



Reserve Bank
of New Zealand
Te Pūtea Matua

Business Transfers, Holding Entities, and Restricted Activities Standard

Guidance Note

GN XX.1

Guidance Note version history

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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 Deposit Takers (Business Transfers, Holding Entities, and Restricted Activities) Standard 2027 (the **Standard**). This recognises that the Standard deals with technical subject matter and there may be no case law or other external reference points to assist with its interpretation. Guidance will assist individual deposit takers with their own compliance and support a more consistent approach across the industry.

The Guidance assists by:

- Outlining the context and purpose of the Disclosure Statements 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 good practice in complying with the Disclosure Statements Standard.

To assist in using the Guidance:

- Terms that are defined in the Disclosure Statements 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 Disclosure Statements Standard. Sections of this Guidance have the same headings as sections of the Disclosure Statements Standard. Clause numbers are those from the Disclosure Statements Standard.
- In event of any conflict between the text of the Standard and this Guidance, the Disclosure Statements Standard prevails. The Disclosure Statements 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, it is for a court to determine the correct interpretation of the Disclosure Statements Standard.
- The Reserve Bank will keep under constant review and update the Guidance. We may change our Guidance or our interpretation of the Disclosure Statements 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 to seek their own professional advice, as it is their responsibility to determine their obligations and ensure that they comply with the requirements of the Disclosure Statements 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

The Standard sets out restrictions and other requirements related to the business activities of deposit takers. These include:

- Business transfers
- Holding entities
- Insurance business
- Non-financial activities
- Locally-incorporated deposit takers setting up subsidiaries or branches overseas
- Issuing covered bonds.

All restrictions and requirements apply to all three groups of New Zealand incorporated deposit takers (i.e. Group 1, Group 2 and Group 3). For overseas licensed deposit takers, restrictions on significant business transfers, acting as an *insurer*, and carrying on non-financial activities apply.

Context and purpose of the Standard

The Standard contributes to financial stability by limiting the ability of deposit takers (or their holding entities) to engage in certain business activities or transactions that can pose a risk to the soundness of individual deposit takers and, in some cases, the stability of the financial system.

The policies covered in the Standard are largely drawn from the prudential regime for registered banks under the Banking (Prudential Supervision) Act 1989 and adapted for the DTA context.

Part B. Guidance on the Standard

Part 1: Preliminary provisions

Interpretation (Clause 3)

1. Consistent with section 20 of the Legislation Act 2019, words or expressions used in the Standard have the same meaning as in the DTA. For example, 'debt security' has the same meaning as in section 6 of the DTA (which in turn refers to section 8(1) of the Financial Markets Conduct Act 2013).

Transitional, savings, and related provisions (Clause 4)

2. See discussion on Part 1 of Schedule 1 below.

Application (Clause 5)

3. The Standard applies to all deposit takers, but some provisions apply only to certain deposit takers. For example, overseas deposit takers are subject to a subset of the restrictions that are applicable to licensed deposit takers that are incorporated in New Zealand.

Part 2: Business transfers

4. Subpart 5 of Part 2 of the DTA covers certain changes that require the Reserve Bank's approval (section 49 of the DTA covers the assessment criteria for that approval). These changes relate to:
 - 4.1. Obtaining significant influence over a deposit taker (sections 39-40)
 - 4.2. Significant transactions (section 41)
 - 4.3. Amalgamation (sections 42-43)
5. These requirements are largely set out in the DTA itself. But, for significant transactions, section 41 provides for certain matters to be specified in a standard, including:
 - 5.1. Other significant transactions of a kind for which Reserve Bank approval is required (per section 41(2)(b))
 - 5.2. How to determine whether a part of a business is material for the purposes of Section 41 (per section 41(3)).
6. Part 2 of the Standard covers these matters and related notification requirements.

Excluded transactions (Clauses 6 and 7)

7. Clauses 6 and 7 set out certain transaction that do not require approval under section 41 of the DTA on the basis that they are neither material for the purposes of section 41(3) nor other significant transactions for the purposes of section 41(2)(b).
8. The intent of Clause 6 is to allow deposit takers to undertake intra-group business transfers without prior approval, while addressing the risk that such transfers are used for the purposes of regulatory arbitrage. Note that this clause does not apply to transfers between a deposit taker and a holding entity or a subsidiary of a holding entity that is not itself a subsidiary of the deposit taker.

