



Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 21st day of June 2010

Present:

His Excellency the Governor-General in Council

Pursuant to sections 157B, 157K, 157S, 157V, and 157ZY of the Reserve Bank of New Zealand Act 1989, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the advice of the Minister of Finance given in accordance with a recommendation of the Reserve Bank of New Zealand made after consultation in accordance with section 157E and taking into account the principles in section 157F of that Act, makes the following regulations.

Contents

		Page
1	Title	3
2	Commencement	3

Part 1

Preliminary provisions

3	Interpretation	3
4	Definition of related party	7
5	All calculations to be on consolidated basis if deposit taker is member of borrowing group	9

Part 2

Requirements relating to credit ratings

6	Requirements for credit ratings	9
---	---------------------------------	---

Part 3

Requirements relating to maintenance of minimum capital ratio

7	Overview	10
8	Trust deed must include minimum capital ratio that deposit taker must maintain	10
9	How to calculate capital ratio	10

Calculation of capital

10	How to calculate capital	11
----	--------------------------	----

Calculation of risk-weighted amount for credit risk

11	Calculation of risk-weighted amount for credit risk	13
12	Calculation of risk-weighted amount for on-balance sheet exposures	13
13	Classification of on-balance sheet exposures for purpose of determining applicable risk weight	14
14	When assets may be classified as rated short-term or long-term claim	15
15	How to determine applicable rating grade for purpose of classifying rated claims	15
16	How to determine loan-to-valuation ratio for purpose of classifying residential mortgage loans and certain other loans	16
17	How to determine loan-to-valuation ratio for purpose of classifying property development loans	17
18	How to determine loan-to-valuation ratio for purpose of classifying loans secured over qualifying moveable machinery	18
19	Requirements for transferred loans to be excluded from calculation of risk-weighted amount for on-balance sheet exposures	18

20	Requirements for loans subject to sub-participations to be excluded from calculation of risk-weighted amount for on-balance sheet exposures	19
----	---------------------------------------------------------------------------------------------------------------------------------------------	----

Calculation of amount for market risk and operational risk

21	How to calculate amount for market risk and operational risk	21
----	--------------------------------------------------------------	----

Part 4

Restrictions on related party exposures

22	Overview	21
23	Trust deed must include maximum limit on aggregate related party exposures of no more than 15% of capital	21
24	How to calculate maximum limit ratio	22
25	Identifying related party exposures	22
26	Measuring related party exposures	23
27	Measuring related party exposures that are market-related contracts	23

Part 5

Revocation

28	Revocation	25
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Schedule

Tables 1 to 3

25

Regulations

1	Title These regulations are the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010.
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2	Commencement These regulations come into force on 1 December 2010.
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Part 1

Preliminary provisions

3	Interpretation
(1)	In these regulations, unless the context otherwise requires,— Act means the Reserve Bank of New Zealand Act 1989

asset sale with recourse, in relation to a deposit taker or member of the borrowing group, means an asset sale where, under the terms of the sale, the deposit taker or member of the borrowing group has an obligation to assume or retain a risk in relation to the asset sold

book value, in relation to an item, means—

- (a) the amount shown for that item in the statement of financial position of a deposit taker; or
- (b) in a calculation required to be made on a consolidated basis, the amount shown for that item in the consolidated statement of financial position for the borrowing group in accordance with regulation 5

consolidated basis means the basis set out in regulation 5

credit rating means a rating of a deposit taker's creditworthiness that complies with section 157I of the Act

direct credit substitute, in relation to a deposit taker or member of the borrowing group,—

- (a) means an off-balance sheet exposure that carries the same credit risk to the deposit taker or member of the borrowing group as a direct extension of credit by the deposit taker or member of the borrowing group; and
- (b) includes (without limitation)—
 - (i) a bill of exchange; and
 - (ii) a letter of credit serving as a financial guarantee for a loan; and
 - (iii) a guarantee of a financial obligation given by the deposit taker or member of the borrowing group; but
- (c) does not include a loan commitment

exchange rate contract has the meaning set out in regulation 27(3)

forward asset purchase, in relation to a deposit taker or member of the borrowing group, means a commitment by the deposit taker or member of the borrowing group to purchase on a specified future date a loan, security, or other asset from another party

generally accepted accounting practice has the same meaning as in section 3 of the Financial Reporting Act 1993

group member has the meaning set out in regulation 4(1)(a)
independent valuer means a person who is not associated (whether directly or indirectly) with a person who has an interest in the property for which a valuation is made and who is—

