



## **Consultation Paper:**

# **Open Bank Resolution (OBR) Pre-positioning Requirements Policy**

The Reserve Bank invites submissions on this Consultation Paper by 30 April 2013.

Submissions and enquiries about the consultation should be addressed to:

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Please note that a summary of submissions may be published. If you think any part of your submission should properly be withheld on the grounds of commercial sensitivity or for any other reason, you should indicate this clearly.

March 2013

Updated: 2 April 2013, to extend submission deadline from 15 April to 30 April 2013.

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# Open Bank Resolution (OBR) Pre-positioning Requirements Policy

## Part 1—Introduction

1. **Open Bank Resolution (OBR) and the Reserve Bank of New Zealand’s objectives**
  - (1) This document sets out the Reserve Bank of New Zealand’s (Reserve Bank) policy on pre-positioning requirements for Open Bank Resolution (OBR) for locally-incorporated registered banks with retail deposits in excess of \$1 billion dollars. It also applies to locally incorporated banks that decide to opt-in, and are subsequently required to comply with the policy. It describes the policy, the OBR process, and the requirements on banks.
  - (2) The Reserve Bank has powers under Part 5 of the Reserve Bank of New Zealand Act 1989 (the Act) to register banks and undertake prudential supervision of registered banks.
  - (3) Section 68 of the Act requires the powers under Part 5 of the Act to be exercised for the purposes of:
    - (a) promoting the maintenance of a sound and efficient financial system; or
    - (b) avoiding significant damage to the financial system that could result from the failure of a registered bank.
  - (4) The purpose of the OBR policy supports the objective of avoiding significant damage to the financial system arising from a bank failure. OBR achieves this by providing the government with an option that would minimise spill-over costs to the rest of the economy and help manage fiscal risk. In the process, OBR strengthens the incentives faced by depositors, creditors and parent groups. It places the cost of a failure in the first instance on shareholders but also provides the flexibility to assign losses to creditors without causing unnecessary disruption to the payments system, thus promoting the maintenance of a sound and efficient financial system.
  - (5) OBR ‘pre-positioning’ is a mechanism for providing bank customers continued access to liquidity and banking service in a bank failure event. Pre-positioning means having the IT, payments, resource and process functionality in place ahead of a crisis, such that should a bank enter into statutory management, access channels can be closed, a portion of creditor funds can be frozen, and access channels can be reopened for business by 9am the next business day enabling customers to have access to the available or good portion of their funds.
  - (6) Notwithstanding the pre-positioning, there is no obligation on the part of government to use OBR in the event of the failure of a registered bank. Any decision on applying OBR to a particular bank will be assessed on a case-by-case basis taking into account specific bank and wider financial system issues.

## 2. Application of policy

- (1) All locally incorporated banks with retail deposits over NZ\$1 billion are required to pre-position for OBR.
- (2) Other locally-incorporated registered banks that do not fall within this category and take in retail deposits may elect to be OBR-capable, but would then also be subject to a condition of registration that requires compliance with the OBR pre-positioning requirements policy.
- (3) This policy does not apply to any New Zealand registered bank that operates in New Zealand as a branch of an overseas-incorporated bank.

## 3. Definitions

For purposes of this document--

- (1) “Business day” means any calendar day that is not a Saturday, Sunday or a public holiday (as that term is defined in the Holidays Act 2003 but excluding provincial anniversary days).
- (2) “Compendium of liabilities” is the list of pre-positioned and non pre-positioned liabilities itemised at the product class level and agreed to with the Reserve Bank.
- (3) “Customer liabilities or customer liability accounts” are unsecured liabilities of the bank represented by a range of products such as cheques, savings and other transactional accounts and including term deposits; these are considered in-scope for pre-positioning as described in this document.
- (4) “*De minimis*” is a nominal dollar amount in relevant customer liability accounts that is protected from the allocation of losses and remains fully available to the account holders when the bank reopens the next business day following the appointment of a statutory manager.
- (5) “Effective Time” means the date on which, and the time at which the bank was declared to be subject to statutory management.
- (6) “ESAS” is the Reserve Bank of New Zealand’s Exchange Settlement Account System that is used by banks and other approved financial institutions to settle their obligations on a Real-Time Gross Settlement (RTGS) basis.
- (7) “Implementation Plan” is the bank’s documentation of its OBR design solution and includes the compendium of liabilities; end of day process timeline; the run sheet; the governance and resourcing arrangement; testing strategy; and overall management of risks and contingencies; plus other relevant supporting documents,

to comply with the OBR pre-positioning requirements and deliver the OBR outcomes described in this document.

