



Reserve Bank
of New Zealand
Te Pūtea Matua

Due diligence duty

Guidance Note

Draft for consultation

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Contents

Use and status of the Guidance	4
Introduction and overview	6
Nature of the duty	6
Scope of the duty and relationship to “prudential obligations”	6
The duty in the wider legal framework	7
Guidance on the due diligence duty	8
The due diligence duty (Sections 93-94)	8
The size and nature of the business of the deposit taker	8
Their position and the nature of their responsibilities	9
A note on proportionality	10
What is due diligence? (Section 95)	11
Reliance on information and advice (Section 96)	15
Respective roles and responsibilities of directors and senior managers (Section 97(2))	16
Evidence of compliance	18
Pecuniary penalties	19
Annex	21
Annex 1: Useful terms	21

Use and status of the Guidance

This Guidance relates to the due diligence duty for “directors” and “New Zealand chief executive officers” in the Deposit Takers Act 2023 (the **DTA**).

This guidance is issued consistent with section 97 of the DTA. It is not itself a standard or other instrument with legislative effect.

The due diligence duty under Subpart 3 of Part 3 of the DTA commences when the DTA comes into force.

References to directors

Throughout this Guidance, we generally refer to “directors” only for brevity, but this should be read to include the New Zealand chief executive officer (**New Zealand CEO**) of overseas licensed deposit takers (**branches**).

Alternate directors, when acting, are also subject to the due diligence duty. The obligation and the degree of care, skill and diligence expected of directors and New Zealand CEOs do not decrease for shorter terms or appointment periods.

Directors of overseas deposit takers are not in scope of the due diligence duty. Senior managers (other than the New Zealand CEO of a branch) are not in scope either. However, the Guidance provides discussion on the “respective roles and responsibilities of directors and senior managers”.

Defined terms and references to the DTA

Throughout this Guidance document we use the term “the **duty**” to describe the due diligence duty set out in sections 93 and 94 of the DTA.

Terms that are defined in the Deposit Taker Standards (the **Standards**) or the DTA are italicised in this Guidance and have the same meaning as in that legislation.

This Guidance is designed to be read alongside the DTA. The section numbers are those from the DTA, unless otherwise stated.

Use of guidance

In event of any conflict between the text of the DTA and this Guidance, the DTA prevails. The DTA is primary legislation. This Guidance represents our view and is therefore an authoritative indicator of that view. However, it is for a Court to ultimately decide the correct interpretation of the DTA.

Section 159(2) of the DTA requires that in the case of a contravention of section 93 or 94, the Court must also have regard to the Guidance published under section 97 (this document).

This Guidance is not legal advice. We encourage directors and New Zealand CEOs to seek their own professional advice, as it is their responsibility to determine what they need to do to meet their duty. It is also their responsibility to understand what the deposit taker needs to do to comply with the prudential obligations.

This Guidance supports directors in understanding their duty, but it doesn't provide Guidance on other prudential obligations.

The examples in this Guidance are for illustrative purposes only, and they do not limit the due diligence duty nor the discharge of other directors' responsibilities.

Some examples are included in a shaded box like this one.

For information on our approach to supervision or enforcement, see publications referred to in this Guidance under "Approach to enforcement", which would apply to any action proposed to be brought with respect to the duty.

Publication date, feedback, and updating

The Guidance relates to the version of the DTA as at 31 July 2025.

We will periodically review and update the Guidance. We may change our Guidance or our interpretation of the DTA if we consider this appropriate. We do not do this lightly and will consult deposit takers, directors, New Zealand CEOs and professional bodies for directors¹ in advance if we are proposing to amend the Guidance.

We welcome feedback on the Guidance at any time.

¹ Consistent with section 97 of the DTA.

Introduction and overview

1. The DTA establishes a positive duty on directors to exercise due diligence to ensure that the deposit taker complies with its prudential obligations.
2. The duty is an individual duty on every director of a licensed deposit taker and branch New Zealand CEO.
3. Directors have significant influence over the operations of a deposit taker. Given this influence, and the important role of deposit takers in the New Zealand financial system, director accountability is an important pillar of the DTA's prudential framework.
4. An individual accountability regime complements the effectiveness of prudential regulation and supervision of prudential obligations by clarifying the responsibility of directors within the prudential framework and incentivising directors taking proper steps to structure and systematise compliance.
5. A director could face a pecuniary penalty for a contravention of the duty. The purpose of a penalty is to deter and punish wrongdoing. This penalty is distinct from the penalties that can be sought against the deposit taker itself for breach of prudential obligations.