- (a) a registered valuer (as defined in section 2 of the Valuers Act 1948); or
- (b) another person approved to provide valuation services by rules made under the Rating Valuations Act 1998

interest rate contract has the meaning set out in regulation 27(3)

market-related contract has the meaning set out in regulation 27(3)

ordinary shares means shares that—

- (a) have full voting rights; and
- (b) have no preferential or predetermined rights to distributions of capital or income; and
- (c) are not redeemable within the meaning of section 68 of the Companies Act 1993

original maturity has the meaning set out in regulation 27(3)

personal loan means a loan to an individual not exceeding \$40,000

property development loan means a loan made for the purpose of financing the development of real property

property valuation policy,—

- (a) in relation to a residential mortgage loan, property development loan, or other loan secured over land, buildings (including buildings that are not yet complete), or both, means a policy governing how property value is determined for a loan against that type of property that—
 - (i) is approved by the deposit taker's governing body; and
 - (ii) includes guidance on the use of—
 - (A) a valuation produced by an independent valuer; and
 - (B) the purchase price of the property; and

- (b) in relation to a loan secured over qualifying moveable machinery, means a policy governing how the value of the security is determined that—
 - (i) is approved by the deposit taker’s governing body; and
 - (ii) includes guidance on the appropriate value of the security over the lifetime of the loan

public sector entity means a local authority (as defined in section 5 of the Local Government (Rating) Act 2002)

qualifying insured residential mortgage loan means a residential mortgage loan that is fully covered by lenders’ mortgage insurance provided by the Housing New Zealand Corporation

qualifying moveable machinery—

- (a) has the same meaning as that given to motor vehicle by section 57 of the Personal Property Securities Act 1999; but
- (b) includes an aircraft

qualifying mutual means—

- (a) a co-operative company as defined in section 2 of the Co-operative Companies Act 1996;
- (b) a credit union as defined in section 2 of the Friendly Societies and Credit Unions Act 1982

related party has the meaning set out in regulation 4

residential mortgage loan means a loan secured by a mortgage over a residential property used primarily for residential purposes either by the mortgagor or by a tenant of the mortgagor

sub-participation has the meaning set out in regulation 20(2)

substantial interest has the meaning set out in regulation 4(3).

- (2) In these regulations, unless the context otherwise requires, a reference to a financial statement means a financial statement prepared in accordance with generally accepted accounting practice.
- (3) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

- (4) Any term or expression that is used in these regulations, but not defined in the Act or these regulations, and that has a meaning according to generally accepted accounting practice has the same meaning in these regulations.

4 Definition of related party

- (1) The purpose of subclauses (2) and (3) is to restate the statutory definition of related party of a deposit taker in section 157B of the Act, and to declare some additional classes of persons to be related parties for the purposes of Part 5D of the Act with the following effect:
- (a) if the deposit taker is part of a borrowing group, persons who are related to any member of the borrowing group (a **group member**) are also treated as related parties of the deposit taker; and
 - (b) the following classes of persons are also related parties:
 - (i) persons in which the deposit taker or a group member has a substantial interest (*see* subclause (2)(f));
 - (ii) sister entities of the deposit taker or of a group member (*see* subclause (2)(g));
 - (iii) persons with which the deposit taker or a group member (or a person with a substantial interest in the deposit taker or group member) have interlocking boards (*see* subclause (2)(h)).
- (2) For the purposes of Part 5D of the Act, a person (A) is a **related party** of a deposit taker if—
- Directors and senior office holders and their relatives*
 - (a) A is a director of the deposit taker or of a group member:
 - (b) A is a senior office holder of the deposit taker or of a group member:
 - (c) A is a relative of a director or senior office holder of the deposit taker or of a group member:
 - Subsidiaries*
 - (d) A is a subsidiary of the deposit taker or of a group member:

Persons having substantial interest in deposit taker or group member

- (e) A has a substantial interest in the deposit taker or a group member:

Entities in which deposit taker or group member has substantial interest and sister entities

- (f) the deposit taker or a group member has a substantial interest in A:
- (g) another person with a substantial interest in the deposit taker or a group member has a substantial interest in A:

Example

If a company (**X co**) that owns 10% of the shares in a deposit taker also owns 10% of the shares in another entity (**Y co**), then X co is a related party of the deposit taker under paragraph (e) and Y co is a related party of the deposit taker under paragraph (g).