- (8) “In flight transaction” is a transaction for which processing has commenced but the interbank element has not yet been settled in ESAS at the effective time.
- (9) “OBR functionality” is the bank’s operational and systems-based capability to execute pre-positioned processes and arrangements that would enable customers to have access to the unfrozen portion of their funds at 9am the next business day after the appointment of a statutory manager.
- (10) “On-us transactions” are transactions where the relevant bank accounts of both the payer and the payee are held with the same bank and no inter-bank payment is required for these transactions to be completed.
- (11) “Partial freeze” is the act of suspending the payment of a proportion of the bank’s unsecured liabilities to creditors, with the effect that the frozen component remains inaccessible to them.
- (12) “Pre-positioned and non pre-positioned liabilities” have the meaning given to it under section 9 below.
- (13) “Retail deposits” are deposit liabilities held by natural persons, excluding liabilities with outstanding balances of more than \$250,000.
- (14) “Statutory management” means statutory management under the Reserve Bank of New Zealand (1989) Act.
- (15) “Systems” means all property, rights, controls, data and staff, owned, operated or used by the bank. This includes those related to management, administrative and information technology functions, as well as any function relating to any business of the bank that is carried on by a person other than the bank.
- (16) “Unfrozen fund or balance” is the available or good portion of customer liability accounts and other creditor balances accessible when the bank reopens or upon instruction of the statutory manager.
- (17) The rest of this document is structured as follows:
  - (a) Part 2 provides an overview of the OBR process and the condition of registration on OBR pre-positioning to which this policy pertains; and
  - (b) Part 3 expands on the OBR pre-positioning requirements. Each section starts with the expected outcome, followed by a list of requirements on banks and further detail about the requirements.

## **Part 2— The OBR policy and condition of registration**

### **4. Condition of registration**

- (1) Section 74 of the Act permits the Reserve Bank to impose conditions of registration that relate to, among other things, the matters referred to in section 73(2)(c) of the Act, namely the ability of the applicant i.e., the registered bank, to carry on its business or proposed business in a prudent manner.
- (2) Locally-incorporated registered banks that are required to pre-position or those that decide to opt-in and be covered by the policy, are subject to a condition of registration relating to OBR requirements.
- (3) Under the Reserve Bank’s OBR pre-positioning requirements policy, a New Zealand-incorporated registered bank with retail deposits of over NZ\$1 billion is normally subject to the standard condition of registration set out in Appendix 1.
- (4) The condition (except for the start date) also applies to registered banks that decide to opt-in or comply with the OBR pre-positioning requirements policy.
- (5) Broadly speaking, this condition requires the registered bank (i) to be pre-positioned for OBR; (ii) to have an Implementation Plan that meets the pre-positioning requirements; and (iii) to have a regular process to test that the pre-positioned arrangements work as intended and ensure durable compliance with the OBR policy.
- (6) Although the Reserve Bank will generally seek to impose the standard condition of registration regarding OBR pre-positioning requirements uniformly on relevant registered banks, the Reserve Bank may impose a variation on this condition of registration on a bank if appropriate in the relevant circumstances.

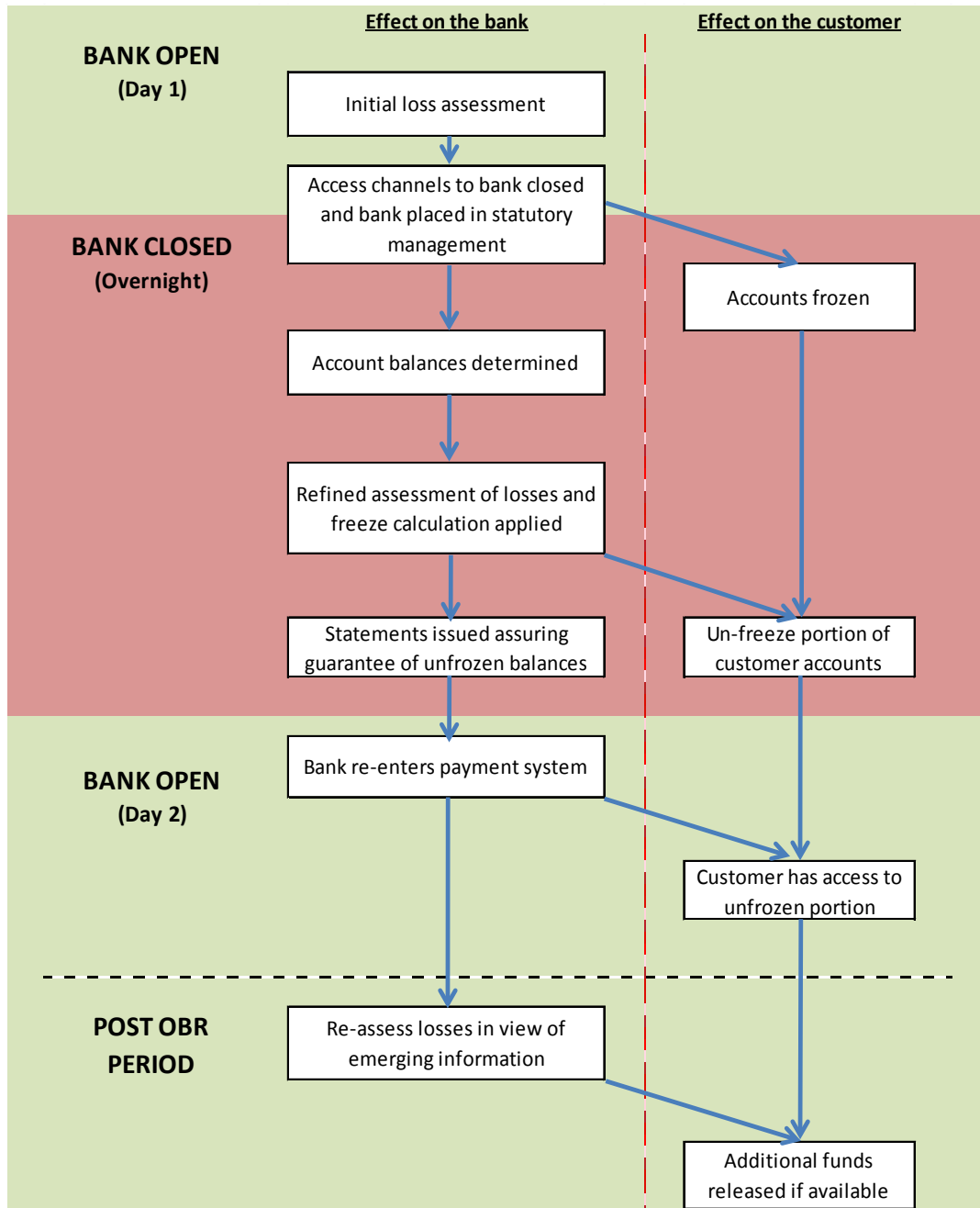
### **5. The OBR process and pre-positioning requirements**