Nature of the duty

6. Exercising due diligence includes taking reasonable steps to ensure that the deposit taker designs and carries out adequate procedures to ensure compliance, has methods for systematically identifying deficiencies, and promptly remedies any deficiencies discovered.
7. The duty is an ongoing obligation. It is not a point-in-time obligation, nor "set-and-forget". We expect directors to have a sound understanding of the deposit taker's prudential obligations, and to take reasonable steps to put in place the systems and procedures required to ensure those obligations are being complied with.
8. We expect directors not to take a "tick box" approach to compliance with the duty. For example, we do not expect specific documentation and/or committees solely generated for the purpose of proving compliance with the duty. Evidence of compliance with the duty is likely to come from the documentation produced by the deposit taker when complying with its prudential obligations.
9. The duty, combined with the prudential obligations, set out a robust framework for governance practices across industry.

Scope of the duty and relationship to "prudential obligations"

10. The duty operates differently than those under general law (such as the directors' duties in sections 131 to 138 of the Companies Act 1993). It relates specifically to the prudential obligations as defined by the DTA and is to support the prudential and financial stability purposes of that Act.

Prudential obligations

A prudential obligation means an obligation imposed by or under any of the following (s6):²

- the DTA and its regulations;
- standards issued under the DTA;
- conditions of licence issued under the DTA;
- a direction issued under the DTA.

11. This Guidance primarily relates to prudential obligations that arise under the Standards and licence conditions. There are various specific duties or prohibitions arising under the DTA and that may arise under regulations, commonly accompanied by their own sanctions, including offences.
12. Different prudential obligations could commence at different points in time. The due diligence duty relates to the prudential obligations that are in force at the time.

The duty in the wider legal framework

13. The duty complements, for the prudential regulatory regime, obligations that directors are already subject to under existing obligations across various statutes and the common law.
14. These obligations include:
 - The Companies Act 1993 (see sections 131-138a): contains provisions to ensure that directors act in the best interests of the company, and exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances.
 - The Building Societies Act 1965 (see section 107): provides that directors or other officers of a society may not be exempt from, or indemnified against, a liability which arises from any negligence, breach of duty, or breach of trust which they may be guilty of in relation to the society.
15. New Zealand CEOs of branches may be subject to individual accountability regimes for senior managers in their home jurisdictions.
16. These general obligations may evolve over time. We expect directors to stay up to date with these general obligations and understand how the duty fits within the wider obligations arising from other legislation, and their interactions with other prudential obligations.

² Note that obligations imposed by or under the [Anti-Money Laundering and Countering Financing of Terrorism Act 2009](#) or regulations made under that Act are excluded from the meaning of prudential obligations for the purpose of the due diligence duty (see s93(3) and 94(3)).

Guidance on the due diligence duty

The due diligence duty (Sections 93-94)

17. The DTA requires every director to “exercise due diligence to ensure that the deposit taker complies with its prudential obligations”.³
18. The duty is an obligation on individuals, unlike the prudential obligations on deposit takers.⁴ This distinction is key to understanding the duty.
19. In exercising their due diligence, every director “must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances”.⁵
20. Directors will be measured against the standard of a “reasonable director”, which is an objective standard. When thinking about the “reasonable director test” that directors may be held against in relation to the duty, directors may find it helpful to consider the matters that the court must have regard to under section 159(1). See the “Pecuniary penalties” section of this Guidance for more information.
21. What is considered reasonable will depend on the circumstances. These circumstances include the size and nature of the business and the position and responsibilities of the director, each addressed below. We expect directors will take their circumstances into account when designing the systems and processes contemplated under section 95 of the DTA.
22. We expect directors to consider any other relevant factors that would affect what a reasonable director would do in the same circumstances. The additional factors will depend on the specific case and context.

The size and nature of the business of the deposit taker

23. In exercising the duty, the DTA requires directors to take into account “the size and nature of the business of the deposit taker”.⁶ These factors will shape directors’ responsibilities.