9. The intent of clause 7 is to allow deposit takers to buy and sell liquid assets of a minimum credit quality without prior approval. This reflects the desirability of deposit takers being able to sell liquid assets at short notice in the event of a liquidity stress.

New Zealand business of overseas deposit taker and subsidiaries (Clause 8)

10. Clause 8 is relevant to overseas deposit takers that are a 'dual-operating branch' as described in the Guidance for the Deposit Takers (Incorporation outside New Zealand) Standard 2027.
11. The intent of Clause 8 is for the materiality of business transfers to be assessed on a consistent basis for dual-operating branches and other overseas deposit takers. As such, the business of any New Zealand licensed deposit taker subsidiaries (and subsidiaries thereof) does not impact an overseas deposit takers thresholds for approval or notification.

Valuation of total assets or consideration (Clause 9)

12. Clause 9 defines how the value of transaction is to be assessed, for the purposes of Part 2 of the standard. Note that, for transactions that involve the transfer of both assets and liabilities, deposit takers are expected to consider the value of the business as a whole, rather than considering the value of assets in isolation. Where consideration is payable after the acquisition date, deposit takers are expected to include an estimate of the net present value of later payments in the value of consideration.

Transfer of material part of a deposit taker (New Zealand) business (Clauses 10 and 11)

13. Clauses 10 and 11 determine whether a part of a business is material for the purposes of Section 41. The materiality test comprises two parts:
- 13.1. A **total asset test**, which considers whether the amount of the assets transferred exceeds a threshold based on:
- 13.1.1. For New Zealand licensed deposit takers, the total assets of the deposit taker and its subsidiaries (if any).
- 13.1.2. For overseas licensed deposit takers, the total assets of the New Zealand business of the deposit taker, subject to the exclusions in clause 8 (discussed above).
- 13.2. A **CET1¹ test**, which considers whether the value of the consideration (defined as per clause 9) exceeds a threshold based on the total *CET1 capital* of the deposit taker. This test only applies to deposit takers incorporated in New Zealand.
14. The intent of having two tests is to better reflect the magnitude of different types of transaction. Some transactions may involve a large amount of assets relative to the consideration (for example, if the transaction involves a combination of assets and liabilities). In other cases, transactions may involve relatively few assets relative to the consideration (for example, the sale of a fee-driven financial services business).
15. The threshold in each test is determined using a backward-looking measure of total assets or CET1 as at the deposit taker's most recent balance date. However, the intent is for deposit

¹ Note that this term may be updated to align with the Capital Standard, which is under development at the time of drafting.

takers to evaluate the size of the transaction on a forward-looking basis, reflecting the expected impact of the transaction on its financial position should it take place.

16. Both tests apply to either a single transaction or a series of transactions. The policy intent is that splitting up a business transfer into multiple transactions should not avoid the need for Reserve Bank approval under section 41.
17. Note that the materiality tests in Part 2 of the Standard are not relevant to the restriction on carrying on business other than providing financial service in clause 20.

Transfer of subsidiary business (Clause 12)

18. Clause 12 defines a kind of significant transaction for the purposes of section 41(2)(b). Under section 41(2)(a), Reserve Bank approval is only required where a deposit taker *itself* is transferring a business to another person. The intent of clause 12 is to also require Reserve Bank approval where a deposit taker's subsidiary holds the business that is being transferred.

Transfer of business to deposit taker or subsidiary (Clause 13)

19. Clause 13 defines another kind of significant transactions for the purposes of section 41(2)(b). Under section 41(2)(a), Reserve Bank approval is only required where a deposit taker is transferring a business to another person. The intent of clause 13 is to also require Reserve Bank approval where a deposit taker (or a subsidiary thereof) is the acquiring party. Significant acquisitions could present risks to a deposit taker's safety and soundness that are not suitably addressed through existing prudential requirements.
20. The total assets test and CET1 test that apply to business transfers under section 41(2)(a) apply in an analogous way to significant acquisitions. The main difference is that the total asset test considers the expected *increase* in assets resulting from the business transfer.