- (1) OBR is an option that provides the ability to allocate losses to creditors of the failed bank without causing unnecessary disruption to the payments system and bank customers’ access to liquidity. As a general principle, first losses are allocated to and borne by shareholders followed by holders of subordinated debt. Claims of subordinated creditors and other capital providers will be fully frozen and will not be available for payment unless the senior creditors were paid in full.
- (2) The complete OBR cycle from closure to resolution can be broken down into the following phases:<sup>1</sup>
  - (a) putting the bank under statutory management and temporarily closing the bank;

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<sup>1</sup> The last 3 steps do not form part of the bank’s overnight process cycle required to enable it to reopen at 9am the following business day.

- (b) preventing customer access to the bank and initially freezing all liabilities in full effective when the bank is put under statutory management;
  - (c) determining customer liability account balances at the effective time;
  - (d) applying the *de minimis* if required;
  - (e) applying the partial freeze, i.e. suspending the payment of a proportion of liabilities to customers (referred to as the frozen funds) based on estimated losses;
  - (f) securing government support, via a guarantee for the unfrozen funds and other new liabilities entered into by the reopened bank;
  - (g) reopening the bank for core transaction business the next business day;
  - (h) applying a partial freeze to all liabilities that have not been pre-positioned (these liabilities remain fully frozen for a period until dealt with by the statutory manager);
  - (i) releasing additional frozen funds at a later time if directed by the statutory manager; and
  - (j) deciding on the future operations and potential restructuring of the failed bank.
- (3) Suspending the ability of customers to access their funds and freezing a proportion of their funds in the bank would be carried out overnight, with the bank reopening at 9am the next business day. Customers would then have access to their unfrozen funds. Additional funds can be made available at a later date but this will be dependent on the determination of final losses.
- (4) The OBR process is illustrated in the diagram below.



- (5) A registered bank to which the policy applies is required to put in place OBR pre-positioned operational and technical arrangements. The registered bank must have in place a pre-positioned IT functionality that is adequate in the Reserve Bank's view for purposes of compliance with the OBR pre-positioning requirements policy as set out in this document.
- (6) The table below summarises the OBR outcomes and the requirements on registered banks to be able to deliver those outcomes.



<b>OBR Outcomes</b>	<b>Required functionality to deliver the outcomes</b>
(1) That the bank can be closed promptly at any time of the day and on any day of the week, freezing in full all liabilities and preventing access by customers and counterparties to their accounts.	(a) The bank must be prepared for the appointment of a statutory manager at any time of the day and any day of the week.  (b) The bank must develop and maintain robust access channel closing procedures to prevent access by customers and counterparties to their accounts, credit balances and other banking facilities at the bank effective as at the date on which and the time at which the bank was put in statutory management (i.e., the effective time).
(2) That the bank's customers are able to access pre-positioned accounts quickly, i.e. at 9am the next business day after a statutory manager is appointed, to fund their day to day operational requirements.	(a) The bank must pre-position for customer liability accounts, maintain an updated compendium of liabilities, and establish a process to ascertain if a new product is in-scope for pre-positioning or not.  (b) The bank must have the ability to determine the customer liability account balances in the records of the bank at the effective time, subject to any adjustment to reflect the treatment of in-flight transactions applying the procedures described in the OBR policy.  (c) The bank must have the capacity to implement or execute the <i>de minimis</i> , if required, and apply it to relevant pre-positioned customer liability account balances in accordance with the specifications set out in the OBR policy.
(3) That the bank suspends the payment of a proportion of customer account balance to meet estimated potential losses.	(a) The bank must have the functionality to apply a partial freeze or suspend the payment of a proportion of customer liability account balances (proportion to be advised by the statutory manager) that are in-scope for pre-positioning.  (b) This freeze application process must be completed within a cycle or timeframe that will enable customers to access their accounts by 9am the next business day following the appointment of a statutory manager.
(4) That the bank's customers are able to access their accounts the next business day after a statutory manager is appointed.	(a) The bank must have the capability to reopen access channels as may be authorised by the statutory manager at 9am the next business day.
(5) That the bank re-instates access by customers to parts or all of their frozen balances.	(a) The bank must have the capacity to release parts or all of the frozen balances in subsequent periods as may be directed by the statutory manager (i.e. the bank must have the ability to release frozen balances in stages).