Example 1

Some factors may be:

- The fact that a deposit taker is of a smaller scale, or has a less complex business model, may influence the design of compliance systems or require a different approach to governance due to the nature of the risks that require oversight.
- A large and complex business model may be more likely to generate a greater range of interconnected risks that shape the governance approach.
- Directors of larger entities may have available reports and assurance from a wider set of more resourced internal functions to rely on.
- Branches can also vary significantly in size and business model, including whether they are dual-operating or stand-alone. We expect the New Zealand CEO to take these elements into account when exercising their due diligence.

³ Sections 93(1) and 94(1), for directors and New Zealand CEOs, respectively.

⁴ Note that there are also a variety of offences in the DTA for specific breaches that are outside the scope of the core pecuniary penalty provision (section 157) because they do not arise from Standards or license conditions.

⁵ Sections 93(2) and 94(2), for directors and NZ CEOs, respectively.

⁶ Sections 93(2)(a) and 94(2)(a), for directors and New Zealand CEOs, respectively.

24. See “A note on proportionality” at the end of this section for a discussion of three different uses of “proportionality” in the prudential framework.

Their position and the nature of their responsibilities

25. The DTA requires directors to take into account “*the position of the director and the nature of the responsibilities undertaken by the director*” when exercising due diligence.⁷

26. While boards customarily act as a collective, the duty is an obligation on each individual director. Entities generally have scope in the ways they structure their governance arrangements and delegations and the DTA anticipates that their individual director roles may alter the expectations of each director.⁸

27. These expectations may vary depending on the specific situation, including, for example, the committees that the director is part of, whether they are also a Chair or Deputy Chair, whether they act in an executive or non-executive role, or as an independent director.

28. When directors are performing their duty regarding prudential obligations that relate to areas where they have a greater level of influence or involvement, the exercise of care, diligence and skill expected of them will vary accordingly.

Example 2

A Chair has greater responsibilities in a deposit taker’s governance, for example in ensuring the Board reaches clear decisions and that those decisions are properly recorded. They also act as a link between the Board and the CEO/Senior Managers, which is key to implementing decisions.

Risk, Audit, or other committees may involve more specialised roles and purposes, requiring committee members to ensure sufficient time and attention is given to the designated matters. Directors who sit on these committees may engage more directly with the relevant materials. These committees will produce reports and recommendations for the Board. Directors who are not members of these committees may rely more on information supplied by them in appropriate circumstances (see s96(2)(c) regarding reliance “in relation to matters within the other director’s or committee’s designated authority”).

Steps taken by executive directors may be different compared to non-executive directors when exercising the duty relative to the business and operations. We would generally expect executive directors to utilise their more detailed operational knowledge in assessing the relevant matter. Executive directors could be expected to be in a stronger position to assess whether an employee who provides reports is reliable and competent (as would be required where reliance is made on s96(2)(a)).

Non-executive directors could rely more on information provided by the executive director in appropriate circumstances. The former should make proper inquiry (s96(3)(b)) in relation to those matters, including in order to assess the employee’s reliability and competence in relation to them (s96(2)(a)).

⁷ Sections 93(2)(b) and 94(2)(b), for directors and NZ CEOs, respectively.

⁸ See section 96, discussed below.

29. Consistent with s96(3)(b), we expect directors to make proper inquiries and challenge other directors and Senior Managers when their role or other circumstances warrant it, in accordance with the Deposit Takers (Governance) Standard 2027 (**Governance Standard**) and their due diligence duty.⁹

A note on proportionality

30. Proportionality is incorporated in the prudential framework in three ways:

- **Proportionality principle:** the “*desirability of taking a proportionate approach to regulation and supervision*” is a principle that is applied across our functions, powers and duties in the DTA. The Proportionality Framework¹⁰ that we have published under s77 of the DTA sets out how we take into account the proportionality principle when developing Standards. This shapes the nature of the prudential obligations for deposit takers that the duty relates to.
- **Proportionality in the duty:** the DTA (see s93(2)(a) and s94(2)(a)) sets out that in exercising the duty a director should take into account “the size and nature of the business of the deposit taker” in determining what action a “reasonable director” would take. This section aims to support each director in determining how they take this factor into account.
- **Enforcement Framework:** the “proportionality principle” that is part of the “Enforcement Principles and Criteria” in our Enforcement Framework.¹¹ These apply to all matters of serious non-compliance that are being dealt with by our enforcement function. An enforcement action regarding a contravention of the duty would be a court response, and these “will almost always be enforcement-led.”¹²

⁹ Requirements relating to independent directors are set in the Governance Standard.

