress and failure. Currently, some registered banks have implemented OBR pre-positioning and Outsourcing policies. In addition to OBR pre-positioning and Outsourcing, we are considering new standards to require deposit takers to undertake further preparations, including:

    - deposit takers to plan for recovery and exit - We are considering introducing requirements for deposit takers to develop and maintain recovery and exit plans under section 89 of the DTA. Section 5a of this paper explains the essential elements of a recovery and exit plan that we are considering.[13]

[11] In some cases, such as a rapid progressive deterioration, we may skip some stages.

[12] As set out in section 3 (Purposes) of the DTA. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS469453.html

[13] If the issue is non-financial, such as a prolonged operational outage, the deposit taker would be expected to address the issue through their Business Continuity Plan (BCP). For the BCP, please refer to our proposed operational risk standard in the policy consultation on the non-core standards https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

- deposit takers to enhance their ability to be resolved - We also are considering additional requirements for certain deposit takers to facilitate orderly resolution under section 89 of the DTA. Section 5b (Resolvability requirements) explains details.

- the Reserve Bank to prepare resolution plans - We will prepare and maintain a resolution plan for each deposit taker in accordance with section 260 of the DTA. The plan will set out how we intend to deal with each deposit taker in resolution in an orderly manner.

- deposit takers to provide us with a set of information for us to develop the resolution plan - We would be likely to specify information in a notice under section 90 of the DTA or a new Crisis Preparedness standard. Section 5b (Requirements for information provision) explains details.

Phase 2. Early detection and diagnosis

58. Early detection and diagnosis would pick up emerging financial or operational issues at a deposit taker. We will proactively monitor deposit takers to inform our diagnosis. We may use information gathering and investigatory powers.

Phase 3. Recovery phase

59. At this phase, the Reserve Bank expects the deposit taker to implement its planned recovery measures and restore itself to usual operations. The Reserve Bank will closely engage with the deposit taker.

Why is recovery important?

60. Recovery plays a key role together with the current capital settings which aim to minimise the probability of failure. A deposit taker's successful recovery from distress prevents the deposit taker from failing and enables it to restore its financial position. Pre-emptive measures to avoid failure (which may start prior to the recovery phase) are the most effective way to meet the purposes of the DTA.

61. Even where the deposit taker makes a strategic decision to cease its regulated activities, an orderly exit would help minimise disruption to depositors and the broader financial system. Enabling orderly exits may also support competition by opening up space for new entrants to enter the market and for more efficient deposit takers to grow.

62. Successful recovery and orderly exits are built on the substantive preparation efforts of both deposit takers and the Reserve Bank. Credible recovery and exit plans prepared during normal operations help each deposit taker to recover from distress and avert failure or cease its regulated activities in an orderly manner. These plans also help minimise the costs of dealing with a distressed deposit taker.

When does the recovery phase begin?

63. The recovery phase begins when the severity of a deposit taker's financial or operational distress increases to the level that a recovery action (or actions) needs to be taken. A deposit taker's situation can deteriorate for various reasons including systemic reasons or firm-specific reasons. The Reserve Bank and deposit takers, respectively, will monitor various risk indicators (such as capital, liquidity, profitability, asset quality, and market and macroeconomic

conditions). These indicators can be used as triggers and indicate when a deposit taker should move to a recovery phase.

What to do during the recovery phase

64. In the recovery phase, we would expect the distressed deposit taker to trigger and implement its own recovery measures in its recovery and exit plan (see Section 5a explaining the essential elements of a recovery and exit plan that we are considering). The deposit taker's recovery and exit plan would serve as a guide for each deposit taker to help it recover from financial distress or cease its regulated activities with minimum adverse impact on its customers, if a deposit taker strategically decided to do so.

65. Deposit takers' recovery measures can differ depending on each deposit taker's circumstances. The measures could include raising capital or other funding, selling assets, reducing costs, ceasing or reducing certain product offerings, and other forms of restructuring. In an extreme scenario, the deposit taker may make a strategic decision to cease its regulated activities in response to distress (for example, by merging with another entity or undertaking a solvent wind-down process).[14]

How the Reserve Bank could engage with a distressed deposit taker

66. The Reserve Bank will engage with a deposit taker promptly when a deposit taker's financial or operational condition deteriorates. Throughout the recovery phase, we may gather information from the deposit taker and closely monitor the deposit taker's financial position (including on a forward-looking basis), relevant non-financial factors (e.g., customer attrition and progress on executing recovery options), and progress towards the deposit taker's recovery plan. This may involve increased use of information requests and meetings with the deposit taker.

67. The Reserve Bank may also consider the use of formal supervisory actions or statutory powers where appropriate. The statutory powers include those to give directions to the deposit taker, approve sale or disposition of the deposit taker's business undertaking and replace a director of the deposit taker.[15] Directions could be used to implement all, or part, of the deposit taker's recovery and exit plan, as well as addressing certain operational difficulties.

68. Where a deposit taker is part of an overseas-based banking group, we would also engage with our counterparts in the home jurisdiction. Where appropriate, this could include information sharing and co-ordinated responses (e.g., around the provision of intra-group financial support). In doing so, we would leverage existing co-operation mechanisms (e.g., Crisis Management Group and Trans-Tasman Banking Council).

69. In parallel with the deposit taker's own recovery efforts, we may start preparing for the potential resolution of the deposit taker. It is important that we act pre-emptively to prepare for resolution when there is a material risk that recovery actions will not succeed, to ensure we

[14] Solvent wind-down could involve the deposit taker not taking on new customers and repaying its depositors and other creditors in full over time from the proceeds of its assets (e.g., as loans are repaid or sold). This can allow the deposit taker to cease its regulated activities in an orderly fashion without entering resolution or insolvency.

[15] Subpart 3 in Part 7 of the DTA.

can take resolution action swiftly if required. During this phase, we may also require the deposit taker to undertake its own preparation for resolution (e.g., communication planning).

70. These preparations for potential resolution will help us move to the resolution phase swiftly if required and enable us to deal with resolution in an orderly manner.

Box 1: Our existing policies for the recovery phase

The Capital Buffer Response Framework (**CBRF**), currently in Part D1 of BPR120 (Capital Adequacy Process Requirements), sets out intervention steps that the Reserve Bank may take when a deposit taker's capital condition deteriorates. The framework comprises three progressive interventions depending on how severely their capital ratio has deteriorated against various thresholds.

- the distressed deposit taker develops a capital restoration plan (Stage 1)
- the Reserve Bank reviews the capital restoration plan (Stage 2)
- the distressed deposit taker develops a recapitalisation plan (Stage 3).

The CBRF also includes staged restrictions on dividend distribution. The Reserve Bank, or the deposit taker itself, may however decide to require (or take) recovery actions earlier than specified in the CBRF.

As part of our development of recovery planning requirements, we may revise aspects of the CBRF to ensure requirements to provide a capital restoration plan or recapitalisation plan are aligned with our broader framework.

There are other types of distress. In the case where a deposit taker's liquidity condition deteriorates, the deposit taker is expected to action the measures in its Contingent Funding Plan prepared under the section D2.3 of BS13 Liquidity Policy.[16]

Phase 4: Resolution

71. The Resolution Phase will only take place if the Governor-General declares that a deposit taker is in resolution on the advice of the Minister of Finance in accordance with the Reserve Bank's recommendation. The Reserve Bank's recommendation can be made only if certain statutory grounds are met.[17] If a deposit taker is in the Resolution Phase, the Reserve Bank carries out its chosen resolution strategy to meet the relevant statutory purposes.

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[16] The current requirements in the Part D1 of the BPR120 and the section D.2.3 of BS13 would be part of the Capital Standard and the Liquidity Standard, respectively, subject to our policy development process.
BPR120 https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/banks/review-capital-adequacy-framework-for-registered-banks/bpr-documents/bpr120-capital-adequacy-process-req-oct-23.pdf
BS13 https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/banks/banking-supervision-handbook/bs13-liquidity-policy.pdf

[17] Section 280 of the DTA sets out the grounds on which the Reserve Bank may make a resolution recommendation to the Minister of Finance. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS530205.html
Section 274 of the DTA sets out the Governor-General declares that a licensed deposit taker is in resolution. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS529223.html

Why we need a dedicated resolution framework for deposit takers

72. Deposit takers perform vital functions for the economy such as providing day-to day transactional deposit-taking services, saving and investment products, credit to households and businesses, processing payments and various critical financial markets activities. They are also critical in the transmission of monetary policy.

73. The ordinary insolvency regimes of voluntary administration, liquidation or receivership, seek to maximise value recovered for creditors rather than aiming for financial stability. Entry into one of these processes would most likely result in customers losing access to transactional accounts and outgoing payments no longer being processed. In many cases, these regimes are not suitable for resolving distressed deposit takers given the risk of contagion to other deposit takers, and the impact on the ongoing provision of banking services, payments, and broader economic activity.

74. In contrast, the resolution regime in the DTA seeks to resolve deposit takers in a way that meets a range of statutory purposes, including to avoid significant damage to the financial system.[18]

When resolution applies

75. Under the DTA resolution may only take place if the distressed deposit taker meets the relevant statutory grounds. These statutory grounds include the "non-viability" and "necessity" grounds.[19] If both grounds are met, and we are satisfied we are acting within the scope of the purposes outlined in section 259 of the DTA, we can make a recommend to the Minister of Finance. The decision to place a deposit taker via Order in Council into resolution sits with the Governor-General on the advice of the Minister of Finance in accordance with the Reserve Bank's recommendation.[20]

76. There are a range of matters that could result in the non-viability grounds being met. Some matters relate to a deposit taker's underlying financial position - for example, that the deposit taker is likely to breach (or has already breached) a minimum capital requirement. Other matters relate to non-compliance with a direction or other prudential obligation. These grounds can also be met where an overseas supervisor takes certain actions against a deposit taker or its parent.

77. The necessity grounds will only be met where we are satisfied that the distress at hand cannot be adequately dealt with to our satisfaction in a timely and orderly way through other means, such as through recovery, group-level resolution led by an overseas supervisor (if available) and an ordinary insolvency regime (see below). In making this judgement, we would balance the potential benefits and risks of allowing more time for recovery to ensure the outcome that would best achieve the DTA purposes. This involves taking a forward-looking view on the deposit taker's situation.

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[18] See section 259 of the DTA for details. https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS528402

[19] Section 280 of the DTA. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS530205.html

[20] Section 274 of the DTA. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS529223.html

78. We would look to take resolution action swiftly once the statutory grounds are met. It is worth noting that this will be after recovery options have been explored and (time allowing) tried but without success. Leaving it too late to take resolution measures can make it more difficult to meet the DTA purposes in subsequent resolution (e.g., by or making it more difficult and costly to implement resolution in an orderly manner increasing that avoids significant damage to the financial system). We recognise the need to strike a balance between giving the deposit taker enough space and time to recover and ensuring that a deposit taker that is likely to fail is dealt with on a timely basis. We believe that this approach is fully in line with the DTA.

79. Foreign-owned deposit takers may be resolved as part of a broader group level resolution led by the supervisor in the overseas banking group's home jurisdiction. Section 280(1)((a)(v) of the DTA provides one of the grounds for our recommending resolution is where an overseas supervisor has taken (or is taking) regulatory action against the deposit taker or an entity that controls the deposit taker. For these purposes regulatory action includes the overseas supervisor seeking to remove or suspend the deposit taker's licence or issuing certain kinds of direction in relation to the deposit taker. The applicable necessary ground is still the same, and resolution will be recommended only if the both the statutory grounds are met.

80. However, even where this resolution threshold is not met, it may still be possible to exercise certain other powers under the DTA when these powers' different, and in some cases lower, thresholds are met. Examples include the power to issue directions to the deposit taker, and the power to appoint, remove, or replace directors of the deposit taker. We would envisage engaging with the relevant overseas supervisors on how we could deal with the New Zealand deposit taker as part of the group-level resolution process in a coordinated and co-operative manner. Section 3 provides further detail on the group-level resolution.