- (6) When the bank reopens the next day, the statutory moratorium or the freeze on other liabilities that are out of scope for pre-positioning remains in effect, until these liabilities are dealt with by the statutory manager in due course.

## **6. OBR Implementation Plan**

- (1) The Implementation Plan is a key part of the documented evidence that pre-positioned arrangements to quickly close the bank, reserve a portion of customers' claims to meet potential losses, and reopen the next business day and continue banking services, are in place.
- (2) The Implementation Plan provides a summary statement of the bank's OBR design solution, and illustrates that it meets the pre-positioning requirements: (i) pre-positioning for the appointment of a statutory manager and closing access channels; (ii) pre-positioning for customer accounts and determining the customer liability account balances; (iii) applying the *de minimis* and the partial freeze; and (iv) reinstating access to unfrozen funds and residual frozen funds. It must explain the bank's design principles, governance and resourcing arrangements, and testing and compliance programme.
- (3) Due to the limited time available to process pending payment instructions to accounts and allow customers' access to their accounts at 9am the next business day, it is expected that pre-positioning will typically be by way of automated IT functionality. However, there may be situations where pre-positioning takes the form of a manual process that is undertaken on the day of failure, provided it can be demonstrated that the process can be effectively and efficiently executed by bank staff available on the day, without compromising the reopening time of 9am the next business day. All manual processes will need to be agreed to by the Reserve Bank and must form part of the bank's Implementation Plan.
- (4) As the OBR requirements are largely focussed on outcomes, banks are able to come up with bespoke technical design solutions for their own OBR functionality, provided these are acceptable to the Reserve Bank. This recognises that banks have different operating systems, and this in turn affects how outstanding account balances are calculated, which is dependent on their IT configuration, process cycles and specific product features. An example is the treatment of term deposits. Banks have varying product features and interest accrual cycles and hence, are given the flexibility in choosing which design approach would suit their situation. Early repayment of term deposits is not expected to be allowed by the statutory manager.
- (5) In order to have confidence that the pre-positioned arrangements will work in a bank failure, there must be a regular process to test that the arrangements will work as intended. Banks are expected to develop and maintain a test strategy that ensures durable compliance with the OBR policy. The test strategy must demonstrate that the OBR design solution will achieve the outcomes required by the policy.

## Other key components of the Implementation Plan

### Compendium of liabilities

- (6) The “compendium of liabilities” is a core feature of the Implementation Plan. The compendium itemises the bank’s liabilities at the product class level, specifying whether the liability has been pre-positioned for OBR or not as at the reporting date. The compendium must be agreed to by the Reserve Bank.
- (7) On an on-going basis, the bank must have a process to determine if a new product is in-scope for pre-positioning or not. If the bank is unsure about the appropriate treatment of a new product, it may refer the matter to the Reserve Bank. The Reserve Bank may approve in principle the pre-positioning treatment of new products whilst at the development stage.
- (8) A stylised compendium of liabilities is presented in annex A.
- (9) **Timeline:** The timeline must indicate the length of time to (i) close all access channels and (ii) to execute the end of day processes necessary to be completed in order to reopen at 9am the next business day.
- (10) **Run sheet:** The run sheet must show the sequence of events or steps to be undertaken from the receipt by the bank of the direction to prepare for the closure of access channels up to the bank’s reopening the next business day. Manual processes must also be disclosed.
- (11) **Review of service contracts:** The bank must conduct an assessment of its agency banking arrangements, if applicable, and review contracts with core service providers. This is to ensure that any agency banking arrangements or contracts with service providers incorporate arrangements necessary to have access to services that may be critical to the bank’s continued operations when it enters statutory management.
- (12) **OBR testing and compliance**
  - (a) The programme for OBR testing must be embedded into the bank’s Business Continuity Planning (BCP) and tested alongside regular BCP requirements, at least on an annual basis.
  - (b) Testing of the full OBR solution life cycle must be made against a range of circumstances including closure at any time of the day and any day of the week, to ensure that OBR is sustainable over time and to demonstrate that the bank is able to deliver the required outcomes.
  - (c) There must be a process to ascertain that all appropriate products are pre-positioned including new products that may be introduced or offered by the bank in the future.

- (d) The testing and compliance programme covers both the technical solution and business processes, including manual arrangements, if any.
  - (e) The bank must determine if it is necessary to undertake more frequent testing in situations where it has undergone or completed system and/or organisational changes that may impact on the effective execution of OBR.
- (13) The testing and compliance programme must cover, at a minimum, the following:
- (a) scope of testing to be conducted, test data required, and the test environment requirements;
  - (b) the testing method or approach to be undertaken including the security or integrity of the processes;
  - (c) performance testing of manual processes;
  - (d) criteria, standards or measurement metrics that would enable an assessment of success; and
  - (e) frequency of testing including internal signoffs.