¹⁰ See [Proportionality Framework for developing standards under the Deposit Takers Act](#).

¹¹ See pages 7-9 of our [Enforcement Framework](#).

¹² See “Court responses” on page 5 of our [Enforcement Framework](#).

What is due diligence? (Section 95)

32. The DTA defines due diligence as including taking reasonable steps to ensure that the deposit taker:
- “(a) requires its employees and agents to follow procedures, or has implemented automated procedures, that are designed to ensure compliance with the prudential obligations; and*
 - (b) has in place methods for systematically identifying deficiencies in the effectiveness of the procedures for compliance; and*
 - (c) promptly remedies any deficiencies discovered.”*
33. This is not an exhaustive definition of what due diligence means. The DTA defines due diligence as an open list. Due diligence could include other steps; what these steps could include will depend on the individual circumstances.
34. Directors cannot avoid their responsibility for the due diligence duty. While directors may delegate to management the implementation and operationalisation of the tasks needed to ensure there are procedures for compliance, appropriate controls, and remediation (when needed), the duty itself cannot be delegated.
35. Directors need to maintain an ongoing understanding, appropriate to their role, of the deposit taker’s prudential obligations and of the systems for compliance and their effectiveness, to support their own compliance with the duty.
36. Information and advice can be relied upon to support exercising their duty (refer to section on “Reliance on information and advice” below).

Procedures for compliance (s95(a))

37. Section 95(a) provides that procedures giving effect to the due diligence duty could be automated, or could require employees to follow them, or some combination of those things. Regardless of the degree of automation, we expect directors to take reasonable steps to satisfy themselves that:
- each system is designed to meet the deposit taker’s prudential obligations, and that reasonable assurance is obtained that the systems will work as intended (for instance, that appropriate testing was undertaken);
 - there is clear responsibility and accountability for the design and implementation of each procedure, and reporting on performance; and
 - there is sufficient resourcing allocated to the design, implementation, testing, and maintenance of those procedures.
38. Prudential obligations on the deposit taker may support a director in providing a basis for compliance with the duty.

Example 3

The Governance Standard requires a board to establish a delegation framework for its committees and senior managers, the Deposit Takers (Risk Management) Standard 2027 (**Risk Management Standard**) requires a deposit taker to put in place internal control structures, the Deposit Takers (Liquidity) Standard 2027 (**Liquidity Standard**) requires them to have a Contingency Funding Plan, and the Deposit Takers (Disclosure Statements) Standard 2027 (**Disclosure Statements Standard**) requires them to have a disclosure statement policy.

Requiring employees to follow procedures (s95(a))

39. Due diligence includes taking reasonable steps to ensure that the deposit taker *"requires its employees and agents to follow procedures, or has implemented automated procedures, that are designed to ensure compliance with the prudential obligations"* (s95(a)).
40. These steps could include ensuring that the deposit taker has processes to ensure the procedures are clearly documented and communicated, staff receive regular training on the procedures, and there are incentives (or no disincentives or barriers) to using the procedures.

Example 4

The Liquidity Standard requires a deposit taker to have procedures it requires its employees to follow, designed to ensure compliance with the requirement to maintain sufficient liquidity. Compliance with this requirement will support directors in complying with their duty in respect of the prudential obligation to maintain sufficient liquidity.

Further, the risk management framework and risk management policies and processes required by the Risk Management Standard will also support compliance with this part of the duty.

Controls for identifying deficiencies (s95(b))

41. Due diligence includes taking reasonable steps to ensure the deposit taker *"has in place methods for systematically identifying deficiencies in the effectiveness of the procedures for compliance"* (s95(b)). These methods must ensure the systematic identification of deficiencies and could include monitoring, internal assurance, and auditing.
42. These methods support compliance with the duty on an ongoing basis, including by ensuring there is proper monitoring of the outputs and outcomes from the procedures for compliance mentioned above. They also support the obligation of ensuring prompt remediation. We expect the design and monitoring of systems and procedures to operate as a feedback loop. This will support both the deposit taker's ongoing compliance with its prudential obligations and the director's ongoing compliance with the duty.
43. Deficiencies in the effectiveness of procedures could arise, for instance, from the procedures themselves (e.g., issues with an automated system) or from the use of those procedures by staff.