81. In some cases, it will be possible to deal with a distressed deposit taker to our satisfaction without continuity of the deposit taker's activities. As such, the statutory grounds for resolution under the DTA would not be met, and we may instead rely on liquidation and DCS payout outside resolution.

What resolution seeks to achieve

82. Resolution aims to manage the failure of a deposit taker in an orderly manner that meets the relevant statutory purposes. Broadly, we could consider three ways to resolve a failed deposit taker:

    - continue with the failed deposit taker (e.g., after being stabilised using the OBR or bail-in tools described below);
    - continue with another entity (e.g., after being transferred to that entity using the sale of business or bridge institution tools); and/or
    - stop, either gradually (e.g., using the orderly wind-down tool) or immediately (e.g., using the liquidation and DCS payout tool).

83. In identifying our chosen resolution strategy, the outcome we would seek would depend on the extent to which a resolution strategy meets the DTA purposes. For example, the DTA purposes include avoiding significant damage to the financial system by maintaining continuity systemically important activities (see Box 2), avoiding any loss of confidence in the financial system, and to protect depositors to the extent they are covered by the DCS. We would consider whether or not the continuity of any or all of the deposit takers products and services

would be necessary to meet these (and other) DTA purposes. In some cases, we may conclude that continuity is not required, in which case a DCS payout may be sufficient to meet the DTA purposes.

84. In addition to the theoretical ability of a resolution strategy to meet the DTA purposes, we need to consider our practical ability to deliver that resolution strategy given the circumstances at hand. For example, whether the failed deposit taker or another entity should provide continuity of relevant products and services will largely depend on whether we have identified an adequate purchaser(s) of failed deposit taker's activities, and whether we can stabilise the deposit taker on a standalone basis, among other things.

Box 2: Systemically important activities

"Systemically important activities" is a key concept in our crisis management framework.[21] We plan to define this term as we work towards future deliverable like resolution plans, standards and the *Statement of Approach to Resolution*.

We see systemically important activities as conceptually similar to "critical functions" used in international guidance and overseas resolution frameworks. The FSB's *Guidance on Identification of Critical Functions and Critical Shared Services* defines critical functions as "activities performed for third parties where failure would lead to the disruption of services that are vital for the functioning of the real economy and for financial stability due to the banking group's size or market share, external and internal interconnectedness, complexity and cross-border activities".

Examples of critical functions listed by the FSB include:

- deposit-taking activities in the commercial or retail sector;
- certain lending activities in the commercial or retail sector;
- activities related to payments, custody, certain lending, clearing and settling;
- limited segments of wholesale markets;
- market-making in certain securities; and
- highly concentrated specialist lending sectors.

In the operational resilience standard, we have proposed a definition of "critical operations".[22] We see the concepts as related. While the concept of critical operations is focussed on an individual deposit taker, the concept of systemically important activities is focussed on activities

[21] The Treasury and the Reserve Bank's underlying policy work on "critical functions" are available here.
Safeguarding the future of our financial system: Background paper on bank crisis management and resolution: Phase 2 of the Reserve Bank Act Review (treasury.govt.nz)
Safeguarding the future of our financial system - Consultation Document 2B: The Reserve Bank's role in financial policy: tools, powers, and approach (treasury.govt.nz)

[22] We are currently consulting on our proposed definition of 'critical operations' in the operational resilience standard. Please refer to the non-core standard policy consultation paper for details.
https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf
Our proposed definition is as follows. "*Critical operations are activities, functions and services undertaken by a deposit taker or any of its service providers which, if disrupted or suddenly discontinued, could be reasonably expected to have a material impact on the continued operation of the deposit taker and its role in the financial system. Critical operations include but are not limited to transactional, savings and deposit accounts, credit services, payment clearing and settlement services.*"

systemically important for the financial system. Every deposit taker will have critical operations. We expect that only a subset of deposit takers will provide systemically important activities.

As our policy is developed, we will work to ensure alignment between the two terms. We will also consider how these terms interrelate with the concept of Basic Banking Services in our Outsourcing Policy.

85. The following sections of the paper look further at the specific resolution tools we could use to achieve the DTA purposes. Section 3 considers existing tools and what additional preparations might be needed and support our future resolution plans under the s260 of the DTA. Section 4 considers bail-in as a potential new resolution tool. Section 5 considers potential additional requirements on deposit takers to support orderly resolution and our resolution planning activities.

Q2 Do you have any comments on our proposed approach to dealing with distressed deposit takers under the DTA? Are there any alternative approaches we should be considering?

3. Updates to our existing resolution tools

Purpose

86. Given the new purposes and principles in the DTA, we are considering the optimal set of resolution tools from which the Reserve Bank can select when developing resolution plans for each deposit taker and executing resolutions under the DTA.

87. This section provides an overview of the key resolution tools we have available and what updates we may make to these tools in light of the DTA. This includes group-level resolution, OBR, sale of business, bridge institution, orderly wind-down and liquidation (with DCS payout). The list of tools considered is not exhaustive.[23]

88. The primary aim of this section is to inform what additional "pre-positioning" we might need to support our resolution plans and help us meet the DTA purposes. Pre-positioning entails both the Reserve Bank as resolution authority and deposit takers putting in place processes, capabilities, resources, and other arrangements during business-as-usual so that resolution tools can be deployed in a timely and effective manner during a crisis.

89. For any given deposit taker, we may also want multiple tools available to provide optionality in how we respond. Deposit takers can fail in a number of ways and under a broad range of circumstances. Recent overseas experiences, such as the failure of Credit Suisse in 2023, highlight how authorities' responses can vary from the expected resolution plan depending on the situation at hand. Having a range of tools available enhances flexibility to respond in a way that best meets the DTA purposes. Setting out our preferred approach, while acknowledging potential fallbacks, helps limit unpredictability (noting there is some inherent unpredictability in what responses are needed to meet our statutory purposes).

90. However, this does not mean we seek optionality without limit. When imposing prepositioning requirements in standards, we need to have regard to the proportionality principle in line with our Proportionality Framework.[24] Prepositioning all options for all deposit takers is unlikely to be proportionate.

91. We are interested in feedback to inform what tools we should prioritise as part of the DTA crisis management framework. This will inform the additional prepositioning requirements we

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[23] The amendments made in the Public Finance Act 1989 (the PFA) by the enactment of the DTA allow the Minister of Finance to approve expenses or capital expenditure to be incurred (whether or not there is an appropriation by Parliament) in relation to a situation where a licensed deposit taker is, or is likely to be, insolvent or otherwise in serious financial difficulties. When approving the expenditure, the Minister of Finance must be satisfied that it is necessary or desirable to maintain the stability of the financial system or maintain the continuity of systemically important activities, and that there is no reasonable prospect of the situation being adequately dealt with other than through exercising the approval power. A statement about any unappropriated expenditure will be included in the Government's financial statements and in an Appropriation Bill for confirmation.
https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS683637
Separately, the subpart 6 of Part 8 of the DTA provides the power to impose a levy on deposit takers to allow the Crown to recover the cost of any public support.
https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS704650

[24] Deposit Takers Act 2023, section 4(1)(a)(i).
https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS469454.html

are considering (as discussed in Section 5b) as well as our own planning and prepositioning as resolution authority (as discussed in Section 5c).

Group-level resolution

- As a host regulator to foreign-owned deposit takers, a key resolution "tool" involves co-ordinating with authorities in the home jurisdiction.
- We engage with our overseas counterparts to support cross-border co-ordination and co-operation around crisis management (this includes the resolution of overseas-based registered deposit takers or branches)
- We also need local standalone resolution options for foreign-owned banks.

What does this tool involve?

92. A key recovery option for foreign-owned deposit takers is to obtain additional capital or funding from an overseas parent entity. However, in some cases, the parent might be in distress and unable to provide the necessary support. In other cases, the parent may be distressed while the New Zealand deposit taker remains relatively stable.

93. Generally speaking, group-level resolution involves the home authority[25] resolving the parent bank and material operating subsidiaries on a group-wide basis. Instead of placing the New Zealand subsidiary into separate resolution process, we could co-ordinate with the home authority to take actions needed to support New Zealand financial stability. This could include actions to ensure the parent provides the necessary financial support for the New Zealand subsidiary, to stabilise the business and address the underlying causes of distress.

94. We will co-operate and coordinate with the home resolution authorities of foreign-owned deposit takers and branches of overseas-based deposit takers. This involves information sharing about the Group's cross-border resolution plan and coordinating responses to facilitate execution of resolution actions in both home and host jurisdictions.

95. Where relevant, we will co-ordinate with the home authority on resolution planning and on executing resolutions. For example, we engage regularly with our Australian counterparts on cross-border resolution planning to enhance the effectiveness of this option. This includes involvement in resolution planning for an Australian-headquartered bank at the group level and annual meetings of an entity-specific Crisis Management Group. Similar considerations also apply where a New Zealand deposit taker owns an overseas deposit taker. As the home resolution authority, we would look to co-ordinate with the relevant host authorities on any potential resolution actions.

What are the potential benefits?

96. Foreign-owned banks play a major role in the New Zealand financial system. New Zealand is unique in that all systemically important deposit takers belong to overseas banking groups based in a single jurisdiction - Australia.

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[25] The home authority refers to the resolution authority or authorities of the jurisdiction in which the New Zealand deposit taker's parent bank (or in the case of a branch, legal entity) is incorporated. For example, the home resolution authority for the four Australian-owned banks is the Australian Prudential Regulation Authority.

97. Our legislation requires us to co-operate with Australian financial authorities.[26] This includes by supporting them to meet their responsibilities relating to prudential regulation and financial system stability. Where practicable, we also need to avoid any action that is likely to have a detrimental effect on financial system stability in Australia. Australian legislation includes equivalent provisions.

98. Cross-border co-operation is, and will remain, a crucial part of our resolution framework. This recognises our statutory obligations for trans-Tasman co-operation and the potential for a co-ordinated group-level solution to best meet our statutory purposes in many situations.

What are the challenges?

99. We also need a robust local fallback for the resolution of locally incorporated deposit takers that belong to foreign-owned banking groups. This is to ensure we can meet our statutory purposes even in scenarios where an adequate group-level solution is not available or fails to stabilise the New Zealand subsidiary. For example, the resolution strategy applied by the home authority may fail to stabilise the parent bank and/or the New Zealand subsidiary in a way that suitably meets the DTA purposes.

100. A branch is part of an overseas legal entity. In line with our approach to co-operate and coordinate with overseas authorities, we would look to rely on the resolution actions initiated by the home resolution authority, unless the home authority does not take action sufficient to meet the section 259 purposes. In this regard, we may form a body corporate to acquire the business of the branch under section 314 of the DTA and undertake local resolution if necessary.

101. To this end, our future resolution framework will continue to include the option of standalone resolution. This includes outsourcing requirements that enable the operational separation of the NZ subsidiary from its parent if needed.

What additional prepositioning are we considering?

102. We continue to work with our overseas counterparts to enhance cross-border co-operation and preparedness for resolution. As discussed below, we are also considering whether to require certain foreign-owned deposit takers to preposition additional financial resources to support their recapitalisation as part of a group-level resolution (or otherwise).

Open Bank Resolution (OBR)

- The current OBR tool provides customers access to their accounts by 9am the business day after entry into statutory management, potentially with a partial freeze applied.
- We require certain deposit takers to have systems and processes in place (i.e., preposition) for this purpose, and are currently consulting on updates to these requirements.[27]
- In line with the existing requirements, we have proposed to only require this prepositioning from Group 1 and 2 deposit takers (potentially with some exceptions).

