

The Treasury

Reserve Bank of New Zealand Institutional Arrangements Information Release

July 2020

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Cabinet Economic Development Committee

Minute of Decision

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Reserve Bank Act Review: Further Policy Matters for the Institutional Bill

Portfolio Finance

On 18 March 2020, the Cabinet Economic Development Committee (DEV):

Information gathering

- 1 **agreed** that the Reserve Bank of New Zealand (the Bank) may collect information for the purpose of performing its central banking and financial system oversight functions from any:
 - 1.1 financial service provider;
 - 1.2 person involved in the distribution and management of bank notes and coins;
 - 1.3 person who holds information relating to, or on behalf of, those persons;
 - 1.4 body corporate that is a related party of a body corporate named in paragraphs 1.1 or 1.2 above, or was formally a person named in paragraphs 1.1 or 1.2 in respect of actions of that former person;

- 2 **agreed** that the information collected must relate to the business of the person, and not to the affairs of a particular customer or client;

- 3 **agreed** that a person who fails to supply required information be subject to an infringement offence with a maximum:
 - 3.1 fee of \$1,000 for individuals, and \$3,000 for body corporates;
 - 3.2 fine of \$3,000 for individuals, and \$9,000 for body corporates;

- 4 **agreed** that a person who purposefully provides false or misleading information, or purposefully fails to provide information, be subject to a criminal conviction with indicative penalties in the range of:
 - 4.1 \$20,000 - \$50,000 for an individual;
 - 4.2 \$100,000 - \$200,000 for a body corporate;

- 5 **agreed** that persons who provide information will have standard legal protections from self-incrimination and protection of profession privilege;

- 6 **agreed** that the provisions of the Reserve Bank of New Zealand Act 1989 (the Act) that remove a person's protections against self-incrimination be repealed (sections 175A, 175B);
- 7 **agreed** that:
- 7.1 collected information be required to be kept confidential, with disclosure being permitted only if specified grounds are met;
- 7.2 it be an offence for a person to otherwise intentionally disclose confidential information;
- 8 **agreed** that information otherwise required to be released under the Official Information Act 1982 only be able to be disclosed by the Bank if the specified disclosure grounds referred to in paragraph 7 above are met;
- 9 **agreed** that the indicative maximum penalty for the offence in paragraph 7 above be broadly aligned with a level 3 offence under the Financial Markets Infrastructure Bill (\$50,000 for an individual);
- 10 **agreed** that:
- 10.1 the Bank be able to require that information collected under the above power be audited or reviewed by an auditor, or other suitably qualified reviewer approved by the Bank, where it reasonably considers that information to be inadequate or inaccurate;
- 10.2 it be an offence to fail to comply with this requirement;
- 11 **agreed** that the indicative penalty for the offence referred to in paragraph 10 above be in the range of:
- 11.1 \$20,000 - \$50,000 for an individual;
- 11.2 \$100,000 - \$200,000 for a body corporate;

Information sharing

- 12 **agreed** that the Bank be enabled to share any information it holds with a defined set of agencies, where that information would assist those agencies in the performance of their functions (this would include members of the Council of Financial Regulators, Statistics New Zealand, the Serious Fraud Office, as well as other prescribed agencies);
- 13 **agreed** that release of such information be permitted under the confidentiality provisions in the Bank's Acts, subject to any conditions the Bill provides for that release;
- 14 **agreed** that the Bank be able to set conditions in relation to shared information, with the penalty for wilful breach of conditions in the range of \$200,000 - \$300,000;
- 15 **agreed** that the Bank be able to put in place confidentiality orders in respect of any information it has released under any provision in the Bank's Acts, with penalties in the range of \$200,000 - \$300,000;

