

Reserve Bank  
of New Zealand  
**Te Pūtea Matua**

# **Incorporation outside New Zealand**

## **Standard**

# **Guidance Note**

**GN XX.1**

## Guidance Note version history

|                  |                                                                                         |                                                                                                   |
|------------------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| October 2025     | Consultation draft for exposure draft of the Incorporation outside New Zealand Standard | Relates to Incorporation outside New Zealand Standard exposure draft version dated [October 2025] |
| [Day Month] 20XX | First issue date                                                                        | Relates to Incorporation outside New Zealand Standard version dated [2028]                        |

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## Use and status of the Guidance

The purpose of this Guidance is to assist licensed deposit takers (or **deposit takers**) to interpret and comply with the Incorporation outside New Zealand Standard (the **Standard**). This recognises the Standard is a technical instrument that is not always straightforward to interpret and there may be no case law or other external reference points to assist. Guidance will assist individual deposit takers with their own compliance and support a more consistent approach across the industry.

The Guidance assists by:

- Outlining our motivations and intentions for the Standard. Technical content is better understood with awareness of the policy intent at the time it was drafted.
- Outlining our preferred interpretation in relation to some clauses, where we have been made aware of differing interpretations by deposit takers.
- Providing examples of actions deposit takers could take in complying with the requirements in the Standard.

To assist in using the Guidance:

- Terms that are defined in the Standard or the Deposit Takers Act 2023 (the **DTA**) are italicised in this Guidance and have the same meaning.
- The Guidance is designed to be read alongside the Standard. Sections of this Guidance have the same headings as sections of the Standard. Clause numbers are those from the Standard.
- The Guidance will not necessarily cover every clause in the Standard. Given its status as an interpretation aid, where we feel a clause (when read in conjunction with the explanatory note attached to the Standard) is sufficiently self-explanatory, no additional Guidance is being provided.
- In event of any conflict between the text of the Standard and this Guidance, the Standard prevails. The Standard is secondary legislation made under the DTA, while the Guidance does not have formal status. The Guidance represents our view and is therefore an authoritative indicator of that view. However, ultimately, the correct interpretation of the Standard is determined by a Court.
- The Reserve Bank will periodically review and update the Guidance. We may change our Guidance or our interpretation of the Standard if we consider this appropriate. We do not do this lightly and will endeavour to notify deposit takers in advance if we are considering amending the content of the Guidance.
- This Guidance is not legal advice. We encourage deposit takers seek their own professional advice, as it is their responsibility to determine their obligations and ensure that they comply with the requirements of the Standard.
- The Guidance relates to the version of the Standard as at [day month year].
- We welcome feedback on the Guidance at any time.

## Part A: About this Standard

### Overview

1. Overseas licensed deposit takers (branches) are an important part of New Zealand's financial system. They differ from locally incorporated subsidiaries of overseas deposit takers in that they are part of a legal entity incorporated outside New Zealand. They offer benefits to the New Zealand economy through the provision of products and services to wholesale customers.
2. We do not apply the full suite of prudential regulation to branches because of the nature of their operations and legal structure. The Incorporation outside New Zealand Standard includes certain requirements that must be met by branches (primarily relating to how branches carry on business).

### Context and purpose of the Incorporation outside New Zealand Standard

3. The Standard requires that all deposit takers must be incorporated in New Zealand unless they meet certain conditions that allow them to be incorporated outside New Zealand. The Standard does not contain all the requirements that apply to branches. For example, disclosure requirements for branches are included in the Disclosure Standard. Examples of requirements included in the Standard include a size cap for branches and a requirement that they can only do business with wholesale clients.
4. The Standard is relevant to branches. Most of the requirements apply to all branches, but some are only relevant to branches that also have a locally incorporated subsidiary that is a licensed deposit taker (referred to in this document as "dual-operating branches").