Notifiable transactions (Clauses 14, 15 and 16)

21. Clauses 14 to 16 set out notification requirements for significant transactions that do not exceed the threshold for approval under section 41 but could still represent a substantial change in a deposit taker's business.
22. When complying with these clauses, we expect deposit takers to send notifications to their allocated supervisor. Note that, for the purposes of this standard, working day is as defined in the Legislation Act 2013.
23. As a matter of prudential good practice, deposit takers are expected to inform their allocated supervisor of any business transfers that might impact their safety and soundness, regardless of whether the transfer exceeds the thresholds set out in the Standard.

Part 3: Holding entities

Holding entities (Clauses 17 and 18)

24. Clauses 17 and 18 relates to the types of holding entity that a deposit taker is permitted to have in its licensed deposit taker group. Note that "licensed deposit taker group" is defined in section 6 of the DTA.
25. The intent of this restriction is to address the risk that the business of a New Zealand incorporated holding entity endangers the safety and soundness of a licensed deposit taker or

broader financial stability. This mitigates potential limitations in effective supervision and the potential for regulatory arbitrage. This also mitigates possible contagion risk from entities that are inside the group, but outside the licensed deposit taker. Note that the restriction does not apply to subsidiaries of holding entities that are not themselves holding entities of the deposit taker (for example a sister company).

Part 4: Restricted Activities

Restrictions on acting as insurer (Clause 19)

26. Clause 19 relates to the maximum permitted size of a deposit taker's insurance activities. The limit is applied on the consolidated financial position of the banking group headed by the deposit taker. Clause 19 does not restrict the marketing or distribution of insurance products by a deposit taker.

Restrictions on carrying on business other than providing financial service (Clause 20)

27. Clause 20 relates to the maximum permitted size of a deposit takers' non-financial service business activities in aggregate.
28. Under Section 6 of the DTA, the meaning of 'financial service' is as defined in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
29. As a matter of prudential good practice, deposit takers are encouraged to consider any risks to their safety and soundness that may arise from carrying out non-financial activities, including where these activities are permitted under the Standard.
30. The materiality threshold for conducting non-financial service business is based on the concept of material information when preparing financial statements in accordance with *generally accepted accounting practice*. The policy intent reflects that undertaking a material non-financial activity (or range of non-financial activities that are collectively material) could present risks to a deposit taker's safety and soundness that would be difficult to effectively assess, supervise and manage.

Transitional arrangements

31. Clause 1 of Schedule 1 provides for deposit takers that were a licensed non-bank deposit taker under the Non-bank Deposit Takers Act 2013 to, under certain circumstances and with the approval of the Reserve Bank, temporarily carry on material non-financial service business.
32. The Reserve Bank intends to implement conditions of approval such that deposit takers are not permitted to carry on such activities after a specified date or actively expand the activities before that date. Pursuant to clause 2(a) the Reserve Bank will ensure that the deposit taker has a reasonable period to cease carrying on that business. Note that the Reserve Bank may amend conditions of approval within the constraints of this clause, for example if a change in market conditions means that a longer transition period is warranted.
33. Entities that may be impacted by this provision are encouraged to discuss the nature of their non-financial activities, and their plans for exiting these activities, with the Reserve Bank prior to licensing.

Restriction on carrying on deposit-taking business outside New Zealand (Clause 21)

34. Clause 21 sets out an approval requirement for deposit takers seeking to carry on deposit-taking business outside New Zealand. In complying with this clause, we expect deposit takers to seek the approval of the Reserve Bank before making application to the relevant overseas supervisor or licensing authority.
35. Note that the transitional provisions in clause 2 of Schedule 1 are relevant to this clause.

Restriction on issuing covered bonds (Clause 22)

36. Clause 22 relates to the maximum permitted amount of assets that a deposit taker is permitted to encumber for the benefit of covered bond holders. The policy intent is to allow for deposit takers to use covered bonds as a funding option, while limiting the extent to which doing so reduces the assets over which depositors and other unsecured creditors would have a claim in the winding up of the deposit taker.