44. We expect directors to ensure there are mechanisms in place for them to receive and review reports on the procedures' effectiveness. We also expect directors to regularly review information covering the deposit taker's reporting of breaches of its prudential obligations, as it could provide information on "*deficiencies in the effectiveness of the procedures for compliance*". This may support directors' compliance with the due diligence duty (including under s95(c)).¹³
45. Prudential obligations may support a director's compliance with this aspect of the duty.

Example 5

The Risk Management Standard requires the deposit taker to have internal controls, and compliance and internal audit functions.

The Disclosure Statements Standard requires regular review of the disclosure statement policy to ensure that the policy remains fit for purpose.

46. The compliance function may support directors by identifying, reviewing, and monitoring the deposit taker's compliance risks. The internal audit function may support directors by providing assurances, audits, and assessing the deposit taker's policies, processes and internal controls' effectiveness.
47. Compliance with these and other requirements will support directors in ensuring there are appropriate controls, and also in receiving adequate reporting (s96).

Example 6

If a deposit taker was not complying with requirements in the Risk Management Standard (for instance, by not hedging its interest rate risk, or not appointing a Chief Risk Officer), this may indicate a breach of the duty under s93(1) or s94(1).

If the deposit taker didn't have in place the methods referred to in s95(b), this may be an indicator of directors failing to meet the aspect of the duty under s95(b).

If the deposit taker had methods, but they were not designed for "*systematically identifying deficiencies in the effectiveness of the procedures for compliance*" (s95(b)), that may also indicate directors failing to meet the aspect of the duty under s95(b).

Promptly remedying deficiencies (s95(c))

48. Due diligence includes taking reasonable steps to ensure that the deposit taker "*promptly remedies any deficiencies discovered*" (s95(c)). We expect directors to act promptly to ensure remediation when any deficiencies are discovered in the effectiveness of the procedures for compliance.
49. This step is informed by the previous aspect under s95(b). We expect directors to take reasonable steps to ensure that the identification and remediation of deficiencies inform the design, implementation, and maintenance of the procedures for compliance referred to under subsection "*Procedures for compliance (s95(a))*" of this Guidance.

¹³ See the current [Guidance on reporting by banks of breaches of regulatory requirements](#) [or the document that supersedes it upon DTA commencement].

50. The three aspects of s95 support ensuring the procedures for compliance are in place, working as intended, and remedied if necessary. This integrated approach to compliance supports a director's ongoing compliance with the duty, which in turn supports ongoing compliance of the deposit taker with its prudential obligations.

Example 7

One way in which the deficiencies could be discovered is when a breach occurs. Deposit takers are required to ensure they have methods for monitoring compliance with prudential obligations (s115), and to report contraventions (s116). Having proper systems and procedures in place to ensure compliance with these DTA obligations will support directors in becoming aware of potential deficiencies and acting promptly to remedy them.

If a deposit taker was breaching its liquidity requirements and the board did not take reasonable steps to ensure that the deposit taker promptly remedied the deficiencies discovered and complied with liquidity requirements, directors would be failing to meet the s95(c) aspect of the duty. This is regardless of the cause of the lack of prompt remediation (e.g., lack of risk expertise, challenge, oversight, escalation processes, etc).

51. Promptly remedying deficiencies does not mean that enforcement action will not be considered at a later stage. However, "responsiveness" is a criterion that is assessed under the Enforcement Framework¹⁴ and considers, among other things, whether an individual has taken steps to resolve the serious non-compliance.
52. Further, a deposit taker's compliance with requirements about information flows, delegations, compliance, assurance and reporting will support directors in receiving timely information (see s96) about deficiencies, to enable prompt action.
53. It would be possible that directors exercised due diligence to ensure that the deposit taker complies with its prudential obligations, and there was still a breach of a prudential obligation. In this case, directors' exercise of due diligence would entail promptly addressing the breach, and promptly remedying any deficiencies in the procedures for compliance.

¹⁴ See the "Enforcement Principles and Criteria" excerpted in section "Approach to enforcement" of this document, or on page 10 of our [Enforcement Framework](#).