**Table 1: Applicability of Standard's requirements to classes of deposit takers**

| [Clause/section/paragraph ref. requirement]                                                                      | All deposit takers | All branches of Overseas Deposit Takers (or "branches") | Branches in groups that also contain a locally incorporated subsidiary (or "dual-operating branches") |
|------------------------------------------------------------------------------------------------------------------|--------------------|---------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
| Licensed deposit taker must incorporate under New Zealand legislation unless certain requirements met (Clause 5) | ✓                  | ✓                                                       | ✓                                                                                                     |
| Wholesale client definition (Clause 6)                                                                           | ✗                  | ✓                                                       | ✓                                                                                                     |
| Large corporate and institutional client (Clause 7)                                                              | ✗                  | ✗                                                       | ✓                                                                                                     |

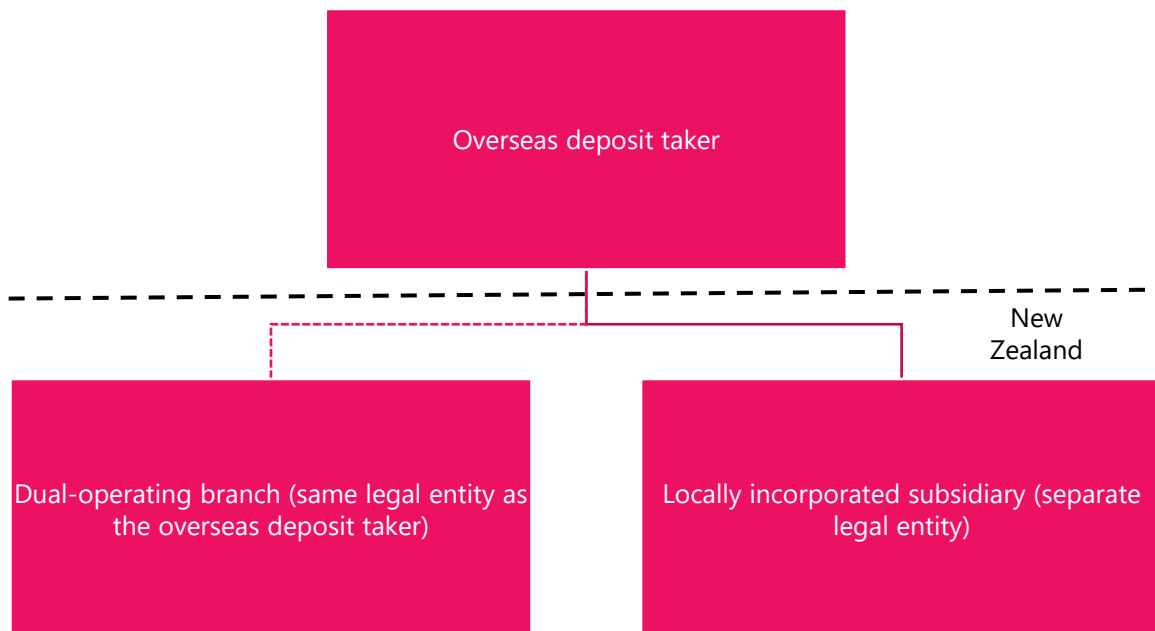
## Part B: Guidance on the Incorporation outside New Zealand Standard

### Part 1: Preliminary provisions

#### Title (Clause 1)

5. This Standard regulates whether a deposit taker must be incorporated under New Zealand legislation. It applies size and client restrictions to deposit takers that are incorporated outside New Zealand. Therefore, it is titled the Deposit Takers (Incorporation outside New Zealand) Standard 2027.
6. The effect of the Standard is that a deposit taker that is an overseas person can only carry on the business of a deposit taker if it meets specific requirements. Otherwise, it would have to cease carrying on business as a deposit taker or become incorporated under New Zealand legislation.
7. The Standard is relevant for all branches. Most of the requirements apply to all branches, but some are only relevant to dual-operating branches).
8. Diagram A shows the structure for an overseas deposit taker that has a locally incorporated subsidiary that is a licensed deposit taker and is a (overseas) licensed deposit taker ("branch") itself. The dotted line represents that while the overseas deposit taker and the overseas licensed deposit taker are the same legal entity, they are licensed in two jurisdictions. The subsidiary is a separate legal entity that is only licensed in New Zealand. Together, the subsidiary and the overseas licensed deposit taker are the dual-operating group.