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[26] Deposit Takers Act 2023, Part 8, subpart 2. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS475675.html

[27] See Deposit Takers Non-Core Standards Consultation, Chapter 6. https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

What does this involve?

103. The existing OBR tool is designed to stabilise a failing deposit taker and mitigate significant damage to the financial system in line with purposes of our existing legislation for banks (BPSA). It enables the application of a freeze on equity and liabilities, including a partial freeze on customer deposits. The extent of the partial freeze would be based on a conservative estimate of losses. The deposit taker would re-open for business the next business day with customers able to access unfrozen balances. The existing OBR tool envisages that these balances, and any new liabilities, would be backed by a government guarantee. The decision on whether to provide a guarantee would be made by the Minister of Finance at the time of a failure, and would be subject to the relevant statutory tests in the Public Finance Act 1989 (**PFA**).

104. As mentioned below, OBR can also be used in conjunction with other tools (for example sale of business, bridge institution, bail-in), which coud help avoid the need for a government guarantee. Under the DTA, the use of a government guarantee in OBR is intended as a potential fall-back option, given it relies on public money.[28]

105. Our ability to apply OBR relies on prepositioning by deposit takers that is not without cost. In our separate consultation paper on non-core standards,[29] we propose to only require OBR prepositioning by deposit takers in Group 1 and Group 2 of our Proportionality Framework (potentially with some exceptions).[30] Our ability to apply OBR to the largest five deposit takers is also supported by their implementation of our Outsourcing Policy (BS11), which we have also proposed to carry over as a DTA standard.

What are the potential benefits?

106. OBR supports a number of the new DTA purposes, such as our ability to resolve deposit takers in an orderly manner and to maintain continuity of systemically important banking services. It also provides an alternative to taxpayer-funded bail-outs, helping to avoid the *upfront* use of public funds. Keeping the failed deposit taker open for business may also help avoid any loss of confidence in the financial system and limit the overall losses of the failed deposit taker. Unlike an immediate "sale of business" (see below) it does not require a third-party acquirer to stabilise the failed deposit taker.

107. OBR is primarily a stabilisation tool that helps buy time to identify a long-term solution. In practice, OBR is consistent with a range of long-term solutions tools such as sale to new owners, repurchase by a parent group or liquidation.

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[28] The Treasury and RBNZ *Safeguarding the future of our financial system – the Reserve Bank's role in financial policy: tools, powers, and approach* (2019), at Figure 5C. https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2b.pdf

[29] https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

[30] See Reserve Bank of New Zealand *Proportionality Framework* (2024). https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/dta-and-dcs/the-proportionality-framework-under-the-dta.pdf

What are the challenges?

108. Despite these benefits, certain aspects of the existing OBR tool may limit our ability to fully achieve all of the relevant DTA purposes. This includes:

- **Protecting insured depositors:** The existing OBR tool may involve the application of a partial freeze (via the moratorium) on "insured" balances.[31] Through our proposed DTA standards, we intend to update OBR prepositioning to incorporate the protection provided by the DCS. Under our proposed OBR-DCS integrated solution, we could use a DCS contribution to resolution to fund the full unfreeze of insured balances. This would ensure that other creditors do not face higher losses as a result. The non-core standards consultation paper provides further detail on the proposed integrated solution.

- **Avoiding use of public money:** Under the DTA, we will be explicitly responsible for avoiding the need to rely on public money in resolution, to the extent not inconsistent with the purposes outlined in section 259(1)(a)-(c) of the DTA. However, stabilising a deposit taker in OBR currently requires a Government guarantee that relies putting public funds at risk. While this risk can be mitigated (for example, through a more conservative partial freeze), our future resolution strategies should seek to avoid the need to rely on public money. Whether or not public money is actually used in resolution will be a decision for the Government of the day.[32] There is also a degree of fiscal risk inherent in the DCS given that the the DCS fund has a Government backstop.

- **Minimising costs and losses:** Part 7 of the DTA includes an additional purpose to deal with distress as quickly as reasonably practicable, to the extent not inconsistent with section 259(1(a)-(c) of the DTA. While OBR is consistent with a range of long-term solutions (e.g., sale to a third-party acquirer), it does not itself recapitalise and provide a new ownership structure for a deposit taker in resolution. As such, there is a material risk that a suitable long-term solution (e.g., sale to a suitable and willing third-party) would not be available on a timely basis.

- **Enabling orderly resolution:** Finally, there is a range of technical matters that would need to be resolved to ensure that OBR could be operationalised effectively, such as the treatment of derivative liabilities, and interactions with any subsequent liquidation.

What additional prepositioning are we considering?

109. As mentioned above, we have proposed updating OBR prepositioning to incorporate the protection of deposits to the extent they are covered by the DCS. In Section 5b, we also discuss the broader prepositioning that may be needed to support an orderly resolution process that meets the DTA purposes.

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[31] See the definition of "insured" in the non-core standards consultation paper available here https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

[32] The DTA (sections 490-492) amends the Public Finance Act 1989 provides the Minister of Finance with a standing authority to approve spending in connection with financial institution in serious financial difficulties in certain circumstances. See the footnote 23 of this Issues Paper and the DTA for details. https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS683637

Sale of business

- The Sale of Business tool involves transferring assets (such as loans) and liabilities (such as deposits) to one or more healthy deposit takers.
- Customers can retain a banking relationship, and may temporarily use the failed deposit taker's access channels (e.g., cards, branches, internet banking).
- The Sale of Business tool can potentially be used for a wide range of deposit takers, either as a standalone tool or in combination with other tools such as OBR or bail-in.

What could it involve?

110. Like BPSA, the DTA enables the Reserve Bank as resolution authority (or statutory manager under BPSA) to sell, transfer or otherwise dispose of the failed deposit taker's assets, liabilities, and other rights, without securing consent from its shareholders or other third parties and without securing consent under other relevant legislation.[33]

111. In using the sale of business tool, an acquirer(s) (typically a healthy deposit taker) would take over the specified assets and liabilities of the failed deposit taker. At a minimum, an acquirer would be expected to take on all insured deposits. However, what portion of the failed deposit taker's business is sold depends on the circumstances at hand. The rest of the failed deposit taker left behind after the transfer (likely including equity and other capital, and potentially including a portion of senior-ranking liabilities) would absorb loss through the failed deposit taker's liquidation.

112. A sale of business could be applied in combination with, or following, the application of OBR. For example, we could use the OBR tool to freeze (or keep frozen) those balances which are not transferred to the acquirer.

113. A sale of business could also be applied in combination with, or following, a bail-in. In this case, the new equity generated through bail-in could be sold to an acquirer, with the net sales proceeds distributed to bailed-in investors in line with the creditor hierarchy. For example, some recent resolutions overseas have involved the bail-in of Additional Tier 1 (AT1) and Tier 2 capital followed by the immediate transfer of the failed entity's shares to an acquirer.[34] However, as discussed in Section 5 of this Issues Paper, the DTA does not currently enable us to deliver the Sale of Business resolution tool in this form.

What are the potential benefits?

114. This tool can allow for the failed deposit taker's systemically important activities and other banking services to continue under new ownership, helping to avoid any loss of confidence in

[33] The transfer of operational assets, liabilities and rights is supported by the disposal powers in section 319 of the DTA. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS534583.html
Section 332 specifies the consents, license, permissions, and other authorities that do not apply to such transfers. https://www.legislation.govt.nz/act/public/2023/0035/latest/LMS533509.html

[34] For example, the resolution of Banco Popular Espanol in 2017, certain European subsidiaries of Sberbank in 2022, and the UK subsidiary of Silicon Valley Bank in 2023.

the financial system. Overseas resolution frameworks commonly feature these types of resolution tools.[35]

115. If effective, a sale of business executed over a resolution evening or weekend could improve on the existing OBR tool by accelerating completion of the resolution process and mitigating the need for a government guarantee (though the actual use of public funds in resolution may be deemed necessary to achieve the DTA purposes and would be decided by the government of the day).

What are the challenges?

116. There are several challenges in delivering a sale of business, particularly if this needs to be done over a resolution weekend. For example:

- It requires a suitable and willing acquirer(s). This in turn depends on several factors such as the availability of potential acquirers in the market, the state of the failed deposit taker's business, and the prevailing economic conditions at the time the failure occurs. Given the structure of the New Zealand banking sector, there is a significant risk that a suitable buyer for a Group 1 deposit taker would not be available immediately.
- It requires timely due diligence, submission and assessment of bids, and agreement of the sales terms. The sales process would likely need to start before the resolution took place, as part of (or in parallel to) the deposit taker's recovery actions.
- The transferred business needs to be commercially attractive to an acquirer. Any shortfall in the value of assets available to cover transferred liabilities could be covered through (for example) use of the OBR tool and/or a DCS contribution to resolution (see Box 3). The acquirer may choose to provide additional funding or capital once the acquisition is completed.
- It needs to be operationally feasible to maintain access to transferred accounts and other banking services shortly after entry into resolution. To achieve this, the acquirer may need to temporarily work with the resolution manager to use the failed deposit taker's systems and staff until it migrates customers and products onto its own systems.

117. Some of these challenges can be overcome by using an intermediate step such as OBR, bail-in or the bridge institution tool.

What additional prepositioning could be required?

118. We may need to set up a process to facilitate a timely sale. For example, we would need to consider how interested acquirers can access the distressed deposit taker's data prior to making a bid. To support this process, deposit takers may need to enhance their capabilities to provide timely and accurate data and information.

119. Where relevant, deposit takers' outsourcing arrangements may also help facilitate operational continuity in resolutions involving a sale of business. However, we would need to examine

[35] For example, see the "Purchase of Assets & Assumption of Liabilities" or P&A as practised overseas particularly in the United States, and the "Partial Transfer" resolution strategy available in the United Kingdom.

what additional prepositioning may be needed to address any residual risks or for deposit takers not in scope of the proposed Outsourcing standard.

Bridge institution

- Bridge institution tool can address a situation where a sale of business is being pursued but the sale cannot be completed rapidly following entry into resolution.
- It is typically seen as a temporary solution that provides us more time to find or execute a viable solution for relatively large deposit takers.

What could this involve?

120. The Reserve Bank can set up a bridge institution under s320 of the DTA and transfer the business undertaking (section 319) of the failed deposit taker to the bridge institution. The bridge institution would be a subsidiary of the Reserve Bank operated by the Reserve Bank or through an appointed resolution manager. If necessary, the bridge institution would be licensed as a deposit taker.

121. There are many ways we could potentially use a bridge institution. For example, we could transfer to a bridge institution all insured deposits and a specified percentage of uninsured deposits, plus selected assets, liabilities and rights, based on the expected perimeter of an onward sale to a third party. Depositors and borrowers of the failed deposit taker would automatically become customers of the bridge institution.

What are the potential benefits?

122. A bridge institution could be useful in situations where, for example, there is no time to conduct the marketing of the failed deposit taker or where the resolution authority is unable to find a suitable acquirer in the available period of time. As with OBR and bail-in, it provides a means to maintain continuity of systemically important activities and other relevant banking services, helping to limit any loss of confidence in the financial system.

What are the challenges?

123. Establishing, licensing, and operating a bridge institution would be a significant undertaking for the Reserve Bank and/or resolution manager. It would be crucial to ensure the operational continuity of the failed deposit taker's business following the transfer.

124. There would also need to be a credible option for adequately capitalising the bridge institution, for example using transfer powers, bail-in, and/or a DCS contribution to resolution (see Box 3).

What additional prepositioning could be required?

125. We may need to establish a bridge institution in business-as-usual to ensure this can be deployed swiftly if required. As with the Sale of Business tool, additional prepositioning may be needed from deposit takers to ensure the operational continuity of banking services transferred to the bridge.

