

**DRAFT FOR CONSULTATION**

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- peer review:
- proof reading:
- editorial, minor, and other relevant changes.

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## **Deposit Takers (Incorporation outside New Zealand) Standard 2027**

This standard is issued under section 72 of the Deposit Takers Act 2023 by the Reserve Bank of New Zealand after—

- (a) complying with section 75(1) of that Act; and
- (b) being satisfied of the matter set out in section 72(1) of that Act; and
- (c) the board of the Reserve Bank of New Zealand having regard to the matter set out in section 49(1) of the Reserve Bank of New Zealand Act 2021.

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## **Schedule 1**

### **Transitional, savings, and related provisions**

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## **Standard**

### **1 Title**

This is the Deposit Takers (Incorporation outside New Zealand) Standard 2027.

### **2 Commencement**

This standard comes into force on 1 December 2028.

### *Preliminary provisions*

### **3 Interpretation**

In this standard, unless the context otherwise requires,—

**Act** means the Deposit Takers Act 2023

**client**, in relation to a deposit taker, means a person to whom the deposit taker provides a financial service within the meaning of the term in section 5(1) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

**large corporate or institutional client** has the meaning set out in clause 7

**New Zealand licensed deposit taker** means a licensed deposit taker incorporated in New Zealand

**relevant time**, in relation to a client of a deposit taker means the time immediately before the person becomes a client

**wholesale client** has the meaning set out in clause 6.

### **4 Transitional, savings, and related provisions**

The transitional, savings and related provisions set out in the Schedule have effect according to their terms.

*Requirements regarding country of incorporation*

**5 Licensed deposit taker must incorporate under New Zealand legislation unless certain requirements are met**

- (1) A licensed deposit taker (A) must be incorporated under New Zealand legislation unless—
  - (a) A is an overseas licensed deposit taker; and
  - (b) the assets of the New Zealand business of A are \$15 billion or less; and [\[see comments in submission\]](#)
  - (c) the New Zealand business of A is less than 50% of its total business; and
  - (d) the New Zealand business of A is limited to,—
    - (i) in the case of an overseas licensed deposit taker that is a holding entity of a New Zealand licensed deposit taker, large corporate or institutional clients:
    - (ii) in any other case, wholesale clients.
- (2) In subclause (1)(b), assets must be calculated by reference to the financial statements for the New Zealand business.
- (3) In this clause, **New Zealand business**, in relation to an overseas licensed deposit taker that is a holding entity of a New Zealand licensed deposit taker, does not include the business of the New Zealand licensed deposit taker and its subsidiaries, if any.

**6 Meaning of wholesale client**

- (1) In this standard, **wholesale client**, in relation to an overseas licensed deposit taker, means a client of a deposit taker if the client, or an associated person of the client, is assessed under any of clauses 8 to 10 as 1 or more of the following:
  - (a) a person who is in the business of providing a financial service within the meaning of section 6 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008: [\[see comment in submission\]](#)
  - (b) a person who is a wholesale investor within the meaning of clause 3(2) of Schedule 1 of the FMCA:
  - (c) a person who, in relation to a relevant transaction with the deposit taker, is an eligible investor under clause 41 of Schedule 1 of the FMCA:
  - (d) a person who, in relation to a financial service received from the deposit taker, is an eligible investor under section 49A of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
  - (e) [\[see comment in submission regarding including a test analogous to clause 7\(1\)\(e\)\]](#)
- (2) In this clause, **relevant transaction** has the meaning set out in clause 49 of Schedule 1 of the FMCA.

**7 Meaning of large corporate or institutional client [\[see the various comments in submission\]](#)**

- (1) In this standard, **large corporate or institutional client**, in relation to an overseas licensed deposit taker, means a person that is assessed by a deposit taker under any of

clauses 8 to 10 as a client to whom 1 or more of the following applies:

- (a) the total assets of the client and associated persons of the client exceed \$75 million as at the last day of each of the 2 most recently completed financial years:
- (b) the total consolidated turnover of the client and associated persons of the client exceeds \$50 million in each of the 2 most recently completed financial years:
- (c) the total scheme property of any managed investment schemes for which the client and associated persons of the client are custodian or manager exceeds \$250 million:
- (d) the total investor money and investor property for which the client and associated persons of the client are a custodian or DIMS licensee, under any discretionary investment management service, exceeds \$250 million:
- (e) the total funds under management for which the client and associated persons of the client are custodian or manager exceeds \$250 million: [see comments in submission]
- (f) the client or an associated person of the client would reasonably be expected to meet any of the tests under clauses 7(1)(a), (b), (c), (d) or (e) on the later of: [see comments in submission] ~~is likely to experience an event causing rapid growth to its business (for example, a merger), which would reasonably be expected to cause the client and associated persons of the client to have either or both of the following:~~
  - (i) on or before the maturity date of any proposed transaction with the deposit taker total assets exceeding \$75 million as at the last day of each of the 2 complete financial years following the event: or
  - (ii) two years from the date of the assessment total consolidated turnover of \$50 million in each of the 2 complete financial years following the event:
- (g) the client or an associated person of the client—[see comments in submission]
  - (i) is a special purpose vehicle in relation to a project; and
  - (ii) would reasonably be expected to meet any of the tests under clauses 7(1)(a), (b), (c), (d) or (e) on the later of (A) have total assets exceeding \$75 million by the completion of the project; and (B) two years from the date of the assessment. —[see comments in submission]