Reliance on information and advice (Section 96)

54. Directors may rely on reports, statements, and financial data and other information, and on professional or expert advice (**information and advice**) in meeting their obligations under the duty.
55. This section may complement directors' understanding of their roles and responsibilities in respect of senior management (s97), who are also employees of the deposit taker.
56. There is an implied division of roles in senior managers and their subordinates providing information and advice, and directors relying on it (subject to conditions, see below). We expect that this is already common practice.
57. Section 96(2) sets out that directors may rely on information and advice prepared or supplied or given by any of the following persons:
- "(a) an employee of the licensed deposit taker whom A believes on reasonable grounds to be reliable and competent in relation to the matters concerned:*
 - (b) a professional adviser or expert in relation to matters which A believes on reasonable grounds to be within the person's professional or expert competence:*
 - (c) in the case of a director, any other director or committee of directors upon which A did not serve in relation to matters within the other director's or committee's designated authority."*
58. If a director is relying on information and advice in exercising due diligence, they must:
- "(a) act in good faith; and*
 - (b) make proper inquiry where the need for inquiry is indicated by the circumstances; and*
 - (c) have no knowledge that such reliance is unwarranted."*¹⁵
59. We expect that a director relying on information and advice will have enough knowledge of the deposit taker and its prudential obligations. This will allow them to ask the right questions, challenge information, and assess the reliability and competency of the subject matter experts.

¹⁵ See s96(3).

Respective roles and responsibilities of directors and senior managers (Section 97(2))

60. This section of the Guidance relates to directors of locally incorporated deposit takers in relation to their senior managers. It also relates to branches' New Zealand CEOs in relation to the other senior managers.
61. Directors and senior managers have distinct but complementary roles. Directors have responsibilities arising from the Companies Act 1993, case law, and prudential obligations, including the board responsibilities set out in the Governance Standard. Senior managers' respective responsibilities may be inferred in respect of the former.

Example 8

The Governance Standard requires the Board to ensure that directors and senior managers have the appropriate skills and experience to prudently govern and manage the deposit taker. A deposit taker's board may choose to delegate to management the design and implementation of the selection process for directors and senior managers, in a way that is consistent with its fit and proper policy.

However, it will remain the Board's responsibility to ensure that *"the selection process for directors and senior managers is consistent with the fit and proper policy set out in clause 22"*.¹⁶ Compliance with these requirements of the Governance Standard will support directors with their own compliance with the duty.

62. The Companies Act regulates the "Management of company" (s128 of the Companies Act) and the "Delegation of powers" (s130 of the Companies Act). We expect directors to inform their framing of their roles and responsibilities in light of these sections.
63. Directors may direct and supervise the management of the business and affairs of the deposit taker, and may delegate powers, subject to the deposit taker's constitution and to the Companies Act.
64. We expect directors to determine how they supervise and direct management, and the specific choice on what powers they delegate, and how. This may vary depending on the deposit taker's size and nature, as different deposit takers could have different business approaches.
65. The DTA and the Standards establish the prudential framework which places obligations and responsibilities on the deposit taker and the Board. The prudential obligations set out the framework for the relationship between directors and senior managers.
66. An overarching prudential obligation is that the Board is responsible for the prudent governance of the deposit taker, including its oversight and strategic direction.¹⁷

¹⁶ See clause 10 of the Governance Standard "Skills and experience of directors and senior managers".

¹⁷ See Governance Standard - Part 2 "Responsibilities of board".

Example 9

Some Standards elaborate on roles and responsibilities between the board and senior managers in relation to specific topics. For instance, see Part 5 of the Risk Management Standard “Organisational responsibilities and practices”, or the Guidance on clause 64 of the Disclosure Statements Standard relating to “Responsible person in respect of disclosure statement policy”.