Orderly wind down

- Orderly wind-down involves an otherwise solvent deposit taker repaying its creditors and exiting the market while continuing to provide banking services on a time-limited basis.
- It is potentially difficult to implement for systemically important activities in a way that would minimise the impact on the broader economy.

What does this involve?

126. As discussed above, orderly wind down is a way for a deposit taker to cease its regulated activities in an orderly manner. The deposit taker sells (or holds) assets to generate cash-flows that are used to repay depositors and other creditors. Existing customers may temporarily retain their banking relationship, providing time to move their business to another deposit taker. However, the wind-down usually involves no (or limited) new lending or customer onboarding.

127. We see orderly wind-down primarily as a pre-resolution option, though it may also form part of our resolution strategy for a given deposit taker.

128. There are several potential reasons why an orderly wind-down may need to take place within resolution as opposed to pre-resolution. For example, if other mechanisms like direction powers prove insufficient, the Reserve Bank may need to use resolution powers to gain sufficient control over the process. The Reserve Bank may also rely on the moratorium that applies in resolution to mitigate the risk of a bank run.

129. Another potential reason is that it is not financially viable for the deposit taker to wind-down in an orderly manner without further intervention. Placing a deposit taker into resolution may provide additional options in this regard. For example, it may be possible to haircut liabilities using OBR, provide a contribution from the DCS fund (see Box 3 below), or (in the case of some foreign-owned banks) call on a parental guarantee.

What are the potential benefits?

130. Orderly wind down, like a sale of business or bridge institution, allows the continuation of banking services, at least in the near term. A difference is that customers are more likely to make their own decisions about how and when they move their business elsewhere. If executed successfully, an orderly wind down also allows for the repayment of insured deposits without the need for a DCS payout.

What are the potential limitations?

131. It may be difficult to execute an orderly wind-down of activities deemed systemically important without impacting customers and the broader economy. Even for less systemic activities, it can be challenging to effectively implement an orderly wind-down. For example, this may depend on the ability of affected customers to establish banking relationships elsewhere in a timely manner. It also requires careful control of costs during the wind-down period, especially given operating revenues are likely to fall as the deposit taker becomes smaller.

What additional pre-positioning could be required?

132. As discussed in Section 5a below, deposit takers may need to develop a recovery and exit plan, including a plan for orderly wind-down where relevant. This could be used to support orderly wind-down in either the recovery or resolution phase.

Liquidation and DCS payout

- Court appoints liquidator to the failed deposit taker.
- The deposit taker's customers lose their account access and banking relationship with the failed deposit taker, but are entitled to DCS compensation (if eligible).
- Secured creditors are repaid immediately by realising their security interest whilst other creditors repaid over time as the liquidator sells the deposit taker's assets (but creditors may not recover their claim in full).
- Unlikely to be suitable for systemically important activities.

What could this involve?

133. We currently have liquidation as a resolution tool available for registered banks.

134. Under the DTA we can apply to the court to under s422 to appoint a liquidator to a deposit taker.[36] Once in liquidation, depositors are likely to lose access to their funds. Following the Reserve Bank's issuance of a specified event notice under s194, The DCS would pay out insured depositors their DCS entitlements. Separately, the liquidator would realise the failed deposit taker's assets to pay other creditors and the DCS.

135. The Reserve Bank, as DCS administrator, is developing its approach to DCS payouts. The payout may take the form of payment into an account held by the depositor at another deposit taker. Entitlements are expected to be paid as soon as practicable after we issue a "specified event notice", which we can do under section 194 of the DTA when:

- a deposit taker enters into resolution or liquidation, or when a receiver is appointed for the whole (or substantially the whole) of the assets and undertaking of the deposit taker and the Receiverships Act 1993 applies to the receivership; and

- we are satisfied that the deposit taker's financial or other difficulties are likely to cause serious and prolonged disruption to the ability of eligible depositors to deal with their protected deposits in accordance with their applicable terms and conditions, and that issuing a specified event notice is the most appropriate means to deal with the disruption.

136. Funding for the DCS payout comes from the DCS fund built up from the levies paid by deposit takers. If the DCS fund is insufficient to pay insured balances (or make a contribution to resolution as discussed in Box 3), the DCS may make a call on the fiscal backstop. DCS borrowings from the government are repaid from future levies collected.

137. Following a payout, the DCS subrogates to the claims of insured depositors against the assets of the failed deposit taker. This means that the Reserve Bank can recover some or all of the

[36] Receivership could result in similar outcomes for the deposit taker, including the pay out of DCS entitlement. However, the DTA does not enable the Reserve Bank to appoint a receiver.

amount it has paid out to eligible depositors from the recoveries of the failed deposit taker's assets, which may take some time to realise. The Reserve Bank ranks alongside other unsecured, unsubordinated creditors and behind any secured creditors and any preferential creditors. If necessary, the DCS can recover any net loss through higher DCS levies over time.

What are the potential benefits?

138. This tool protects depositors from financial loss up to $100,000 per deposit taker. It is important that depositors have confidence in this protection regardless of whether or not other resolution options are available.

139. Liquidation and DCS payout may also be more straightforward to implement than other tools that involve ongoing provision of banking services.

What are the challenges?

140. Liquidation and DCS payout is a "closed bank" resolution tool in that the deposit taker's customers lose their account access and banking relationship with the failed deposit taker. As such, this tool may not be appropriate for continuing systemically important activities. Even for non-systemic cases, there is a risk that a deposit taker's sudden closure could lead to contagion and broader instability. Importantly, customers of the failed entity may need days or weeks to establish a new banking relationship, thus losing the ability to make financial transactions.

141. Our initial view is that the liquidation and DCS Payout tool is likely to be used should it not be appropriate and reasonably practicable to use other tools to pursue the DTA purpose. These other tools may be supported by a DCS fund contribution, as discussed in Box 3. DCS payout is most likely to be relevant in circumstances where closing the deposit taker in question would not impact confidence in the broader financial system.

What additional pre-positioning could be required?

142. The Reserve Bank as DCS administrator is currently establishing its DCS function and payout capabilities for this liquidation and DCS payout option.

143. Under our proposed DCS standards all locally incorporated deposit takers will need to pre-position for a DCS payout through the ability to generate Single Depositor View (SDV) files. The quick onboarding of customers of the failed entity and facilitation of the payout mechanism may require additional planning and maintenance of emergency processes by industry.

Box 3: DCS Fund contribution to resolution

Section 230 of the DTA enables the Reserve Bank to use the DCS fund as part of the resolution of a deposit taker if we are satisfied that insured depositors are likely to receive no less favourable treatment and provided that this is estimated not to be more costly than liquidation and payout.

For example, consider a case where assets, insured deposits and a portion of other senior-ranking liabilities are transferred to another deposit taker using the sale of business tool. It is estimated that, if the liquidation and DCS payout tool was used instead, the DCS would have paid out $100 million in total compensation and recovered $60 million in the subsequent liquidation. The DCS fund could therefore contribute up to $40 million to the acquirer as long as depositors could continue to access all $100 million of insured balances once transferred.

The DCS contribution to resolution may come in the form of a cash payment to the deposit taker in resolution, or an acquirer or bridge institution that takes on the failed deposit taker's assets and liabilities. Alternatively, this contribution may be structured as a shared loss arrangement. This means that the DCS indemnifies the acquirer for a percentage of the actual losses that may be incurred over time from the acquired assets. This shared-loss arrangement reduces the uncertainty in the value of specific assets passed on to the acquirer, thus providing downside protection. Depending on the agreement, the DCS may also share in any gains realised from the acquired assets.

4: Bail-in

Purpose

144. This section sets out our initial analysis of the potential role of a bail-in resolution tool in our future crisis management framework. While bail-in resolution tools are used in some jursidctions, we do not yet have a position on whether this tool is needed in the New Zealand context. Submissions on this Issues Paper will inform our cost-benefit analysis and ultimate policy recommendations.
145. In short a bail-in resolution tool would seek to recapitalise a failed deposit taker by writing down, or converting into ordinary shares, selected capital instruments and liabilities of a deposit taker in resolution.[37] As such, bail-in allocates the costs of both stabilising and recapitalising a failed deposit taker to its creditors rather than taxpayers.

146. In line with the FSB Key Attributes, most major overseas jurisdictions have adopted some form of bail-in as a resolution tool for their systemically important banks since the GFC. In these cases, authorities have also adopted standards for total loss-absorbing capacity (TLAC). In line with FSB guidelines,[38] these standards require banks to issue a given quantity of additional gone-concern loss-absorbing debt beyond regulatory capital), that can then be bailed in during resolution to provide new regulatory capital.

147. Broadly speaking, there are three ways to deliver a bail-in: *structural bail-in*, *contractual bail-in* and *statutory bail-in*. There are also different ways that bail-in can be funded in terms of which claims are bailed in to provide new capital (e.g., though dedicated gone-concern loss-absorbing debt, or through general unsecured liabilities).

148. We are considering the need to develop a bail-in resolution tool. This would provide us with the option to both stabilise and recapitalise a failed deposit taker without reliance on public money or a credble third party acquirer. However, even with bail-in as an option, we would envisage retaining OBR and other existing tools to provide optionality in how we respond.

149. We are still considering whether to develop a bail-in resolution tool using the powers already provided under the DTA, and further whether to recommend statutory bail-in powers in our report back to the Minister (see below). We are seeking feedback to inform this. To this end, the remainder of this section considers the benefits and challenges of a bail-in resolution tool, as well as the funding and different legal mechanisms needed to deliver bail-in.

150. Our view is that existing design of capital ratio and instruments requirements (such as capital definitions) will remain appropriate notwithstanding any updates to our resolution framework. The financial distress of a large deposit taker can severely impact financial stability regardless of whether resolution is required or how effective resolution might be. We therefore need to keep the probability of financial distress as low as we reasonably can. Our resolution framework focusses on how we manage the residual risk associated with bank failure.[39]

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[37] It can also extend to the cancellation or transfer to a third party of ordinary shares.
[38] Financial Stability Board *Total Loss-absorbing Capacity (TLAC) Term Sheet* (2015). https://www.fsb.org/wp-content/uploads/TLAC-Principles-and-Term-Sheet-for-publication-final.pdf
[39] See The Treasury and RBNZ *Safeguarding the future of our financial system – the Reserve Bank's role in financial policy: tools, powers, and approach* (2019), at Box 5C. https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2b.pdf

The potential role of a bail-in resolution tool

What are the potential benefits?

151. A bail-in resolution tool would enhace optionality for us to deal with a failed deposit taker in a way that meets the relevant DTA purposes. This is particular relevant for larger deposit takers that provide systemically important activities, where a sale of business may be harder to execute and options to recapitalise the deposit taker without use of public funds could be particularly useful to meet the subordinate purpose (i.e., support the effective and efficient management of public financial resources).

152. Bail-in is an "open bank" resolution tool like other tools such as OBR, sale of business, and bridge institution. Similar to these tools, it supports the new DTA purposes of resolving deposit takers in an orderly manner and maintaining continuity of systemically important banking services. It also provides an alternative to taxpayer-funded bail-outs, helping to avoid or minimise the need to rely on public money (while acknowledging that the use of public money would depend on the circumstances at hand). Keeping the failed deposit taker open for business may also help mitigate any loss of confidence in the financial system.

153. The key incremental benefit of the bail-in tool is that it could provide a pre-positioned option for us to both stabilise *and* recapitalise a deposit taker in resolution. This would not require us to identify a suitable third-party acquirer or capital provider during the crisis at hand, which is critical for the sale of business tool and is sometimes used as part of the OBR and bridge institution tools. Moreover, bail-in does not rely on a government guarantee, as envisaged under the existing OBR tool.[40]

154. Where deposit takers are foreign-owned subsidiaries, bail-in at the subsidiary level could be designed to recapitalise the subsidiary as part of a co-ordinated group-wide resolution process where the subsidiary remains part of the group (see above).[41] Alternatively, bail-in could be designed to both recapitalise and create a new ownership structure for the subsidiary if it is separated in resolution.[42]

155. If effective, the recapitalisation delivered using the bail-in tool can buy time and provide funds to support a range of different outcomes. For example, the failed deposit taker could be restructured to restore its long-term viability. Alternatively, the deposit taker could be sold to a third party. The focus of these measures would be to maintain continuity of systemically important activities. Preserving the failed deposit taker as a whole is not an objective of the DTA.