Entities with interlocking boards

- (h) 40% or more of A's governing body are the same persons as 40% or more of the governing body of the deposit taker or of a group member (or of another person that has a substantial interest in the deposit taker or of a group member).
- (3) In this regulation, a person (**X**) has a **substantial interest** in another person (**an entity**) if—
- (a) the entity is a company and X—
 - (i) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the ordinary shares of the entity; or
 - (ii) owns, or in any way has the power to control (whether directly or indirectly), or has the right to acquire, 10% or more of the voting rights of the entity; or
 - (iii) has, by any other means, 10% or more of the control of the entity:
 - (b) the entity is not a company and X—

- (i) is in a position to control (whether directly or indirectly) 10% or more of the voting rights in relation to the entity; or
 - (ii) has, by any other means, 10% or more of the control of the entity;
- (c) X has control (whether directly or indirectly) or significant influence over 25% or more of the composition of the governing body of the entity.
- (4) Subclause (1) is intended only as a guide to the general scheme and effect of this regulation.

5 All calculations to be on consolidated basis if deposit taker is member of borrowing group

- (1) If a deposit taker is a member of a borrowing group, every calculation that these regulations require the deposit taker to make must be made on a consolidated basis for the deposit taker's borrowing group.
- (2) If a calculation is made on a consolidated basis for a borrowing group, then—
 - (a) no member of that borrowing group is a related party of the relevant deposit taker for the purposes of the calculation (despite regulation 4(2)); and
 - (b) the calculation is only required to be made on the consolidated basis specified in subclause (1) (rather than on a solo basis for the deposit taker as well as on that consolidated basis).

Part 2

Requirements relating to credit ratings

6 Requirements for credit ratings

For the purposes of section 157I(a) of the Act, the current rating of a deposit taker's creditworthiness given by an approved rating agency must be a local currency (New Zealand dollar), long-term, issuer rating.

Part 3
Requirements relating to maintenance of minimum capital ratio

7 Overview

- (1) This regulation is intended only as a guide to the general scheme and effect of this Part.
- (2) The capital ratio of a deposit taker is the ratio of the deposit taker's capital to an amount representing the degree of the following types of risk to which the deposit taker is exposed:
 - (a) credit risk:
 - (b) market risk:
 - (c) operational risk.
- (3) This Part sets out what a trust deed must include about the capital ratio (*see* regulation 8) and how the capital ratio must be calculated.
- (4) Calculation of the capital ratio requires determination of—
 - (a) the deposit taker's capital (*see* regulation 10); and
 - (b) the deposit taker's risk-weighted amount for credit risk (*see* regulation 11); and
 - (c) the deposit taker's aggregate amount for market risk and operational risk (*see* regulation 21).

8 Trust deed must include minimum capital ratio that deposit taker must maintain

- (1) Every deposit taker and trustee must ensure that the trust deed includes the minimum capital ratio that the deposit taker must maintain.
- (2) The deposit taker and the trustee must ensure that the minimum capital ratio that is included in the trust deed is—
 - (a) not less than 8%, if the deposit taker has a credit rating; and
 - (b) not less than 10%, if the deposit taker does not have a credit rating.

9 How to calculate capital ratio

- (1) The capital ratio must be calculated as the ratio, expressed as a percentage, of the deposit taker's capital to the sum of—

- (a) the deposit taker's risk-weighted amount for credit risk, calculated in accordance with regulation 11; and
 - (b) the deposit taker's aggregate amount for market risk and operational risk, calculated in accordance with regulation 21.
- (2) The deposit taker's capital, referred to in subclause (1), must be calculated in accordance with regulation 10 using book values as at the date of calculation.
 - (3) If the deposit taker is part of a borrowing group, the capital ratio must be calculated on a consolidated basis (*see* regulation 5).
 - (4) If accounting standards require a securitisation special purpose vehicle to be consolidated for the purposes of group financial statements, the special purpose vehicle must be consolidated with the deposit taker or the borrowing group for the purposes of the calculations under this Part.