**Diagram A: organisation structure for a dual-operating group**



### Interpretation (Clause 3)

9. This clause provides definitions that are later used in the Standard. Consistent with section 20 of the Legislation Act 2019, words or expressions used in the DCS Standard have the same meaning as in the Deposit Takers Act 2023 (DTA) or referring legislation.

### Transitional, savings, and related provisions (Clause 4)

10. Branches can maintain a relationship with existing clients (as at December 2028), provided they assessed that these clients met the relevant client definition ahead of that date. This is further described in Schedule 1 of the Standard.

## Part 2: requirements regarding country of incorporation

### Licensed deposit taker must incorporate under New Zealand legislation unless certain requirements are met (Clause 5)

11. The key requirements are set out in clause 5. They relate to the New Zealand business of the overseas licensed deposit taker, which is commonly referred to as a branch of the deposit taker. In all cases, the New Zealand business of a branch:
  - must not exceed \$15 billion in assets; and
  - must be less than 50% of the deposit taker's total business.
12. We expect that a branch's assets would be measured as being the total assets of its New Zealand business. The measurement of total assets of a branch's New Zealand business should be prepared as if that business were conducted by a company formed and registered in New Zealand. This will also be consistent with the measurement of total assets of a branch required by the Deposit Takers (Reporting) Standard 2027.
13. In addition (as set out in Table 1, above), if the branch is a dual-operating branch, its business must be limited to "large corporate or institutional clients". For a stand-alone branch, its business must be limited to "wholesale clients". Although clause 5 limits their business to "wholesale clients", a "large corporate or institutional client" will always also be a "wholesale client" so, in effect, these other branches can do business with both categories of clients.

### Meaning of wholesale client (Clause 6)

14. Clause 6 gives the meaning of wholesale client for the purposes of clause 5. Whether a deposit taker's client is a wholesale client depends on the deposit taker assessing that the client or an associated person of the client is 1 or more of the types of wholesale client specified in clause 6. Associated person is defined in section 7 of the Act.
15. We expect that all deposit takers already have a strong understanding of their obligations to monitor which of their clients are wholesale clients under either the Financial Markets Conduct Act 2013 ("FMC Act") or the Financial Service Providers (Registration and Dispute Resolution) Act 2008 ("FSP Act").
16. Consistent with our approach to supervision, we expect to see evidence of good systems and controls, as part of robust risk management practices.
17. To do business with a new client, a branch will have to assess that the client meets the definition of being "wholesale" at the point of onboarding. They will then subsequently have to

reassess that the client still meets the definition no more than two years after onboarding, and no more than two years after each assessment. See clause 9 of the Standard.

18. Clients can remain defined as wholesale for two years as described in clauses 8-11. This applies to all limbs of the definition. The two-year period is consistent with the treatment of wholesale investors under clause 44 of Schedule 1 of the FMC Act.
19. The Deposit Takers Regulations provide that branches are exempt from the DCS unless the deposit taker provides a material amount of services to retail clients. Branches may be required to demonstrate that they are only conducting business with wholesale clients beyond 2028 to be exempted from the DCS.