67. Further, the deposit taker’s compliance with fitness and propriety requirements will support directors and senior managers in fulfilling their respective responsibilities, including ensuring that suitable persons are responsible for implementing, supervising, and remedying the procedures for compliance.
68. Directors must ensure their compliance with the duty, and their responsibility includes ensuring their compliance with the three elements under s95.
69. In practice, a director’s role when exercising the duty may include:
 - Direction: directing and requiring senior managers to undertake key tasks to fulfil the deposit taker’s prudential obligations, approving policies and procedures developed by senior management, setting the approach to resource allocation and prioritisation, and encouraging a sound risk management culture (see Risk Management Standard).
 - Supervision: requesting and reviewing reports (see s96) from, and making proper inquiry of, senior managers; and overseeing the entity’s performance, risk management, and compliance.
70. Senior managers are accountable to the Board and must operate within the authority delegated to them. See s130(2) of the Companies Act for responsibilities of the Board when delegating powers, including monitoring of the exercise of those powers.
71. We do not expect directors to carry out management-like functions. For example, while the Board must approve the fit and proper policy, it is not their responsibility to write nor to operationally implement the policy. Policies and procedures generally will be developed by or under senior management, for approval by the Board.

Evidence of compliance

72. We expect evidence of directors' compliance with their duty to be clear from the range of documentation prepared through prudently governing the deposit taker and complying with the Standards and other prudential obligations.
73. We do not expect specific documentation and/or committees solely generated for the purpose of proving compliance with the duty. We expect directors to not take a "tick box" approach to compliance with the duty.
74. The duty relates to a broad array of prudential obligations. The documents and procedures which support compliance with these obligations are likely to provide evidence of compliance with the duty.

Example 10

Some of the documents and procedures mentioned in paragraph 74 could include:

- formalised procedures (approved policies and processes) and controls approved by the board (see s95(a) and (b));
- board reports (for instance audits, assurance, breaches) (see s96);
- minutes from Board and committee meetings, that may show challenge, inquiries, requests for reports, and actions taken to address deficiencies (see s96 and 95(c), respectively);
- more broadly, minutes and other documents that may show decisions, actions, and other reasonable steps taken to ensure that the deposit taker complies with its prudential obligations.

75. The above materials are normally shared with us in the course of normal supervision.

Pecuniary penalties

77. If a director contravenes the duty, they are personally liable and may face a pecuniary penalty determined by a court, on the application of the Bank (see s157(1)(d) and (e)).
78. The maximum amount of a pecuniary penalty that an individual may be ordered to pay under the above cases is \$1,000,000 (see section 158(3)).
79. A pecuniary penalty for a contravention of the duty is distinct from the penalties that can be sought, primarily against the deposit taker itself, for breach of prudential obligations.

Approach to enforcement

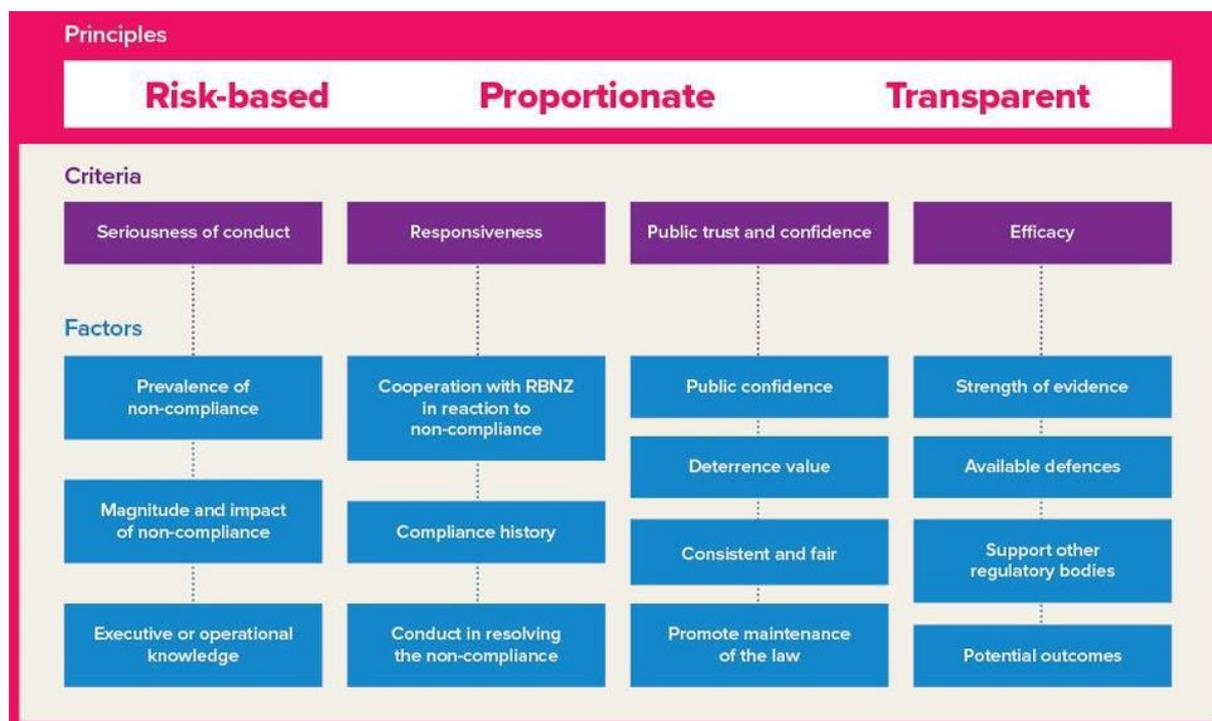
80. While this Guidance provides our views on the due diligence duty, our approach to this duty takes place under and consistently with our general prudential policies and is subject to the guidelines we have published in that regard. For example:
 - Our *Statement of Prudential Policy* sets out how our regulatory response model takes a proportionate and staged approach to supervision and enforcement action.¹⁸ The duty and associated penalties are a part of the framework for ensuring compliance with the DTA.
 - Our *Enforcement Framework*¹⁹ outlines our regulatory response model to enforcement. The Enforcement Framework informs our approach to applying our enforcement discretion to a breach of the duty.
81. The Enforcement Framework states that proceedings against individuals may be taken when we believe they have breached their statutory obligations and the non-compliance is serious, repetitive, systemic, or causes serious harm.²⁰