## **7. Material to be provided**

- (1) Banks must provide or make available a copy of the most recent or updated Implementation Plan (including any relevant supporting documents, e.g. operations manual), which can take the form of an electronic or hardcopy version to the Reserve Bank.
- (2) The pre-positioning requirements are described in more detail below.

## **Part 3—Requirements for pre-positioning**

### **8. Pre-positioning for the appointment of a statutory manager and closing access channels**

#### **Outcome**

- (1) That the bank can be closed promptly at any time of the day and on any day of the week, freezing in full all liabilities and preventing access by customers and counterparties to their accounts.

#### **OBR requirements**

- (2) The bank must be prepared for the appointment of a statutory manager at any time of the day and on any day of the week.
- (3) The bank must develop and maintain robust access channel closing procedures to prevent access by customers and counterparties to their accounts, credit balances and other banking facilities at the bank in statutory management.

- (4) The bank must indicate to the Reserve Bank the latest time that it can be placed under statutory management and reopen at 9am the next business day, as well as the duration or time required to close down all access channels. The closure of access channels must be effective concurrently with the appointment of the statutory manager.

#### **Closing access channels**

- (5) The Act provides the Governor General with the power to place a bank into statutory management on the advice of the Minister of Finance following a recommendation by the Reserve Bank.<sup>2</sup> Once a bank is placed into statutory management, creditors' rights against the bank are subject to a statutory moratorium.
- (6) In recommending the appointment of the statutory manager, the Reserve Bank takes into account the time required by the bank, as disclosed in its Implementation Plan, to close all access channels and execute its overnight end of day process in time to reopen at 9am the next business day.
- (7) Banks pre-positioning should recognise that the appointment of a statutory manager may take place at any time. That is, the OBR process has to be robust to a closure at any time during the day and on any day of the week.
- (8) The closure of channels will be by way of a direction issued by the Reserve Bank. Section 113 of the Act states that the Reserve Bank may give a registered bank or an associated person of a registered bank a direction in writing. The scope of directions (section 113A) may require a registered bank to cease to carry on its business or any part of business, in accordance with the direction or to take the action that is specified in the direction to address any circumstances of financial difficulties, or generally to take any other action that may be specified in the direction.
- (9) The direction requires the bank to prepare to go through its shutdown procedure and have the capability to disable any capacity to initiate or accept banking transactions at the effective time. The closure of customer access channels aligns with the time the bank is placed under statutory management.
- (10) The process for closing customer access channels may take the form of a documented manual process (e.g. branch closure, internet and telephone banking taken to offline status, etc.) or an automated shut down process or a mixture of both.

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<sup>2</sup> Statutory management can be imposed either on the registered bank or on a New Zealand banking group basis. For OBR, statutory management would be imposed on a banking group basis. Refer to sections 117 to 156 of the Reserve Bank Act 1989 for details on statutory management of registered banks.

- (11) If the bank is a merchant acquirer or an ATM acquirer, all merchant channels and ATMs will be closed from the effective time. The merchant channels and ATMs are expected to be reopened when the bank re-enters the payment system. If the bank is a card issuer, all cards issued are blocked from the effective time and expected to be un-blocked when the bank re-enters the payment system.

## **9. Pre-positioning customer liability accounts**

### **Outcome**

- (1) That the bank's customers are able to access their accounts quickly after a statutory manager is appointed.

### **OBR requirements**

- (2) The bank must pre-position for customer liability accounts considered in-scope as defined in this document.
- (3) The bank must establish and maintain an up-to-date compendium of liabilities.

### **Pre-positioned liabilities**

- (4) For purposes of OBR, pre-positioned liabilities refer to customer accounts or customer liability accounts. These are represented by a range of products used by customers to access banking services. As banking services are critical for these customers' day-to-day operating requirements, interrupting such services potentially carries high economic cost for customers as they may not be well placed to manage such disruptions.
- (5) A customer is a person, whether natural or legal, who opens an account with a bank and receives banking services. An account is a banking relationship established to provide or engage in banking services or financial transactions, and typically includes a deposit or transaction account. Examples of such accounts are:
- (a) Transactional accounts or similar products used by individuals and businesses for their transactional, everyday banking needs or business requirements. Customers are able to access their accounts through a number of channels such as internet, mobile banking, and through branches or ATMs and using a wide range of payment instruments (e.g. debit and credit cards). Savings accounts, credit balances on credit cards, overdrafts and revolving facilities are also in in-scope for pre-positioning.
  - (b) Term deposit accounts, whilst not transactional in nature, are for OBR purposes required to be pre-positioned as they are usually held by individuals and entities who also engage in transactional banking and the need to meet maturity obligations on time.

- (6) Customer liability accounts described above must be pre-positioned for OBR. Pre-positioned customer liability accounts will have unfrozen funds made accessible or available to account holders from 9am the business day following the appointment of a statutory manager (except for term deposits which will be accessible at maturity).