### **Meaning of large corporate or institutional client (Clause 7)**

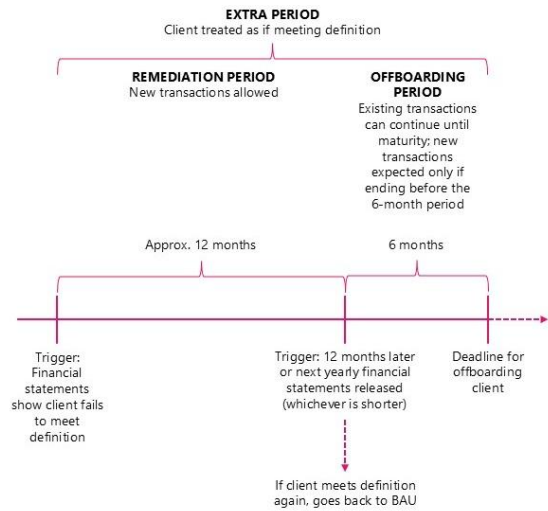
20. Clause 7 gives the meaning of large corporate or institutional client. This supports the requirement that applies to dual-operating branches in clause 5.
21. Whether a deposit taker's client is a large corporate or institutional client depends on the deposit taker assessing that the client meets the criteria in clause 7.
22. We expect that all deposit takers have a strong understanding of their obligations to closely monitor the financial information of large clients, given they often represent relatively large exposures on their balance sheet.
23. We expect that monitoring clients' balance sheet information would support good risk management and due diligence practices. Therefore, we do not expect that this requirement should place substantial additional compliance costs on dual-operating branches.
24. We expect that dual-operating branches will be able to demonstrate to supervisors that they have robust practices in place to monitor the status of their clients with regards to the large corporate or institutional client definition. We expect that dual-operating branches will be able to demonstrate to supervisors that they have established processes for off-boarding clients if and when they no longer meet the large corporate or institutional client definition.
25. To do business with a new client, a dual-operating branch will have to assess that the client meets the definition of being "large corporate or institutional" (LCIC) at the point of onboarding. They will then subsequently have to reassess that the client still meets the definition no more than two years after onboarding, and no more than two years after each assessment.
26. In the case of funds managers, all of the assets managed are not on the client's financial statements (they are not owned by the client), so the deposit taker should make an assessment of the assets under management by the client.
27. In the case of special purpose vehicles ("SPV"), a dual-operating branch can make an assessment of the expected assets of the SPV by the conclusion of the project. This is likely to be relevant in the case of infrastructure projects (eg, building a motorway or wind farm) where the SPV requires upfront investment and will accrue assets over the course of the project.
28. In the case of prospective clients who are expected to undergo rapid growth, dual-operating branches may make an assessment of this expected growth. Examples of this would include a merger or acquisition, or a major investment by the client. For instance, an investment to be funded via raising debt and/or equity in the near future.

29. Dual-operating branches may, when assessing associated persons of large global entities, use the scale of the client's holding entity to determine whether they meet the LCIC test.
30. Clients can remain defined as LCIC for two years as described in clauses 8-11. This applies to all limbs of the definition. The two-year period is consistent with the treatment of wholesale investors under clause 44 of Schedule 1 of the FMC Act.

### **Assessment by deposit taker (Clauses 8-11)**

31. The draft Standard sets out when a deposit taker must assess a client under the Standard. The assessment must be made:
  - for a new client, at the time immediately before they become a client; and
  - for an existing client, at the time the Standard commences.
32. The Standard also requires deposit takers to periodically assess whether its clients continue to meet the requirements in the Standard to be wholesale clients or LCIC (as the case requires). These assessments must occur after financial statements are available for every second financial year after the last assessment.
33. If a deposit taker assesses that a client no longer meets the relevant definition, the Standard provides that the client is still treated as meeting the definition for up to 6 months after the client's financial statements for the next financial year become available (an "extra period" of approximately 18 months).
34. The extra period ends earlier if the deposit taker either assesses (under clause 6 or 7, as the case requires) that the person meets the definition, or ends the client relationship. The effect of this provision is that a deposit taker has a period to reassess the client, taking into account the next financial statements, in case the client's situation changes.
35. The extra period can be thought of as consisting of an initial remediation period of 12 months where a client may meet the definition again, or confirm they are not meeting it over a sustained period. If the client fails to meet the definition after the remediation period, branches are required to offboard them within 6 months.
36. After the remediation period ends and the client is still not meeting the definition, we expect that a deposit taker would not enter into any transactions with maturity dates beyond the end of the extra period.
37. The policy intent of these provisions is to give some flexibility for normal business fluctuations, for instance around the LCIC thresholds. The intent is also to support the branches' clients' continued access to financial products and services regardless of short-term fluctuations, while ensuring that only the large clients are dealing with dual-operating branches. We expect this to minimise unnecessary compliance costs for branches.
38. The extra period is visualised in Diagram B below.

Diagram B: remediation and off-boarding periods for clients



Branch-to-subsidary asset ratio

39. In some situations, dual-operating branches may be subject to a limit on their total assets relative to the assets of the locally incorporated subsidiary in the group. This limit will be applied using conditions of licence under s24 of the Act.