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[40] As noted above in this paper, the actual use of public funds in resolution would be considered on a case-by-case basis.

[41] Bail-in could be support by "Internal Total Loss-Absorbing Capacity (TLAC)" requirements where the deposit taker issues TLAC to a parent entity. In this case, bail-in could be applied as part of a so-called "single-point-of-entry" resolution strategy. In this case, the parent entity would remain the shareholder of the deposit taker, unless a decision was taken to separate it from the group. As necessary, the home authority may apply bail-in to liabilities issued externally by the relevant parent entity to recapitalise the parent and then subsidiaries.

[42] Bail-in could be support by "External TLAC" requirements where the deposit taker issues TLAC to the market. In this case, bail-in may be applied to external liabilities as part of a so-called "multiple-points-of-entry" resolution strategy lead by the Reserve Bank. The bailed in creditors could become the new shareholders of the separated subsidiary.

What are the challenges?

156. There are several challenges associated with the bail-in tool. First, there needs to be a set of creditors or investors where it is possible to both impose loss and generate new capital without undermining the stability of the deposit taker and the financial system more broadly. The next sub-section discusses potential funding options for bail-in, each of which has its own challenges.

157. Second, there needs to be a credible legal mechanism to give effect to bail-in. Later in this section we discuss the options that could be used for this purpose. Again, each of these options comes with its own challenges.

158. Finally, because there is no government guarantee or immediate third-party acquirer, it could be more difficult to restore confidence in the recapitalised deposit taker. Section 5b discusses some of the additional pre-positioning by deposit takers that could be needed to help ensure that the bail-in process was effective in stabilising as well as recapitalising the failed deposit taker.

Funding to deliver bail-in

159. There are a range of potential funding sources to recapitalise a deposit taker in resolution without use of public money. Existing capital resources provides an initial source of funds, but are likely to be significantly depleted if a deposit taker is in resolution. We may therefore need to consider other options. This includes general creditors of the failed deposit taker, specific total loss-absorbing capacity (TLAC) investors in the failed deposit taker, or other "off balance sheet" sources.

General creditors

160. The OBR tool envisages applying a partial freeze on unsecured creditors in light with a conservative estimate of losses. To deliver a bail-in, we could apply a larger partial freeze to generate a surplus of assets over unfrozen liabilities. We could then bail in those frozen funds to generate new equity. As discussed further below, the DTA does not currently provide us with so-called "statutory bail-in powers" power to unilaterally convert those frozen liabilities which do not have contractual contingent terms into equity, though we could potentially achieve similar outcomes under a so-called "structural bail-in".[43]

161. There are several challenges with this approach. For example, imposing additional losses on general creditors may risk further instability, particularly where creditors are unaware of the risks. Furthermore, it would be very complex to convert senior-ranking claims into shares in practice, noting these claims could include uninsured deposits, derivative liabilities, and liabilities owed to suppliers, payments systems and other counterparties.

Total loss-absorbing capacity (TLAC)

162. Under this option we would issue a bail-in standard under section 80 of the DTA to require relevant deposit takers to hold additional financial resources beyond going-concern capital, in a form that can be used to allow recapitalisation in the event of resolution. Deposit takers could potentially meet these requirements by issuing debt that ranks above regulatory capital

[43] Structural bail-in achieves a write-down or conversion indirectly by transferring assets and liabilities to a new entity.

but below deposits and other general unsecured liabilities in the creditor heirachy.[44] This pre-positions an additional layer of gone-concern loss-absorbency to provide new regulatory capital in resolution. As discussed below, the bail-in of TLAC could be delivered through structural, contractual or (if available) statutory means.

163. We think that any future bail-in resolution tool (regardless of whether bail-in is contractural or statutory) would likely involve TLAC requirements. Having dedicated bail-in resources in the form of TLAC helps limit the potential destabilising impacts of bail-in. TLAC would be held by either professional investors or (if applicable) a parent entity who should arguably be relatively well placed to take on and understand this risk. From a practical perspective, it may also be less complex to bail-in TLAC debt than general liabilities.

164. That being said, TLAC also comes with its own challenges. Issuing TLAC is not without cost. It also needs to be credible for a deposit taker to issue the required amount of TLAC, and for us to bail-in that TLAC in practice. Lessons from the failure of Credit Suisse[45] highlight that the potential challenges that can arise where TLAC investors are not fully aware of their exposure to bail-in, and where TLAC is issued across multiple jurisdictions.

165. We are still considering whether or not to introduce TLAC requirements. If we decided to proceed with this, we would undertake further public consultation on the size of any TLAC requirement, what instruments would be eligible as TLAC, and whether deposit takers should be required to issue TLAC to a parent entity or to third parties. This would follow our general process for developing standards under the DTA. Our expectation is that any such future TLAC requirements would be in addition to existing minimum capital and buffer ratio requirements, not instead of these existing requirements.

166. We would also need to consider which deposit takers (if any) would be subject to TLAC requirements to support bail-in. In doing so, we must take into account the desirability of taking a proportionate approach to regulation, in line with our Proportionality Framework. Our initial view is that, for deposit takers that do not provide systemically important activities (see Box 2), the cost of TLAC requirements would likely exceed the benefits given there is more scope to rely on other resolution tools to meet the DTA purposes.

Off balance sheet sources

167. As mentioned in Box 3, the DTA enables us to use the DCS fund to support a resolution measure.[46] In theory this contribution could support the recapitalisation of a deposit taker in

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[44] For example, some banks overseas have issued of "non-preferred senior" debt or structurally subordinated holding company senior debt to meet local TLAC requirements. If relying on contractual bail-in, TLAC-eligible debt would also need to include contractual terms enabling its write-down or conversion to ordinary shares in resolution.

[45] See the FSB report *2023 Bank failures: Preliminary lessons learnt for resolution* (2023). https://www.fsb.org/2023/10/2023-bank-failures-preliminary-lessons-learnt-for-resolution/

[46] Section 230 of the DTA allows the Reserve Bank to authorise an amount to be paid out of the DCS fund for the purposes of supporting a resolution measure undertaken or to be undertaken for a deposit taker and meeting all other costs of the Reserve Bank in performing or exercising its functions, powers, or duties in connection with the measure, if statutory conditions have been met. The statutory conditions are: (a) we are satisfied that eligible depositors are likely to receive, as a result of the resolution measure, no less favourable treatment than would have been the case had the eligible depositors been paid compensation; and (b) the total amount paid out of the DCS fund in connection with the resolution of the deposit taker does not exceed a statutory upper limit set in section 231 of the DTA. https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS506208

resolution. However, the international standards for deposit insurance schemes suggest that the DCS should not be used to fund the recapitalisation of failed deposit takers unless shareholders' interests are reduced to zero and additional losses, if any, are allocated to uninsured and unsecured creditors.[47] Also, the size of the contribution is capped in legislation, and we would first need to ensure that depositors receive no less favourable treatment than under a DCS payout.

168. Separately, we have explored alternatives to bail-in that involve a dedicated "resolution fund" built up through levies on deposit takers and/or the issuance of TLAC-like instruments to the market. This fund would be separate from the DCS fund, with the distinct purpose of investing new capital into a deposit taker in resolution. However, given the likely costs and complexity of establishing an adequate fund, we do not plan to proceed with this option at this stage.

Legal mechanisms to deliver bail-in

169. As mentioned above, there are three ways to deliver a bail-in: structural bail-in, contractual bail-in and statutory bail-in. From a legal perspective, both the structural and contractual bail-in options are already available under the existing provisions of the DTA.

170. In New Zealand statutory bail-in was considered during the Reserve Bank Act Review (which led to the DTA) as a tool to minimise the need for taxpayer support.[48] Many jurisdictions also have a form of statutory bail-in power (i.e., a power in legislation to bail-in creditors without, in theory, having to rely on conversion/write down terms in contracts or relying on sale or transfer powers). There are a variety of reasons why this kind of statutory bail-in power is provided in other jurisdictions (for example, it may be a more operationally effective to rely on a statutory power rather than a contract to effect the bail-in).

171. However, statutory bail-in powers present their own complexity and would require a potentially significant amendment to the DTA. During the development of the DTA, Cabinet initially agreed to include statutory bail in powers in legislation, but given the complexity of this issue decided to rescind this decision and instead note that the then Minister of Finance had asked officials to report on the need for statutory bail-in powers within two years after enactment of the DTA (i.e., July 2025).[49]

172. The Reserve Bank's vision is a strong and simple prudential framework. It underlies our Capital Review decisions, including the decision to remove the instruments with contractual contingency features from the capital definition in New Zealand, which until then featured in our capital framework for banks. Our vision remains the same even under a different legislative setting. The DTA has broadened our responsibilities as resolution authority and introduced new purposes such as avoiding or minimising the need to rely on public money. We therefore

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[47] See the Core Principle 9 in the IADI Core Principles for Effective Deposit Insurance Systems https://www.iadi.org/what-we-do/policy/core-principles/

[48] See the Phase 2 documents of the Reserve Bank Act Review:
https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-background-paper-p2.pdf
https://www.treasury.govt.nz/sites/default/files/2019-06/rbnz-safeguarding-future-financial-system-2b.pdf
https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf

[49] See the Cabinet paper: Reserve Bank Act Review – Deposit Takers Bill (rbnz.govt.nz) and its associated Minutes of Decision: Cabinet Economic Development Committee DEV-21-MIN-0204 (rbnz.govt.nz)

need to consider a wider range of potential new resolution tools to pursue the new purposes (e.g., bail-in tools).

173. We are still assessing whether to recommend in our report back to the Minister of Finance that statutory bail-in powers are needed in the DTA from a policy perspective. This section examines how the three potential options to deliver a bail-in (structural, contractual and statutory) could operate in the New Zealand context and how they have been adopted overseas. It then explores the relative advantages and disadvantages of a potential statutory bail-in approach. We are interested in feedback on this initial analysis to inform our upcoming report back.

174. For the purposes of this section, we focus on how each form of bail-in could be used to bail in non-CET1 capital[50] and other subordinated claims (e.g., claims issued to meet potential TLAC requirements). This reflects our expected focus for the potential bail-in tool discussed above. We do not consider the bail-in of general unsecured liabilities, which presents additional complexity.

Options already available under the DTA

Structural bail-in

175. Structural bail-in achieves a write-down or conversion indirectly by transferring assets and liabilities to a new entity. This would happen in combination with the bridge institution or sale of business tools described above.

176. Under the DTA, we can impose losses on shareholders and creditors by transferring assets of an entity in resolution, alongside a portion of its liabilities, to another deposit taker or bridge institution.[51] When appropriate, the failed entity could then enter liquidation, where creditors and holders of preference shares would expect to face a loss on the portion of their claim that was not transferred (as the failed entity would no longer have assets to satisfy those claims). This is how we envisage creditor "haircuts" being effected under the current OBR tool. Similarly, shareholders would retain their rights in respect of the failed deposit taker, but would have no rights in respect of the transferred business.

177. To the extent it enables the deposit taker in resolution to be dealt with in an orderly manner, or otherwise pursues the purposes in section 259(1)(a)-(c) of the DTA, we could transfer an excess of assets over liabilities to generate new capital as well as imposing losses.