Liability and indemnity

- 16 **agreed** that individuals acting for the Bank be protected from liability in the course of their duties when acting in good faith, except in relation to specified crimes;
- 17 **agreed** to apply the Crown entities framework for indemnities and insurance to employees, directors and office holders, which allows the Bank to provide an indemnity or effect insurance for civil liability when the person is acting in good faith;
- 18 **agreed** that statutory managers be indemnified by the Crown, through a permanent legislative authority, for any liability arising in the exercise of their statutory management functions when acting in good faith;
- 19 **agreed** that the Bank be protected from any liability when exercising its powers or performing its policy and regulatory functions in good faith, except in relation to specified crimes;
- 20 **agreed** that the Bank be indemnified from liability by the Crown, through a permanent legislative authority, for any liability arising in the exercise of statutory management powers when acting in good faith;
- 21 **noted** that the matter referred to in paragraph 20 above will be reviewed again as part of the development of the resolution framework for the proposed Deposit Takers Act;
- 22 **agreed** that the indemnity and liability provisions be consolidated into the proposed Institutional Act;

Foreign Exchange Reserves

- 23 **agreed** that the Minister of Finance and the Bank be required to agree a Foreign Reserves Management and Coordination Framework (RMCF);
- 24 **agreed** that the RMCF, once in place, will replace the requirement on the Minister to set the total level of foreign exchange reserves that the Bank holds (section 24 of the Act);
- 25 **agreed** that the RMCF be subject to transitional arrangements, and that the existing arrangements apply until a RMCF is agreed;
- 26 **agreed** that, the RMCF notwithstanding, the Minister retain the power to direct the Bank to deal in foreign exchange within guidelines, and that such a direction may specify the level of reserves the Bank shall hold to meet this direction or a potential direction;
- 27 **agreed** that the above direction power be subject to similar process requirements that apply to directions under section 115 and 115A of the Crown Entities Act 2004;

Determining the Governor's remuneration and terms and conditions of appointment

- 28 **agreed** that the Governor's remuneration be determined by the Remuneration Authority;
- 29 **agreed** that the Governor's other terms and conditions of appointment be determined by the Board;

Bank notes and coins

- 30 **agreed** that the Bill recognise an expanded mandate for the Bank in relation to oversight of the system of bank notes and coins, including through the specification of its functions relating to bank notes and coins and monitoring;
- 31 **noted** that current offence provisions in relation to bank notes and coins will be carried over to the Institutional Bill;

The Council of Financial Regulators (CoFR)

- 32 **noted** that, in accordance with previous Cabinet decisions [DEV-19-MIN-0345], a legislative mandate for the CoFR will be provided along the lines of requiring that the Bank and the Financial Markets Authority (FMA) chair the CoFR with the purpose of facilitating cooperation and coordination between financial regulators and other agencies to enable effective and responsive financial system regulation;
- 33 **agreed** that the Financial Markets Authority Act 2011 and the Bill reference the respective roles of the FMA and Bank as Chairs of CoFR in their coordination functions;

Appointment of Board members

- 34 **noted** that on 11 December 2019, DEV agreed that the current processes for the appointment of Board members continue to apply (which involves Ministerial appointment) [DEV-19-MIN-0345];
- 35 **agreed** to build upon the decision noted in paragraph 34 above by providing that the Governor-General will undertake the appointment of Board members, following the advice of the Minister, consistent with the process for Independent Crown Entities;

Decision-making principles

- 36 **noted** that on 11 December 2019, DEV agreed that the Bill contain decision-making principles that the Bank must have regard to in exercising its regulatory powers under the sectoral Acts [DEV-19-MIN-0345];
- 37 **agreed** to amend the decision referred to in paragraph 36 above, to provide that the decision-making principles broadly agreed by Cabinet be located in the proposed Deposit Takers Act, and that the existing principles in other sectoral Acts be retained;
- 38 **agreed** that the Insurance (Prudential Supervision) Act 2010 include an additional decision-making principle that requires the Bank to have regard to long-term risks to the insurance sector when exercising its powers under the Act, to ensure climate change considerations are captured in the Act;

Further matters

- 39 **invited** the Minister of Finance to issue further drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

40 **authorised** the Minister of Finance to further clarify and develop policy matters relating to the above paragraphs in a manner not inconsistent with the policy proposals in the paper under DEV-20-SUB-0041.

Vivien Meek
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon Dr Megan Woods
Hon David Parker
Hon Nanaia Mahuta (via phone)
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Shane Jones
Hon James Shaw
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for DEV
Treasury officials

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