¹⁸ See our [Statement of Prudential Policy](#).

¹⁹ See our [Enforcement Framework](#).

²⁰ See page 5 of our [Enforcement Framework](#).

82. See below a diagram of the Enforcement Principles and Criteria from our Enforcement Framework. We apply the Principles and Criteria when determining an appropriate response to serious non-compliance.



83. When thinking about the “reasonable director test” that directors may be held against in relation to the duty, directors may find it helpful to consider the matters that the Court must have regard to when determining whether to make a pecuniary penalty order.²¹ These may inform directors’ understanding and exercise of the duty and the considerations of what a reasonable director may do. The matters include:

- the extent to which the conduct undermines the purposes of the DTA;
- any loss or damage caused by the conduct;
- whether the person has taken steps to avoid or mitigate any adverse effects arising from their conduct;
- whether the conduct was intentional or reckless;
- the circumstances of the conduct;
- whether the person has previously engaged in similar conduct; and
- any other matters the court considers relevant.

²¹ See section 159(1) of the DTA.

Annex

Annex 1: Useful terms

84. Consistent with section 20 of the Legislation Act 2019, words or expressions used in this Guidance have the same meaning as in the Deposit Takers Act 2023 (DTA) or referring legislation.

85. This section brings together terms that are used or defined under s6 of the DTA, and that the reader may find useful to understand the due diligence duty. These are:

- **prudential obligation** (see box on page 5)
- **standard** means a standard issued under subpart 2 of Part 3
- **applicable standard**, in relation to a person, means a standard issued under subpart 2 of Part 3 that applies to the person
- **regulations** means regulations made under the DTA
- **director** (for companies) means any person occupying the position of a director of the company by whatever name called
- **New Zealand chief executive officer**, in relation to an overseas deposit taker, means—
 - (a) the most senior officer of the deposit taker who is ordinarily resident in New Zealand; or
 - (b) another person who may be nominated by the deposit taker and agreed to in writing by the Bank
- **senior manager**, in relation to a person (A), means a person who occupies any of the following positions in respect of A (by whatever name called):
 - (a) if A is an overseas person,—
 - (i) New Zealand chief executive officer:
 - (ii) New Zealand chief financial officer:
 - (b) in any other case,—
 - (i) chief executive:
 - (ii) chief financial officer:
 - (iii) a manager who reports directly to the chief executive
- **court** means, in relation to any matter, the court before which the matter is to be determined (see section 187, which confers exclusive jurisdiction on the High Court in proceedings other than proceedings for offences, banning orders, and certain other matters)
- **information** includes any data, forecast, or document