178. Using this approach, we could achieve a bail-in by transferring selected assets and a portion of liabilities of the deposit taker in resolution to a bridge institution.[52] We would calibrate the transfer such that the bridge institution had positive net assets that qualified as common equity Tier 1 (CET1) capital. For example, the bridge institution would need sufficient capital to meet our capital requirements to ensure it could be licensed, to promote public confidence in the bridge institution, and to enable the ongoing provision of transferred banking services.

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[50] Non-CET1 capital means the capital that is not qualified as CET1 capital based on the definition of CET1 capital in Part B of the BPR110. https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/consultations/banks/review-capital-adequacy-framework-for-registered-banks/bpr-documents/bpr110-capital-definitions-oct-23.pdf

[51] See section 319 of the DTA. https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS534583

[52] See section 320 of the DTA. https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS534634

179. If appropriate, we could then achieve a form of conversion by offering new shares in the bridge institution (credited as fully paid) to the creditors who were haircut or to the remaining part of the failed deposit taker.[53] Alternatively, we could sell those new shares to one or more third parties, and distribute the net sale proceeds instead.

180. Compared to structural bail-in, delivering a bail-in using either contractual or statutory bail-in would:

- Enhance transparency by relying on statutory powers that are more explicitly focused on bail-in. This is more in line with how bail-in powers operate overseas, and may be better understood by overseas investors.[54] There may be other ways to provide transparency, such as through our upcoming *Statement of Approach to Resolution*, however these may not provide the same level of certainty;

- Help avoid the complexity and risk of rapidly transferring the bulk of the failed deposit taker's business to a bridge institution upon entry into resolution. This could involve transferring not only assets and liabilities, but the rights and obligations of the deposit taker associated with (for example) certain derivatives, outsourced services, and financial market infrastructures.[55] This is sometimes seen as a complex and circuitous route to impose losses when dealing with a failed bank.

Contractual bail-in

181. Under a contractual bail-in, write-down or conversion is achieved directly by triggering specific contractual terms in the relevant financial instruments (i.e., non-CET1 capital and TLAC). The DTA enables the Reserve Bank to introduce standards requiring deposit takers to have financial products containing contractual bail-in terms.[56] The DTA also enables the Reserve Bank to direct a deposit taker to take action that is necessary or desirable for that contractual bail-in to occur.[57]

182. Prior to the 2019 Capital Review decisions instruments with contractual contingency features were included in the capital definition for banks in New Zealand. Box 4 below summarises the reasons why we decided to remove these instruments from the capital definition.

183. We discuss the option of contractual bail-in here solely to assess the case for statutory bail-in powers. This requires looking the theoretical advantages and disadvantages of options that are already available under the DTA. In doing so we are contemplating a hypothetical contractual bail-in mechanism that allows the Reserve Bank to trigger the direct recapitalisation of a New

[53] If the failed bank is in liquidation, the shares offered to the failed bank would then be dealt with by the liquidator on behalf of haircut creditors.

[54] For example, in their 2017 Financial Sector Assessment Programme, the International Monetary Fund recommended that a statutory manager appointed under BPSA should have the express power to write-down creditor claims in accordance with the established hierarchy. See https://www.imf.org/en/Publications/CR/Issues/2017/05/10/New-Zealand-Financial-Sector-Assessment-Program-Technical-Note-Contingency-Planning-and-44899

[55] This disadvantage is also relevant to OBR. However, because OBR envisages the transfer taking place upon exit from resolution, there would be additional time to plan and prepare the eventual transfer.

[56] See section 80 of the DTA https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS557736

[57] See section 267(1)(k) of the DTA https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS529206

Zealand deposit taker in a resolution event.[58]Any future use of contractual bail-in would not simply be a case of reverting to previous approaches. However, as mentioned above, we are not revisiting our previous decisions to remove contractual bail-in as part of this review.

Box 4: Capital review decisions on the exclusion of instruments with contractual contingency features from the capital definition

In implementing Basel III, we had required eligible AT1 and Tier 2 capital to have contractual contingency terms. However, during the Capital Review, we decided to remove the instruments with contractual contingency features from the capital definition in New Zealand.

Our decision was based on these points:

- Contractual contingent instruments introduce complexity to the regime, which makes the regime costly to comply with and administer, and vulnerable to arbitrage;
- There is limited international evidence to suggest contractual contingent instruments can be relied on to deliver going-concern capital, and reliance on contractual contingent instruments is potentially hindered further by the Trans-Tasman structure and unlisted nature of domestic systematically important banks;
- Inclusion of contractual contingency terms makes some choices of corporate form less advantageous then others (for example, mutual structures).

Potential role of statutory bail-in powers

184. Statutory bail-in involves the use of powers that are set out in legislation rather than in contract. This could include powers to:

- write-down, cancel, or convert[59] into ordinary shares, certain liabilities and other specified claims such as preference shares.

185. Additionally, to prevent failed deposit taker's shareholders from gaining benefits from the recapitalised deposit taker after resolution, statutory bail-in provides powers to:

- cancel the ordinary shares of a failed deposit taker; and
- transfer the ownership of ordinary shares from existing holders to one or more other persons (such as an acquirer, bailed-in creditors or other intermediary).

186. There are several ways that the DTA could be amended to enable a bail-in. For example, bail-in powers could be exercised by the Reserve Bank issuing some form of bail-in notice (which can be a trigger event for bail-in instruments potentially issued under the bail-in standard), or by the making of an Order-in-Council (which would provide the additional safeguard of requiring a ministerial or executive council decision). This could be done either as part of the

[58] This means that 1) triggers would not be available in going concern; 2) the bail-in could not be triggered by another authority; and 3) the bail-in would have to generate new CET1 capital for the New Zealand deposit taker rather than a parent entity.

[59] Conversion could be achieved, for example, by issuing new shares or transferring existing shares to the holders of claims subject to write down or cancellation. Statutory bail-in powers could potentially be designed to remove the need for the recipient to consent to receiving these shares in a resolution event.

decision to place a deposit taker into resolution or separately (provided the relevant grounds were met).

187. Given their statutory nature, these powers would apply to claims notwithstanding their contractual terms. However, statutory bail-in powers would likely need to be combined with requirements for contractual terms recognising the possibility of bail-in (so-called "contractual recognition" terms) for claims governed by overseas law. Such terms would be required to be included in eligible bail-in instruments to ensure we can unilaterally effect the bail-in of these claims. This is not equivalent to contractual bail-in terms.

188. Box 5 below summarises how the three different forms of bail-in have been adopted overseas.

Box 5: Overseas approaches to bail-in

Overseas, the introduction of statutory bail-in powers has been a key feature of post-GFC reforms. For example, the European Union, United Kingdom, Canada, Switzerland, Hong Kong and Singapore have adopted statutory bail-in powers, with several others actively progressing this.[60]

Overseas resolution authorities (including in Europe and the US) commonly rely on contractual bail-in for material hosted subsidiaries. This supports a group-level resolution where a cross-border banking group is resolved through the use of resolution powers in the home jurisdiction. Some jurisdictions, such as Australia, rely on contractual bail-in for certain locally headquartered banking groups.

Some overseas bail-in models rely on structural bail-in. For example, a bail-in in the US could involve the structural bail-in of a bank holding company by transferring assets to a bridge holding company.

Relative advantages of statutory bail-in powers compared to existing options

189. Compared to contractual bail-in, delivering a bail-in using statutory bail-in powers would have the following advantages:

- It would avoid reintroducing the potential complexity of relying on deposit takers' contractual bail-in terms. An effective contractual bail-in relies on robust contractual terms that establish the necessary triggers and conversion/write down mechanisms. As noted during the *Capital Review*, contingent instruments introduce complexity to the regime, which made the regime costly to comply with and administer, and vulnerable to arbitrage. While contractual recognition terms would likely be needed for statutory bail-in, these complexities would be less significant than for contractual bail-in.

- After losses are borne by shareholders and creditors, it would allow us to directly eliminate the remaining rights of existing shareholders in relation to the failed deposit taker (if required). Contractual bail-in cannot fully eliminate the claims of existing shareholders. By converting bailed-in claims into new shares it could be possible to dilute existing shareholders. However, we would need to use another form of bail-in (i.e., structural or

[60] Financial Stability Board's Resolution Report 2023, Annex 1. www.fsb.org/2023/12/2023-resolution-report-applying-lessons-learnt/

statutory bail-in) to prevent existing shareholders from retaining their rights in relation to the recapitalised deposit taker.

Benefits to sale of business tool

190. Statutory bail-in powers would introduce the option to execute a sale of business by writing down or converting non-CET1 capital (and possibly other TLAC if available) then selling the shares in the deposit taker to an acquirer. If viable, this option could help avoid the operational complexity and risk of transferring underlying assets, liabilities and rights to the acquirer (which are similar to those encountered when transferring to a bridge institution). It could also facilitate sale to a broader range of acquirers, including those which do not already hold a New Zealand deposit taking licence. This approach has featured in several overseas resolutions in recent years.[61]

Relative disadvantages of statutory bail-in powers compared to existing options

Complexity

191. Adopting statutory bail-in would entail complex and substantive new legislative powers. Along with the fact the structural and contractual bail-in already exist as options, this complexity is one of the key reasons why Cabinet chose to not include these powers in the initial DTA resolution regime, and instead note that officials would carry out further work on this issue.

192. There are a variety of complexities associated with designing a statutory bail-in power such as the interface with other relevant legislation such as the Companies Act 1993. As noted above, there is also the possible need for a statutory bail-in power to be supported by contractual recognition terms in at least a few circumstances (e.g., when the contract is governed by foreign law).

Need

193. Contractual bail-in in particular can be operationally simpler to execute than other forms of bail-in. For example, in the context of cross-border banking groups, it can enable the recapitalisation of hosted subsidiaries as part a group-level resolution that avoids placing the subsidiary into a separate resolution process. (See the footnotes 41 and 42 for the difference between a group-level resolution and a separate resolution)

194. However, as noted above, the complexities of statutory bail-in need to be viewed in light of the complexities of contractual and structural bail-in mentioned above.

Impact on the legal rights of investors

195. Even if it delivers the same economic outcome, statutory bail-in could have more of an impact on the legal rights of investors than structural or contractual bail-in. For example, it could allow the Reserve Bank to override the legal rights of shareholders and creditors[62] on public policy

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[61] See, for example, the resolutions of Banco Popular Español in 2017, certain European subsidiaries of Sberbank in 2022, and the UK subsidiary of Silicon Valley Bank in 2023. The acquisition of Credit Suisse in 2023 involved similar measures, though ad-hoc legislation was required to enable the transfer of shares.

[62] To write down the value of a creditors' claim on the deposit taker and/or convert some or all of creditors claim to equity would override the legal rights of investors or other creditors by reducing the size of their claim on the deposit taker, or fundamentally changing the nature of their property from a debt security to an equity security.

grounds and without the consent of investors or creditors (unless there is contractual recognition of this in the terms of the relevant claims). These actions would presumably be covered by the no creditor worse off (NCWO) safeguard, which would entitle investors and creditors to compensation if bail-in left them financially worse off than in a liquidation counterfactual.

196. In contrast, powers to achieve a structural bail-in are applied to the property and obligations of the entity in resolution, rather than the property of the investor. This is in line with how most other insolvency regimes operate in New Zealand.[63] Achieving a bail-in indirectly helps limit the impact of bail-in on the legal rights of investors because it does not materially change the nature of those rights, just the practical ability to enforce them. It also achieves the desired economic outcome of statutory bail-in in a more legal conventional way than (at least by the standards of existing New Zealand law).

197. Achieving a bail-in contractually is another way to limit the impact of bail-in on the legal rights of investors. This is because bail-in is expressly provided for in the terms of these financial instruments, and investors are agreeing to those terms when they purchase these instruments. Like structural bail-in, contractual bail-in is a more legally conventional way of achieving bail-in by the standards of existing New Zealand law.