Calculation of capital

10 How to calculate capital

- (1) Capital must be calculated in accordance with the following formula:
$$\text{gross capital} - \text{deductions}$$
- (2) In the formula in subclause (1), **gross capital** is—
 - (a) issued and fully paid-up ordinary shares:
 - (b) retained earnings:
 - (c) fully paid-up perpetual non-cumulative preference shares that meet the requirements in subclause (4), up to the limits set out in subclause (5):
 - (d) revenue and other reserves, including the following, but not including reserves that are earmarked on account of any assessed likelihood of loss:
 - (i) capital redemption reserves:
 - (ii) other reserves that are created or increased by appropriations of retained earnings net of tax and dividends payable:
 - (iii) share premium reserves arising from the issue of ordinary shares:

- (iv) each of the following types of reserves that are reflected in the statement of financial position:
 - (A) reserves arising from a revaluation of tangible fixed assets, including owner-occupied property:
 - (B) foreign currency translation reserves:
 - (C) reserves arising from the revaluation of investments:
 - (e) minority interests.
- (3) In the formula in subclause (1), **deductions** are—
 - (a) goodwill and other intangible assets:
 - (b) future tax benefits and deferred tax assets:
 - (c) share capital in, and subordinated loans to, related parties:
 - (d) share capital in, and subordinated loans to, other financial institutions or holding companies of other financial institutions (whether held directly or indirectly):
 - (e) unrealised gains and losses on liabilities designated at fair value through profit and loss that arise from changes in the deposit taker's or member of the borrowing group's own credit risk:
 - (f) any fair value gain that relates to a financial instrument where—
 - (i) fair value is determined in whole or in part using a valuation technique based on assumptions that are not supported by prices from observable current market transactions in the same instrument; or
 - (ii) fair value is not based on observable market data; or
 - (iii) fair value is based on prices in a market that is not active:
 - (g) any surplus, net of any associated deferred tax liabilities, in any defined benefit superannuation fund sponsored by the deposit taker as employer.
- (4) Perpetual non-cumulative preference shares may be included in capital if they meet the following requirements:
 - (a) the payment of dividends on shares is able to be withheld if the financial condition of the deposit taker or

- borrowing group would not support payment of those dividends; and
- (b) dividends that are withheld in accordance with paragraph (a) are not cumulative; and
 - (c) the dividend rate for the shares must be set—
 - (i) as a fixed percentage rate; or
 - (ii) as a fixed margin above a benchmark floating rate (for example, a bank bill rate); and
 - (d) the shares are not—
 - (i) subject to any arrangement for resetting the dividend rate; or
 - (ii) redeemable within the meaning of section 68 of the Companies Act 1993; or
 - (iii) repayable or redeemable at the option of the holder.
- (5) Perpetual non-cumulative preference shares without full voting rights may not constitute more than—
- (a) 25% of capital, if a deposit taker is not a qualifying mutual; and
 - (b) 50% of capital, if a deposit taker is a qualifying mutual.

*Calculation of risk-weighted amount for credit
risk*

11 Calculation of risk-weighted amount for credit risk

A deposit taker must calculate its risk-weighted amount for credit risk by aggregating—

- (a) its risk-weighted amount for on-balance sheet exposures, calculated in accordance with regulation 12; and
- (b) the following off-balance sheet exposures, measured as the principal or notional principal amount of the exposure as at the date of calculation, risk-weighted at 100%:
 - (i) direct credit substitutes;
 - (ii) asset sales with recourse;
 - (iii) forward asset purchases.

12 Calculation of risk-weighted amount for on-balance sheet exposures

- (1) To calculate its risk-weighted amount for on-balance sheet exposures, a deposit taker must—

- (a) classify each on-balance sheet asset into its appropriate class in table 1 of the Schedule in accordance with regulations 13 to 20,—
 - (i) including any transferred loan, unless that loan meets the requirements for exclusion set out in regulation 19; and
 - (ii) including any loan or part of a loan in respect of which there is a sub-participation, unless that sub-participation meets the requirements for exclusion set out in regulation 20; but
 - (iii) excluding any asset that must be deducted from the deposit taker's capital under regulation 10; and
 - (b) multiply the book value of each asset as at the date of calculation (measured net of any allowances for impairment loss and unearned income) by the risk weight that applies to that class of asset set out in table 1 of the Schedule; and
 - (c) aggregate the resulting amounts.
- (2) However, if the asset is a loan for which the deposit taker holds a deposit as security, the deposit taker may deduct the deposit from the book value of the loan before carrying out the multiplication under subclause (1)(b) if there is a written contractual agreement between the deposit taker and the depositor that provides that the deposit taker has direct, unconditional, and irrevocable recourse to the deposit security.