#### **Non pre-positioned liabilities**

- (7) Unsecured liabilities of the bank that are *not* in the nature of customer liabilities as described above are out of scope for pre-positioning (i.e., non pre-positioned liabilities). These liabilities generally involve more sophisticated creditors or counterparties who can typically better manage temporary illiquidity.
- (8) Liabilities that are not pre-positioned remain inaccessible or frozen in full until the statutory manager is in a position to release the unfrozen portion of these liabilities at a later date.

### **10. Determining the customer liability account balance**

#### **Outcome**

- (1) That the bank calculates the balances held by customers as at the effective time, adjusted for pending payment transactions, and completing the process cycle in time to reopen the next business day.

#### **OBR requirement**

- (2) The bank must have the capacity to determine the customer account balance by applying the procedures described in this document.

#### **Pending payment transactions**

- (3) In determining the customer liability account balance as at the effective time, the statutory manager is generally expected to take the approach prescribed in section 10(5) below.
- (4) The amounts shown in the records of the registered bank as customer liability account balance at the effective time will be adjusted to reflect the processing of all “on-us” transactions; the treatment of interbank in-flight transactions; and the treatment of transactions that are dishonoured or reversed as stated below.
- (5) For the purposes of OBR:
- (a) Transactions that have been settled via ESAS (i.e., the interbank element has been settled) before the effective time are pre-statutory management transactions.

- (b) “On-us” transactions: “On-us” transactions pending in the bank at the effective time are to be processed. These transactions include all payment instructions due to be paid on the day of statutory management that can be settled on that day without further recourse to the initiator of the transaction (i.e. settlement instructions are validated and ready to settle), but have not been completed when statutory management was declared.
- (c) In-flight transactions: If at the time the statutory manager is appointed, the processing of a transaction requiring interbank settlement has already commenced but that transaction has not been settled in ESAS, the interbank element of the transaction will be held over for processing on re-entry by the bank at the next business day. These transactions are not required to be unwound back to customer accounts. The interbank processing of held over in-flight transactions will be completed when the bank reopens and re-enters the payments system the next business day. Similarly, transactions from surviving banks destined to the bank under statutory management shall be held over for processing to be completed the next business day. The interbank processing of held over in-flight transactions will be completed when the bank reopens and re-enters the payments system the next business day.
- (d) In relation to the settlement of card (i.e., debit or credit card transaction) transactions (where the card transaction is initiated prior to the effective time but settlement owed by the bank under statutory management has not occurred), the statutory manager may exercise discretion as to how these settlements are to be treated.

### **Customer balances**

- (6) The customer liability account balance that has been adjusted to reflect the treatment of in-flight transactions (as specified above), provides the basis for the application of the *de minimis*, if required. It is also the balance to which the statutory manager applies the partial freeze or temporary suspension of a portion of the account balance based on the bank’s estimated losses. The total customer liability account balance is made up of cleared and uncleared funds.
- (7) Uncleared funds in the customer liability account balance may subsequently be dishonoured or reversed by the statutory manager in accordance with existing business practices and timeframes. It is expected that the statutory manager will make the appropriate adjustment to the customer liability account balance for ‘business as usual’ dishonours and reversals, but will actively monitor dishonour and reversal activity that is not deemed ‘business as usual’ activity that has the effect of frustrating the OBR process.
- (8) The process cycle for the application of the partial freeze or temporary suspension of a proportion of customer liability account balance must be completed in time to reopen the bank at 9am the next business day following the appointment of the statutory manager.



## 11. Applying the *de minimis*

### Outcome

- (1) That the bank applies the *de minimis*, if required, to relevant customer accounts to enable quick access by these customers to funds that they need for their day-to-day operational requirements.

### OBR requirement

- (2) The bank must have the capacity to apply a *de minimis* to relevant accounts in accordance with the specifications described in this policy.

### Overview

- (3) The *de minimis* amount is a nominal dollar amount in the relevant customer liability account that is protected or exempt from the allocation of losses and will be fully available upon reopening of the bank.
- (4) The purpose of the *de minimis* is to help customers with limited resources fund their normal day-to-day operational expenses. The Minister of Finance will decide whether to set a *de minimis* amount, and determine the quantum or level at which it is set.
- (5) There is no access to the *de minimis* whilst the bank is closed. Full access becomes available upon the reopening of the bank.

### Applying the *de minimis*

- (6) The *de minimis* concept applies only to pre-positioned liabilities of the bank that are available for transactional use, such as cheque accounts and savings accounts (i.e., the relevant accounts). Term deposits and foreign currency denominated accounts are excluded from the *de minimis* application.
- (7) The *de minimis* is applied to each customer liability account, i.e. there is no aggregation of accounts held by the same person or entity.
- (8) Relevant accounts with balances below and up to the specified *de minimis* threshold are exempt from the application of the partial freeze. This exemption also applies to the balance up to the *de minimis* level for relevant accounts whose outstanding balances exceed the *de minimis* threshold. An example is shown overleaf.

Assumption: *De minimis* is set at \$500 per account and the partial freeze is 20 percent.