Potential mitigating factors

198. As shown in Box 5, a number of jurisdictions now have bail-in tools in places. Overseas examples are likely to be of assistance in considering how at least some of the potential disadvantages could be addressed.

199. Also, some of the potential disadvantages could be mitigated by the design of a statutory bail-in power and associated requirements. In particular, we think that contractual recognition would play an important role in any potential structural bail-in model to mitigate potential impacts on investor property rights and ensure that bail-in is binding on foreign-law instruments.

200. Moreover, the relevant legislative provisions could provide that the Reserve Bank may not:

- Convert uninsured deposits and other senior liabilities into ordinary shares. This could be seen as the most complex and heavy-handed form of statutory bail-in. If needed, we could still impose loss on these claims using transfer powers (as envisaged under OBR).

- Prioritise junior-ranking claims over senior-ranking claims. This would help preserve the creditor hierarchy applicable in insolvency.

[63] One potential exception is the statutory management regime in the Insurance (Prudential Supervision) Act 2010. This regime includes the power to write down (through Order in Council) the value of insurance contracts of a licensed insurer that is in statutory management; section 191. https://www.legislation.govt.nz/act/public/2010/0111/latest/DLM2478550.html

- Bail in liabilities or preference shares issued before the enactment of these powers. This would help ensure that the relevant investors are aware of the risks that they face at the time they make their investment decisions.[64]

Next steps

201. We are still assessing whether or not to recommend statutory bail-in powers. Our recommendation on statutory bail-in will depend on factors including:

(1) the expected role of Bail-in resolution tool in our future resolution toolkit (if any);

(2) whether further evidence suggests that the 'contractual model' and other relevant resolution powers prove inadequate;

(3) how significant the benefits of statutory bail-in are over structural or contractual bail-in;

(4) whether we think that any unintended consequences could be suitably mitigated; and

(5) whether the benefits justify the remaining complexity and risk.

202. Should we assess that statutory bail-in powers would be desirable, we would expect to undertake further public consultation on the design of these powers. Additional design elements that would need to be determined may include:

- What claims statutory bail-in powers should be applicable to and what should be excluded;
- Whether bail-in of these claims should enable write-down or conversion or both (noting we do not see a role for statutory conversion of deposits and other senior liabilities);
- Whether statutory bail-in powers should also be available where a parent entity of a New Zealand deposit taker is subject to resolution proceedings, but where the New Zealand deposit taker itself is not in resolution;
- The need for recognition of statutory bail-in terms in the terms of claims subject to bail-in;
- How the statutory bail-in powers would interact with existing safeguards including the DCS and the No-Creditor-Worse-Off safeguard;
- What additional safeguards should be included to avoid any undue impact on property rights;
- How the legal mechanisms would operate and interact with other legislation (e.g., the Companies Act 1993);
- How much a deposit taker would be required to raise in connection with bail-in instruments issued internally and externally.

202. Regardless of the approach to bail-in, we would also need to consider further the mechanics of the bail-in process. This includes processes identifying the investors or other creditors who would be bailed-in, the mechanics of issuing and cancelling shares, and working through any

[64] However, this approach may complicate the application of bail-in by creating a class of "legacy" instruments, issued before enactment, which still sit inside the ranking in the creditor hierarchy at the time of resolution. See also previous discussion of this possible approach in the consultation paper by The Treasury and RBNZ *Safeguarding the future of our financial system – Further consultation on the prudential framework for deposit takers and depositor protection* (2020), at section 7.2. https://www.treasury.govt.nz/sites/default/files/2020-03/rbnz-further-consultation-phase-2.pdf

flow on effects of writing down creditor claims (e.g., how creditor claims would be evidenced after they have been written down).

203. As we continue to develop our future crisis management framework, we may identify other areas where additional statutory changes could be considered.

Q3	Do you agree with our assessment of the costs and benefits of a potential statutory bail-in power? Are there additional costs or benefits we should consider? Do you have any view on the need for statutory bail-in powers given the structural and contractual bail-in options are already available with the powers under the DTA?

5: Preparations in business-as-usual

Purpose

204. This section outlines our initial policy position on a potential new Crisis Preparedness standard issued under section 89 of the DTA.

205. Our current view is that the Crisis Preparedness standard would include new sets of requirements for:

- recovery and exit planning (See Section 5a for details)
- resolvability (See Section 5b for details)

206. These requirements would build on our proposed OBR and Outsourcing standards and help to support timely and effective recovery and resolution responses if and when a deposit taker becomes distressed in the future.

207. At the same time, the Reserve Bank will also undertake additional preparations for crisis management under the DTA, including to prepare orderly resolution plans as required by s260 of the DTA. Section 5c provides some brief remarks on our own preparations.

208. We welcome feedback to inform our policy developments on the potential new Crisis Preparedness standard. Subject to your feedback, we intend to consult on the detailed policy of the standard in 2026.

Background

209. Preparation during normal operations helps each deposit taker to recover from distress and avert failure where that is possible. Also, preparation helps us to act swiftly and in a way that meets the DTA purposes. The importance of preparedness was recognised as a key part of crisis management frameworks in the FSB's *Key Attributes of Effective Resolution Regimes for Financial Institutions*.[65]

Current crisis preparedness requirements for banks

210. Currently, we have several policies contributing to crisis preparedness, such as the Outsourcing Policy (BS11), the OBR pre-positioning requirements (BS17), requirements on the planning for contingency liquidity management (D.2.3 of BS13) and the capital buffer response framework (CBRF – Part D1 of BPR120).[66]

211. The existing pre-positioning requirements for resolution (i.e., Outsourcing and OBR) focus on the ability of certain banks to implement aspects of the overnight resolution and to continue basic banking services such as transactional banking services after a bank enters resolution. We are currently consulting on our proposed changes to these policies to make them fit for the

[65] Financial Stability Board (2024). https://www.fsb.org/work-of-the-fsb/market-and-institutional-resilience/crisis-management-and-resolution/

[66] There is no specific requirement for non-bank deposit takers other than the Reserve Bank NBDT Risk Management Guidelines. https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/non-bank-deposit-takers/3697899.pdf

purposes of the DTA.[67] Please refer to our detailed proposals on the OBR and Outsourcing standards in the non-core standard consultation paper and provide feedback through that consultation process.

Rationale for our proposed Crisis Preparedness standard

212. Effective crisis management requires deposit takers to take a range of actions in what may be a time-critical and contagious situation. These actions are likely to extend well beyond those considered under the OBR and Outsourcing policies, noting these policies only apply to resolution (not recovery) and to certain registered banks.

213. Without further preparations, the deposit taker's additional recovery and resolution related actions will be largely from scratch and on an ad-hoc basis. The deposit taker's management and staff are likely to be already under significant pressure. In this context, there will be limited scope to establish the necessary data, systems, plans, processes and other arrangements unless this had already been considered prior to the onset of stress.

214. As such, managing a crisis without any preparations in business-as-usual may limit a deposit taker's ability and the Reserve Bank's ability to deal with distressed deposit takers in a manner that meets the purposes of the DTA.[68]

215. We therefore propose to introduce requirements for recovery and exit planning and facilitating orderly resolution as part of a Crisis Preparedness standard under section 89 of the DTA.[69]

216. The Crisis Preparedness standard would primarily focus only on addressing financial distress. If a deposit taker gets in operational difficulties, such as a prolonged operational outage, the deposit taker would be expected to address the difficulties through its Business Continuity Plan which would be prepared under our proposed Operational Resilience Standard.[70]

Next steps

217. Subject to consultation feedback, we plan to consult on any proposed Crisis Preparedness Standards in the first half of 2026. We intend to issue the final Crisis Preparedness Standard after issuing the initial DTA standards (including OBR pre-positioning and Outsourcing). We would consult on the implementation deadline for the Crisis Preparedness Standard when we consult on the exposure draft of that standard (which is indicatively planned for 2027).

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[67] See the non-core standard consultation paper. https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

[68] For example, preparations support the purposes of enabling a licensed deposit taker that is in resolution to be dealt with in an orderly manner (section 259(1)(b) of the DTA), and minimising the costs of dealing with, or cost or losses otherwise occurred in connection with, a distressed deposit taker – including by dealing with the stress as quick as reasonably practicable (section 259(1)(d) of the DTA). https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS528402

[69] Standards issued under section 89 of the DTA can require deposit takers to prepare and maintain a plan for the event of financial distress and other difficulties. Standards can also relate to matters to ensure that resolution can be carried out in an orderly manner and in accordance with the DTA purposes for the Reserve Bank to manage crisis and resolution. https://www.legislation.govt.nz/act/public/2023/0035/latest/whole.html#LMS579797

[70] We are currently consulting on our proposed Operational Resilience standard as part of the non-core standard policy consultation. The Operational Resilience standard and the Crisis Preparedness standard may cross-reference each other, if necessary. https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

Section 5a: Potential new requirements for recovery and exit planning

218. We are considering introducing recovery and exit planning requirements applicable to all deposit takers in a proportionate manner (discussed below).

219. During the normal operation, deposit takers would be required to:

1) identify credible options for recovery and exit;
2) assess the options' feasibility and impacts; and
3) have governance and arrangements in place to execute its recovery and exit plan.

220. The Table D summarises the essential elements of a recovery and exit plan that we are considering based on international standards and the practices of overseas supervisors.[71]

Table D: A summary of the essential elements of a recovery and exit plan

Essential elements	Details
Description of the deposit taker and entities covered in the recovery and exit plan	• a general characterisation of the deposit taker and entities covered by the recovery and exit plan • a mapping of their critical operations[72] and the business lines • a description of the legal and financial structures of the deposit taker and entities, and an interconnectedness with the deposit taker's parent, if applicable • a description of external interconnectedness (e.g., large exposures)
Recovery triggers and risk indicators	• Qualitative and quantitative risk indicators to identify when a situation is developing that may require the deposit taker to take a recovery action or to make a strategic decision to exit • Qualitative and quantitative criteria to trigger the implementation of the recovery and exit plan • The indicators and criteria would be expected to include those of both systemic/market-wide and firm-specific/idiosyncratic, such as: o Capital o Liquidity o Profitability o Asset quality o Market conditions o Macroeconomic conditions
Recovery and exit options	• a list of various recovery and exit options ranging from the moderate to the more radical, to respond to different financial stress scenarios • a description of each option (e.g., actions, arrangements, measures and steps necessary to restore the financial

[71] Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions* (2014). https://www.fsb.org/wp-content/uploads/r_141015.pdf

[72] For the definition of "critical operations", please see footnote 22 of this paper.

Essential elements	Details
	position and viability, or cease regulated activities with minimum adverse impacts) • arrangements and measures to maintain operational continuity under each option (e.g., access to internal and external operational functions such as IT and financial market infrastructures) Options could consist of action, arrangements and measures to: • strengthen the capital situation (e.g., raise new capital, employ capital conservation measures) • improve liquidity position (e.g., pledge assets as collateral, voluntary restructuring of liabilities) • reduce operational cost (e.g., lower bonuses and other remuneration) • restructure (e.g., sell assets or business units) • exit Recovery and exit options should not assume that public support, such as government funding, will be available.
Assessments of each option	• feasibility and impact assessments of each option (e.g., intended benefits and possible side-effects and time needed to implement the option) • a detailed description of any material impediment to the effective and timely execution of each option • assessments as to whether each option is credible and could be activated in time (i.e., scenario analysis and simulation-type exercises)
Communication and disclosure plan	• internal and external communication strategies • how and when the communication and disclosure plan would be implemented • specific communication needs for individual recovery options (e.g., managing any potential negative market reactions)

Governance	• detailed description regarding:
	  o how the plan is developed
	  o policies and procedures governing the approval of the plan
	  o conditions, triggers, procedures and arrangements to carry out the actions in the plan
	• description regarding consistency:
	  o with the deposit taker's general risk management framework
	  o with the group recovery and exit plan, if the deposit taker belongs to overseas deposit taking groups

Consistency with a group-level recovery and exit plan

220. For those deposit takers who belong to overseas deposit-taking groups, we would expect the deposit takers to develop their local recovery and exit plan in a consistent and coordinated manner with their overseas deposit taking group.