13 Classification of on-balance sheet exposures for purpose of determining applicable risk weight

- (1) The deposit taker must classify each on-balance sheet asset according to the first numbered class into which it falls in the first column of table 1 of the Schedule.
- (2) However, if a loan is made against more than 1 form of security, it must be classified into the numbered class that refers to one of those forms of security and that has the highest risk weight.

14 When assets may be classified as rated short-term or long-term claim

- (1) An asset may only be classified as—
 - (a) a rated short-term claim if there is a short-term credit assessment of that claim and the credit assessment meets the requirements in subclause (3); and
 - (b) a rated long-term claim if there is a long-term credit assessment of that claim or a credit assessment of the issuer or the counterparty and the credit assessment meets the requirements in subclause (3).
- (2) However, in the case of a subordinated claim,—
 - (a) subclause (1)(b) does not apply; and
 - (b) the asset may only be classified as a rated long-term claim if there is a long-term credit assessment of that claim and the credit assessment meets the requirements in subclause (3).
- (3) The credit assessment must—
 - (a) be solicited from, and issued by, an approved rating agency; and
 - (b) be paid for by the issuer or rated counterparty or a commercial associate of the issuer or rated counterparty.
- (4) For the purposes of subclause (3)(b), a person is a **commercial associate** in relation to the issuer or rated counterparty if—
 - (a) the person and the issuer or rated counterparty are in the same group of companies; or
 - (b) the person and the issuer or rated counterparty are directly or indirectly under the control of the same persons.
- (5) In subclause (4)(a), **group of companies** means a holding company and its subsidiaries within the meaning of section 5 of the Companies Act 1993.

15 How to determine applicable rating grade for purpose of classifying rated claims

- (1) For the purpose of classifying a rated short-term claim, the rating grade that applies to the claim is the rating grade that corresponds to the rating agency's assessment according to table 2 of the Schedule.

- (2) For the purpose of classifying a rated long-term claim, the rating grade that applies to the claim is the rating grade that corresponds to the rating agency's credit assessment according to table 3 of the Schedule.
- (3) If there are different credit assessments for a particular claim, the credit assessment that must be used is the credit assessment that results in the higher (less favourable) rating grade according to table 2 or 3 of the Schedule (as applicable).

16 How to determine loan-to-valuation ratio for purpose of classifying residential mortgage loans and certain other loans

- (1) For the purpose of classifying a residential mortgage loan or other loan secured by first mortgage over land, buildings, or both (to avoid doubt, not including a property development loan, *see* regulation 17), the loan-to-valuation ratio must be calculated using the formula—

$$\frac{\text{loan value}}{\text{property value}} \times 100$$

- (2) In the formula in subclause (1), **loan value**,—
 - (a) in relation to a residential mortgage loan, is the total amount of—
 - (i) all claims secured by way of first mortgage over the residential property; and
 - (ii) subsequent claims of the deposit taker or members of the borrowing group (if the deposit taker is part of a borrowing group) that are secured over the residential property:
 - (b) in relation to other loans secured by first mortgage over land, buildings, or both, is the total amount of—
 - (i) all claims secured by way of first mortgage over the land, buildings, or both; and
 - (ii) subsequent claims of the deposit taker or members of the borrowing group (if the deposit taker is part of a borrowing group) that are secured over the same land, buildings, or both.
- (3) In the formula in subclause (1), **property value**,—

- (a) in relation to a residential mortgage loan, is the value of the residential property determined under a deposit taker's property valuation policy:
- (b) in relation to other loans secured by first mortgage over land, buildings, or both, is the value of the land, buildings, or both, determined under a deposit taker's property valuation policy.

17 How to determine loan-to-valuation ratio for purpose of classifying property development loans

- (1) For the purpose of classifying a property development loan, the loan-to-valuation ratio must be calculated using the formula—

$$\frac{\text{loan value}}{\text{present value of the property}} \times 100$$

- (2) In the formula in subclause (1),—
- (a) **loan value** is the total amount of—
 - (i) all claims secured by way of first mortgage over the land, buildings, or both; and
 - (ii) subsequent claims of the deposit taker or members of the borrowing group (if the deposit taker is part of a borrowing group) that are secured over the same land, buildings, or both:
 - (b) **present value of the property** is calculated using the formula—

$$\text{value} \times (1 - \text{time to maturity} \times 0.12)$$
- (3) In the formula in subclause (2)(b),—
- (a) **value** is the net realisable value of the land and buildings at completion as determined by an independent valuer in accordance with the deposit taker's property valuation policy:
 - (b) **time to maturity** is the expected time to maturity of the credit exposure, in years (including part-years, expressed as a decimal), as at the date of calculation.