Accounts held by customer	Beginning balance	<i>De minimis</i>	Partial freeze applied on balance above <i>de minimis</i>	Available funds to the customer
Cheque account	\$ 450	\$ 450	n.a.	\$ 450
Savings account	\$ 5,000	\$ 500	\$3,600	\$ 4,100

## 12. Applying the partial freeze or suspension of payment

### Outcome

- (1) That the bank suspends the payment of a proportion of the customer account balance to meet estimated potential losses.

### OBR requirements

- (2) The bank must have the functionality to apply a partial freeze or suspend the payment of a proportion of the customer liability account balance in accordance with the specifications described in this policy.
- (3) This freeze application process must be completed within a timeframe that will enable customers to access their accounts at 9am the next business day following the appointment of a statutory manager.

### Applying the partial freeze

- (4) The proportion of the liabilities that will be frozen and remain inaccessible is based on an estimation of losses following an assessment of the net asset deficiency of the bank. The partial freeze does not necessarily equate to the final outcome for customers and other creditors. It is expressed as a proportion or percentage (*x percent*) of customer liability account balance at the bank, rather than as an absolute amount.
- (5) The partial freeze is applied to the pre-positioned customer liability account balances above the *de minimis* threshold, if applicable. It is applied to each account i.e. there is no aggregation of accounts held by the same person or entity.
- (6) The process cycle for the application of the partial freeze must be completed in time to reopen the bank at 9am the business day following the appointment of the statutory manager.
- (7) After the application of the partial freeze, no additional funds will be frozen. As the statutory management progresses, further funds may be unfrozen or made available and returned to customers if asset recoveries exceed initial estimates. The partial

freeze (representing the extent of potential losses allocated to customers) does not necessarily equate to the final outcome for customers and other creditors.

### **13. Reopening access channels and re-instating access to available or unfrozen funds**

#### **Outcome**

- (1) That the bank reopens the next business day following the appointment of the statutory manager so that customers are able to access the good portion of their funds and resume banking services.

#### **OBR requirements**

- (2) The bank must have the capacity to reopen customer access channels that the statutory manager authorises to be reopened.
- (3) The bank must have the capacity to reinstate customers' access to the available or unfrozen portion of the pre-positioned customer liability account balances, upon reopening at 9am the next business day following the appointment of a statutory manager.

#### **Process**

- (4) The statutory manager decides which channels should be reopened. The statutory manager may also reopen other banking services and facilities on a limited basis as may be appropriate under the circumstances.
- (5) The statutory manager on behalf of the bank or the bank itself may access liquidity from the market or the Reserve Bank as may be required.
- (6) The available or unfrozen funds will be supported by an appropriate government guarantee. The government guarantee ends upon expiration of statutory management.

### **14. Re-instating access to residual frozen funds**

#### **Outcome**

- (1) That the customers of the bank regain access to parts or all of their frozen funds over time depending on the resolution of the bank's financial problems.

#### **OBR requirement**

- (2) The bank must have the capacity to enable customers to regain access to parts or all of their frozen funds in subsequent periods as may be directed by the statutory manager, i.e. the bank must have the ability to release frozen funds in stages.

- (3) The bank must maintain a full record of the frozen funds enabling subsequent releases if any, to be paid to the owners of those funds.
- (4) The release or reinstatement of the frozen funds to customers could occur in variable amounts and staged over a period that may not be known in advance.
- (5) The bank is not required to build a solution to calculate interest on the frozen portion of the funds as part of its OBR functionality. In the event that surpluses are generated at a later stage, the statutory manager will determine whether interest should be paid on the frozen funds and at what rate.

<b>Annex A</b>	
<b>Illustrative compendium of liabilities<sup>1</sup></b>	
<b>Date</b>	
<b>Liabilities</b>	<b>Prepositioned</b>
<b>Deposits and Borrowings</b>	
<input type="checkbox"/> <i>Transaction Accounts</i>	<i>Yes</i>
<input type="checkbox"/> <i>Solicitor Trust accounts</i>	<i>Yes</i>
<input type="checkbox"/> <i>Savings Accounts</i>	<i>Yes</i>
<input type="checkbox"/> <i>Term Deposits</i>	<i>Yes</i>
<input type="checkbox"/> <i>PIE Holding accounts</i>	<i>Yes</i>
<input type="checkbox"/> <i>Derivative flows</i>	<i>No</i>
<input type="checkbox"/> <i>Credit Balances on credit cards /travel cards/ mortgages/ investment loans</i>	<i>Yes</i>
<input type="checkbox"/> <i>Foreign currency accounts</i>	<i>Yes</i>
<input type="checkbox"/> <i>Revolving credit facilities (credit balances)</i>	<i>Yes</i>
<input type="checkbox"/> <i>Overdraft facilities (credit balances)</i>	<i>Yes</i>
<input type="checkbox"/> <i>Insurance</i>	<i>No</i>
<input type="checkbox"/> <i>Letter of Credit</i>	<i>No</i>
<input type="checkbox"/> <i>Medium Term Notes</i>	<i>No</i>
<input type="checkbox"/> <i>Debentures</i>	<i>No</i>
<input type="checkbox"/> <i>Bonds</i>	<i>No</i>
<b>Due to other Financial Institutions</b>	
<input type="checkbox"/> <i>Deposits</i>	<i>Yes</i>
<input type="checkbox"/> <i>Term Investments</i>	<i>Yes</i>
<input type="checkbox"/> <i>Vostro Balances</i>	<i>Yes</i>
<input type="checkbox"/> <i>Settlement Accounts</i>	<i>No</i>
<b>Money Market</b>	
<input type="checkbox"/> <i>Certificates of Deposit</i>	<i>No</i>
<input type="checkbox"/> <i>Commercial Paper</i>	<i>No</i>
<input type="checkbox"/> <i>Call accounts</i>	<i>Yes</i>
<input type="checkbox"/> <i>Term deposits</i>	<i>Yes</i>
<input type="checkbox"/> <i>Yield enhanced deposits</i>	<i>Yes</i>
<b>Derivative Financial Instruments</b>	
<input type="checkbox"/> <i>Foreign Exchange Contracts</i>	<i>No</i>
<input type="checkbox"/> <i>Forward Rate Agreements</i>	<i>No</i>
<input type="checkbox"/> <i>Futures</i>	<i>No</i>