221. We would also coordinate with the relevant overseas supervisors to ensure that the recovery options, triggers and governance arrangements are consistent in both the plans and reflect the sources of risk and interdependencies.

Interaction with other areas of requirements

222. Recovery planning can be seen as an extension of deposit takers' broader risk management. We would encourage deposit takers to align and integrate crisis preparedness within, their existing systems, plans and processes (e.g., general risk management framework, stress testing, Internal Capital Adequacy Assessment Process (ICAAP), the contingent funding plan and the Capital Buffer Response Framework). Leveraging existing arrangements helps minimise unnecessary compliance costs from duplication. As part of our development of recovery planning requirements, we may revise aspects of the CBRF to ensure requirements to provide a capital restoration plan or recapitalisation plan are aligned with our broader framework.

Applying proportionality

223. The recovery and exit planning requirements would mostly be principle based. This means that the amount of preparation required would be based on the size and nature of each deposit taker's business. For example, if certain parts of a deposit taker's business activities (such as wholesale market activities) are limited, the amount of preparation for those parts of the business would be limited.

224. Some parts of the Crisis Preparedness standards may need to be more prescriptive (for example, frequency of testing and reviewing, requirements for specific contractual arrangements). For those parts, we could tailor the standard to reduce the compliance burden on Group 2 and 3 deposit takers (e.g., setting a lower testing frequency, or alternatively allowing a deposit taker's governing body to decide that the previous year's plan continues to be appropriate where a deposit taker's prudential state has not changed materially year on year).

225. We would review the recovery and exit plan as part of the overall supervisory process, assessing its credibility and ability to be effectively implemented. We may consider the publication of guidance to help enable deposit takers to implement the requirements efficiently and consistently.

Section 5b: Potential new requirements to facilitate orderly resolution

226. This sub-section sets out our initial views on potential additional requirements to facilitate orderly resolution that could be included in the Crisis Preparedness Standard (beyond our existing OBR and Outsourcing requirements).

Requirements for information provision

227. Under s260 of the DTA, the Reserve Bank must prepare and maintain resolution plans for each deposit taker. To do so, we may need information from each deposit taker to, for example:

- identify any systemically important activities;
- identify the most relevant resolution strategy(s); and
- identify and assess potential impediments to the deposit taker's orderly resolution.

228. We are considering different ways of collecting the necessary information from deposit takers, which could involve using requirements in the Crisis Preparedness standard. These requirements could potentially be applicable to all deposit takers.

Resolvability requirements

229. Resolvability requirements involve deposit takers undertaking preparations in business-as-usual so that they are "resolvable" in a crisis (i.e., so that our resolution plans and resolution tools in general can be deployed effectively in practice to meet the DTA purposes).

Entities subject to resolvability requirements

230. In line with our Proportionality Framework,[73] we will seek to tailor requirements across different groups of deposit takers to reflect the risks each group presents to the DTA purposes. Deposit takers who are not in scope of any resolvability requirements will still be required to pre-position for a DCS Payout. To this end, we have separately proposed Single Depositor View (SDV) requirements for all locally incorporated deposit takers under our core standards consultation.

Risks to be addressed

231. In developing our potential future resolvability requirements, we will focus on identifying and mitigating potential risks to orderly resolution. By way of example, potential risks could relate to:[74]

- Valuations: a deposit taker's ability to provide timely and robust data and analysis to support valuations and financial analysis to inform our key resolution decisions (e.g., the timing of entry into resolution, the application of losses, and the eventual reorganisation of the entity). This could also include the provision of data to potential acquirers to support their due diligence activities in the case of a sale of business" resolution.

- Funding: a deposit taker's ability to identify and mobilise liquidity needs and sources under a severe stress. The qualitative requirements in our proposed and existing liquidity policies help mitigate this risk. We need to assess whether any further qualitative requirements would be needed to address the incremental challenges of a resolution scenario.

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[73] Reserve Bank of New Zealand *Proportionality Framework* (2024). https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/regulation-and-supervision/dta-and-dcs/the-proportionality-framework-under-the-dta.pdf

[74] See the Bank of England *Resolvability Assessment Framework* of the EU Single Resolution Board's *Expectations for Banks* for an overseas example of how impediments to resolvability have been identified and removed.

- Operational continuity: a deposit taker's ability to continue providing banking services to customers through resolution. The DTA includes statutory safeguards against the risk that third-party suppliers terminate services as a result of resolution. The outsourcing policy also helps to address continuity risks for in-scope banks. However, we need to assess any potential residual risks for those banks, as well as for deposit takers not in scope of the Outsourcing policy. This assessment will take into account our proposed standard on Operational Risk.[75]

- Access to financial market infrastructures (FMIs): a deposit taker's ability to access critical FMIs such as payments and settlement systems through resolution.

- Continuity of financial contracts: a deposit taker facing the widespread termination of derivatives and other financial contracts as a result of its entry into resolution. The DTA includes statutory safeguards against this risk. However, these safeguards may not apply where deposit takers engage in certain cross-border trading activities.

- Restructuring: a deposit taker's ability to reorganise its business following entry into resolution to address the underlying issues that led to its failure and deliver a sustainable business model (or exit the market in an orderly manner).

- Communications: a deposit taker's ability to provide timely and effective communications to reassure its customers, markets, counterparties, suppliers, and other stakeholders throughout the resolution process.

- Management and governance: a deposit taker's ability to organise itself effectively to support the end-to-end resolution process (e.g., through clear responsibilities, oversight, or suitable key staff).

232. We intend to assess the extent of these risks in the New Zealand context and also consider whether there are any additional risks. For example, we will consider the relative size and simplicity of New Zealand deposit takers, and the possibility to deliver aspects of the resolution process on an ad-hoc basis if needed. We welcome feedback on these risks to inform our work.

Potential requirements under consideration

233. We intend to consider what requirements we may need to apply to deposit takers to mitigate potential risks to orderly resolution and ensure that deposit takers are resolvable. For example, the Crisis Preparedness standard could require that deposit takers:

    - are able to achieve various outcomes to support orderly resolution;

    - have specific capabilities and arrangements in place to do so; and

    - suitably oversee, document, test and assess their compliance with these requirements, as well as their overall resolvability.

[75] See the non-core standard policy consultation. https://consultations.rbnz.govt.nz/prudential-policy/deposit-takers-non-core-standards/user_uploads/deposit-takers-non-core-standards-consultation-paper-august-2024.pdf

234. Where appropriate, we will draw on overseas practice to help ensure foreign-owned deposit takers can leverage work undertaken at group-level.

Integration with other requirements

235. When developing the crisis preparedness standard, we would consider:

- OBR pre-positioning and Outsourcing: whether all or some of the requirements currently proposed for the OBR pre-positioning and Outsourcing standards should be moved into the crisis preparedness standard. We would not envisage making substantive changes to the underlying OBR pre-positioning and Outsourcing requirements at that stage.
- Recovery planning: whether to develop a single Crisis Preparedness standard covering both recovery and resolution. This recognises that the recovery and resolution processes are likely to overlap in practice during the pre-resolution contingency planning phase. There are also significant overlaps in the types of planning and capabilities that may be required (e.g., in relation to governance, data and financial modelling).
- Bail-in standard: whether any TLAC requirements (i.e., a bail-in standard issued under section 80 of the DTA) should be incorporated in the broader Crisis Preparedness standard (or elsewhere).

Q4	Do you have any view on the potential new crisis preparedness requirements (i.e., recovery and exit planning, and resolvability)? If these requirements were imposed, do you have any initial comments on how they should be designed?

Section 5c: Preparedness as resolution authority

236. This sub-section outlines how we are enhancing our own preparedness to deal with distressed entities in an orderly manner.

Implementing our resolution function

237. The DTA designates the Reserve Bank as New Zealand's resolution authority and uplifts the Reserve Bank's responsibilities for resolution. To implement these changes DTA, the Reserve Bank is enhancing its resourcing and capability for crisis management. We have established a dedicated resolution function and are enhancing our internal processes for monitoring and dealing with at-risk deposit takers.

238. In the coming years we will prepare and maintain resolution plans for each licensed deposit taker. These will be internal plans produced by the Reserve Bank. However, we will require input from deposit takers to develop these plans and ensure these plans are executable in practice, as discussed above.

Implementing the DCS

239. We are establishing our internal DCS functions including levy collection, fund management, payout, and public communications. We are engaging industry separately on this matter, which is a fundamental part of our new crisis management framework.

Engagement with other agencies

240. Cross-agency engagement is an integral part of our crisis management framework. We work closely with other New Zealand agencies on crisis management and crisis preparedness. This includes engagement via the Council of Financial Regulators.

241. We also work closely with Australian authorities. The Trans-Tasman Banking Council has been in place since 2005 with membership including the Australian and New Zealand prudential and conduct regulators, treasuries and central banks. In 2010, New Zealand and Australian authorities entered into a Memorandum of Co-operation on Trans-Tasman Bank Distress Management. More recently, trans-Tasman authorities have established a dedicated Crisis Management Group to carry out cross-border resolution planning, in line with international best practice.

242. Moreover, we engage with other overseas regulators where relevant. For example, in 2023 we entered into a Co-operation Agreement with the EU Single Resolution Board.

243. As we implement the DTA crisis management framework we will continue to enhance cross-agency and cross-border co-operation in this space.

6: Final remarks

244. There is much to do to operationalise the new crisis management regime in the DTA, and industry input is an important contribution to this work. We encourage you to engage with us throughout the processes (see Figure 3).[76] We look forward to working with you in developing the new framework for deposit taker crisis management in New Zealand.

Figure 3. Process for developing crisis management framework under the DTA

Q5	Are there any other aspects of crisis management we should be considering as part of our review?

[76] For further details, see the DTA/DCS implementation timeline. https://www.rbnz.govt.nz/regulation-and-supervision/depositor-compensation-scheme/dta-dcs-timeline

Annex A: Abbreviations

Term	Meaning
AT1	Additional Tier 1 capital instruments
BCP	Business Continuity Plan
BPSA	Banking (Prudential Supervision) Act 1989
CBRF	Capital Buffer Response Framework
CET1	Common Equity Tier 1
DCS	Depositor Compensation Scheme
DTA	Deposit Takers Act 2023
FDIC	Federal Deposit Insurance Corporation
FMI	Financial market infrastructures
FSB	Financial Stability Board
GFC	Global Financial Crisis
ICAAP	Internal Capital Adequacy Assessment Process
NCWO	No creditor worse off
OBR	Open Bank Resolution
NBDT	Non-bank deposit taker
PFA	Public Finance Act 1989
SDV	Single Depositor View
SoAR	Statement of Approach to Resolution
TLAC	Total loss absorbing capacity

Annex B: Consolidated consultation questions

Q1	Do you have any views on our proposed approach to implementing the crisis management framework under the DTA? Are there any factors we should, or should not, take into account when implementing the framework?
Q2	Do you have any comments on our proposed approach to dealing with distressed deposit takers under the DTA? Are there any alternative approaches we should be considering?
Q3	Do you agree with our assessment of the costs and benefits of a potential statutory bail-in power? Are there additional costs or benefits we should consider? Do you have any view on the need for statutory bail-in powers given the structural and contractual bail-in options are already available with the powers under the DTA?
Q4	Do you have any view on the potential new crisis preparedness requirements (i.e., recovery and exit planning, and resolvability)? If these requirements were imposed, do you have any initial comments on how they should be designed?
Q5	Are there any other issues that we should consider when operationalising the crisis management framework under the DTA?