18 How to determine loan-to-valuation ratio for purpose of classifying loans secured over qualifying moveable machinery

- (1) For the purpose of classifying a first ranking loan secured over qualifying moveable machinery in respect of which a financing statement has been registered and perfected under the Personal Property Securities Act 1999, the loan-to-valuation ratio must be calculated using the formula—

$$\frac{\text{loan value}}{\text{property value}} \times 100$$

- (2) In the formula in subclause (1),—
- (a) **loan value** is the total amount of the first ranking loan secured over the qualifying moveable machinery;
 - (b) **property value** is the value of the qualifying moveable machinery determined under the deposit taker's property valuation policy.

19 Requirements for transferred loans to be excluded from calculation of risk-weighted amount for on-balance sheet exposures

- (1) A deposit taker may only exclude a transferred loan from the calculation of its amount for risk-weighted on-balance sheet exposures under regulation 12 if the transfer meets the following requirements:
- (a) the loan is transferred by novation or assignment; and
 - (b) the transfer does not contravene the terms and conditions of the underlying loan agreement and all necessary consents have been obtained; and
 - (c) the seller has no residual beneficial interest in the principal amount of the loan (or that part which has been transferred), and the buyer has no formal recourse to the seller for losses; and
 - (d) the seller has no obligation to repurchase the loan, or any part of it, at any time; and
 - (e) the seller has given notice to the buyer that it is under no obligation to repurchase the loan or support any losses suffered by the buyer, and the buyer has provided writ-

- ten acknowledgement of the absence of those obligations; and
- (f) the documented terms of the transfer are such that if the loan is rescheduled or renegotiated, the buyer, and not the seller, will be subject to the rescheduled or renegotiated terms; and
 - (g) if payments are routed through the seller, the seller is under no obligation to remit funds to the buyer unless and until they are received from the borrower; and
 - (h) if the buyer is subject to a trust arrangement, the trustees of that trust are independent of the seller or companies related to the seller both during and after the sale negotiations; and
 - (i) a clean transfer within the meaning of subclause (2) is achieved.
- (2) A clean transfer is achieved if, as a result of the transfer, the deposit taker or member of the borrowing group (as applicable)—
- (a) would incur no loss (of interest or principal) in the event of non-performance by the borrower; and
 - (b) reasonably believes that it is not, in any circumstances, required to support the loan.

20 Requirements for loans subject to sub-participations to be excluded from calculation of risk-weighted amount for on-balance sheet exposures

- (1) A deposit taker may only exclude a loan, or any part of a loan, in respect of which the deposit taker (or member of the borrowing group, as applicable) has entered into a sub-participation from the calculation of its risk-weighted amount for on-balance sheet exposures under regulation 12 if the following requirements are met:
- (a) there are no terms or conditions in the underlying loan agreement that would prevent the deposit taker or member of the borrowing group from entering into the sub-participation and all necessary consents have been obtained; and

- (b) the deposit taker or member of the borrowing group, whether under the terms of the sub-participation agreement or any other agreement or arrangement,—
 - (i) is not under an obligation to assume all or any part of the risk of the sub-participant under the sub-participation in any circumstances; and
 - (ii) has no liability for any losses suffered by the sub-participant under the sub-participation as a result of default by the borrower under the underlying loan agreement; and
 - (c) the sub-participant must have given written acknowledgement to the deposit taker or member of the borrowing group, confirming the matters in paragraph (b); and
 - (d) the deposit taker or member of the borrowing group is not under an obligation to repay any amount to the sub-participant unless and until an equivalent amount is received by the deposit taker or member of the borrowing group under the underlying loan agreement, including if payments under the underlying loan agreement are rescheduled; and
 - (e) if the sub-participation does not apply to the whole of the underlying loan, the parts of the loan that are subject to the sub-participation must rank equally with the parts of the loan that are not subject to the sub-participation in the event of default by the borrower.
- (2) In this regulation, **sub-participation** means a transaction in which a person (the **sub-participant**) places a deposit with the deposit taker or the member of the borrowing group (**A**) in the amount of its participation in respect of a loan (the **underlying loan**) by A to a third party (the **borrower**) on terms under which A's obligation to repay the sub-participant depends on the borrower repaying A under the underlying loan agreement; and **sub-participation agreement** has a corresponding meaning.