(2) In this clause,—

**custodian and scheme property** have the same meanings as in section 6(1) of the FMCA

**DIMS licensee** has the same meaning as in section 432A(3) of the FMCA

**investor money** and **investor property** have the same meanings as in section 444 of the FMCA

**managed investment scheme** has the same meaning as in section 9 of the FMCA

**manager** has the same meaning as in section 6(1) of the FMCA.

*Assessment by deposit taker*

## 8 Assessing whether person who will be client meets definition

- (1) This clause applies for the purposes of assessing, under clause 6 or 7 as the case requires, a person who will be a client or an associated person of a client.
- (2) A deposit taker must make the assessment at the relevant time, as if the person were a client or an associated person of a client at that time. [\[see comments in submission\]](#)

## **9 Assessing whether person continues to meet definition**

- (1) A person continues to meet the definition in clause 6 or 7, as the case requires, if the deposit taker periodically assesses that the person meets the definition.
- (2) The assessment must be carried out after every second financial year, [or, in the case of large corporate or institutional clients, third financial year](#), after the last assessment (as soon as reasonably practicable after the person's financial statements for that financial year are available). [\[see comments in submission\]](#)

## **10 What happens if client no longer meets definition**

- (1) This clause applies if, under clause 9, a person is assessed as no longer meeting the definition in clause 6 or 7, as the case requires.
- (2) The person is to be treated as continuing to meet the definition until the earliest of the following occurs: [\[see comments in submission\]](#)
  - (a) the deposit taker assesses that the person meets the definition:
  - (b) the person ceases to be a client of the deposit taker:
  - (c) the close of the day that is 6 months after the person's financial statements for the next financial year are available.
- (3) An assessment under subclause (2)(a) must be treated as if it takes place after the second financial year after the last assessment.
- (4) In this clause, **next financial year** means the financial year after the assessment.

## **11 [\[Assessments must rely on information in financial statements if relevant\]](#)**

A deposit taker that assesses a person under any of clauses 8 to 10 must rely on information in the person's financial statements if the information is relevant to the assessment. [\[see comments in submission with regard to making this a safe harbour provision and clarifying that deposit takers can use alternative approaches to satisfying the “wholesale client” criteria\]](#)

## Schedule 1 Transitional, savings, and related provisions

### Part 1 Provisions relating to this standard as made

#### 1 Assessing whether existing client meets definition

- (1) This clause applies for the purposes of assessing, under clause 6 or 7 as the case requires, a person who is, immediately before commencement, an existing client or associated person of an existing client.
- (2) A deposit taker must make the assessment at the relevant time. [see comments in submission]
- (3) The assessment must rely on information in the person's financial statements if the information is relevant to the assessment.
- (4) This clause overrides clause 8 and the definition of relevant time in clause 3, in respect of existing clients of a deposit taker.
- (5) In this clause—  
**existing client** means a person who is a client of the deposit taker immediately before this standard comes into force.  
**relevant time** means the beginning of the day on which this standard comes into force.

Made at Wellington on [day month year].

Reserve Bank of New Zealand

#### Explanatory note [Not commented upon]

*This note is not part of the standard but is intended to indicate its general effect.*

This standard is issued under the Deposit Takers Act 2023 (the **Act**). The standard prescribes matters relating to the country of incorporation of a licensed deposit taker, as contemplated by section 78(c)(ii) of the Act. It comes into force on 1 December 2028.

All licensed deposit takers under the Act are body corporates. In this regard, *see* section 16 of the Act. *Part 1* restricts incorporation of a deposit taker outside New Zealand.

The effect of this standard is that a deposit taker that is an overseas person can only carry on the business of a deposit taker if it meets specified requirements. Otherwise, it would have to

cease carrying on business as a deposit taker or become incorporated under New Zealand legislation.

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. Generally, the New Zealand business—

- must have assets of \$15 billion or less; and
- must be less than 50% of the deposit taker’s total business; and
- must be limited to wholesale clients.

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.

Different requirements apply in the case of an overseas licensed deposit taker that is the holding entity of a New Zealand licensed deposit taker (sometimes referred to as a dual-operating branch). In this case, the New Zealand business—

- must have assets of \$15 billion or less; and
- must be less than 50% of the deposit taker’s total business; and
- must be limited to large corporate or institutional clients.

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*. For these clients, the New Zealand business does not include the business of the New Zealand licensed deposit taker and its subsidiaries.

The 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.

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 large corporate or institutional clients (as the case requires). These assessments must occur after financial statements are available for every second financial year after the last assessment.

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**). 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.

|                                                                                                        |                                                                  |
|--------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| This is secondary legislation issued under the authority of the <a href="#">Legislation Act 2019</a> . |                                                                  |
| Title                                                                                                  | Deposit Takers (Incorporation outside New Zealand) Standard 2027 |
| Principal or amendment                                                                                 | Principal                                                        |
| Consolidated version                                                                                   | No                                                               |
| Empowering Act and provisions                                                                          | Deposit Takers Act 2023<br>section 72                            |

|                                           |                                                                                                                             |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Replacement empowering Act and provisions | Not applicable                                                                                                              |
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| End date (when applicable)                |                                                                                                                             |
| Consolidation as at date                  | Not applicable                                                                                                              |
| Related instruments                       | Not applicable                                                                                                              |

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