<input type="checkbox"/> <i>Options</i>	<i>No</i>
<input type="checkbox"/> <i>Interest Rate Swaps</i>	<i>No</i>
<input type="checkbox"/> <i>Currency Swaps</i>	<i>No</i>
<input type="checkbox"/> <i>Credit Support Agreements</i>	<i>No</i>
<input type="checkbox"/> <i>Margin Calls</i>	<i>No</i>
<b>Due to Controlled Entities and Associates</b>	
<input type="checkbox"/> <i>Due to Parent Company</i>	<i>No</i>
<input type="checkbox"/> <i>Due to Subsidiary Company</i>	<i>No</i>
<input type="checkbox"/> <i>Interest payable on amounts due to parent</i>	<i>No</i>
<b>Other Liabilities</b>	
<input type="checkbox"/> <i>Accrual of Interest Coupons</i>	<i>No</i>
<input type="checkbox"/> <i>Open market positions</i>	<i>No</i>
<input type="checkbox"/> <i>Kiwisaver products</i>	<i>No</i>
<input type="checkbox"/> <i>Charity Accounts / Child Accounts</i>	<i>Yes</i>
<b>Operating Expenses</b>	
<input type="checkbox"/> <i>Utilities</i>	<i>No</i>
<input type="checkbox"/> <i>Suppliers</i>	<i>No</i>
<input type="checkbox"/> <i>Employee Benefits</i>	<i>No</i>
<input type="checkbox"/> <i>IRD Payments</i>	
<i>o Interest taxes</i>	<i>No</i>
<i>o Payroll taxes</i>	<i>No</i>

<sup>1</sup>Note that the OBR functionality is available for pre-positioned liabilities at the date the compendium is issued. All other liabilities not pre-positioned are frozen in full until dealt with by the statutory manager in due course.

## Appendix 1 -- Standard conditions of registration

From 30 June 2013 New Zealand-incorporated registered banks with retail deposits over NZ\$1 billion must comply with the following conditions of registration.

1. That the registered bank is pre-positioned for Open Bank Resolution so that in the event of stress or failure of the registered bank, and on the appointment of a statutory manager, the registered bank can—
  - (a) close promptly at any time of the day and on any day of the week with—
    - (i) all liabilities frozen in full; and
    - (ii) no further access by customers and counterparties to their accounts is possible;
  - (b) apply a *de minimis* to relevant customer accounts;
  - (c) apply a partial freeze to the customer account balance;
  - (d) reopen at 9am the next business day following the appointment of a statutory manager and provide customers access to their unfrozen funds;
  - (e) maintain a full freeze on liabilities not pre-positioned for open bank resolution; and
  - (f) re-instate customers' access to some or all of their frozen funds.
  
2. That the registered bank has an Implementation Plan that—
  - (a) is up-to-date; and
  - (b) demonstrates that the registered bank's prepositioning for Open Bank Resolution meets the requirements set out in the Reserve Bank document: "Open Bank Resolution Pre-positioning Requirements Policy" (BS 17).
  
3. That the registered bank has a compendium of liabilities that—
  - (a) at the product-class level lists all liabilities, indicating which are—
    - (i) pre-positioned for Open Bank Resolution; and
    - (ii) not pre-positioned for Open Bank Resolution;
  - (b) is agreed by the Reserve Bank; and
  - (c) if the Reserve Bank's agreement is conditional, meets the Reserve Bank's conditions.
  
3. That on an annual basis the registered bank conducts business continuity planning exercises that—
  - (a) test the registered bank's prepositioning for Open Bank Resolution; and
  - (b) demonstrate full compliance to all elements of the policy.

For the purposes of this condition of registration, "*de minimis*", "partial freeze", "customer account balance", "frozen and unfrozen funds", "Implementation Plan", "compendium of liabilities", and "pre-positioned and non pre-positioned liabilities" have the same meaning as in the Reserve Bank document entitled "Open Bank Resolution (OBR) Pre-positioning Requirements Policy" (BS17) dated xx 2013.