*Calculation of amount for market risk and
operational risk*

21 How to calculate amount for market risk and operational risk

A deposit taker must calculate its aggregate amount for market risk and operational risk by applying the book value for its total assets as at the date of calculation and its risk-weighted amount for credit risk, calculated in accordance with regulation 11, in the following formula:

$$\frac{\text{total assets} + \text{deposit taker's risk-weighted amount for credit risk}}{2} \times 0.175$$

Part 4

Restrictions on related party exposures

22 Overview

- (1) This regulation is intended only as a guide to the general scheme and effect of this Part.
- (2) The limit on related party exposures is a limit, expressed as a ratio, on the exposures that a deposit taker may have to related parties, relative to the deposit taker's capital base.
- (3) The limit applies to all exposures to related parties, in aggregate (and is not a limit on exposures to individual related parties), and, if the deposit taker is part of a borrowing group,—
 - (a) applies to exposures to related parties of all members of the borrowing group (by virtue of the definition of related party); and
 - (b) is relative to the capital of that borrowing group.
- (4) This Part sets out what a trust deed must include about the maximum limit on related party exposures (*see* regulation 23) and how the maximum limit must be calculated.

23 Trust deed must include maximum limit on aggregate related party exposures of no more than 15% of capital

- (1) Every deposit taker and trustee must ensure that the trust deed includes a maximum limit on aggregate exposures to related parties that the deposit taker must not exceed.

- (2) The maximum limit must be fixed by agreement between the deposit taker and the trustee (but *see* section 157ZD of the Act for provisions that apply if there is no agreement).
- (3) The maximum limit must be expressed as a ratio that—
 - (a) must be calculated in accordance with regulation 24; and
 - (b) must not exceed 15%.

24 How to calculate maximum limit ratio

- (1) A deposit taker must calculate the maximum limit (and measure whether or not it is exceeding that maximum limit) by—
 - (a) determining the amount of the aggregate exposures as follows:
 - (i) identifying the exposures as set out in regulation 25; and
 - (ii) measuring those exposures as set out in regulations 26 and 27; and
 - (iii) adding together all of those exposures; and
 - (b) determining the amount of capital under regulation 10, using the book values most recently reported to the trustee; and
 - (c) applying those amounts in the following formula:

$$\frac{\text{aggregate exposures}}{\text{capital}} \times 100$$

- (2) If the deposit taker is part of a borrowing group, both the aggregate exposures and the capital must be calculated on a consolidated basis (*see* regulation 5).
- (3) If accounting standards require a securitisation special purpose vehicle to be consolidated for the purposes of group financial statements, the special purpose vehicle must be consolidated with the deposit taker or the borrowing group for the purposes of the calculations under this Part.

25 Identifying related party exposures

- (1) The deposit taker must identify, for the purposes of regulation 24(1)(a)(i), all actual, potential, or contingent exposures to loss for the deposit taker (or a member of its borrowing

group) under a contract or arrangement if a related party fails to discharge its obligations (whether or not the related party is a counterparty to the contract or arrangement).

- (2) In identifying those exposures, the deposit taker must—
 - (a) include those not recorded in the statement of financial position (for example, commitments, contingencies, stand-by lines, letters of credit); and
 - (b) exclude those that are share capital or subordinated loans.

26 Measuring related party exposures

- (1) An exposure identified under regulation 25 (other than a market-related contract) must then be measured on the following basis:
 - (a) if it is included in the statement of financial position, the exposure is the book value most recently reported to the trustee;
 - (b) if it is not included in the statement of financial position, the exposure is the maximum loss that the deposit taker (or member of the borrowing group) would incur, as at the date of calculation, as a result of the related party failing to discharge its obligations.
- (2) In each case, however, the exposure must be measured net of allowances for impairment loss and without taking into account any credit risk mitigation arrangements.

27 Measuring related party exposures that are market-related contracts

- (1) If an exposure identified under regulation 25 is a market-related contract, the exposure must be measured as the notional principal amount of the contract, as at the date of calculation, multiplied by the credit conversion factor that applies under subclauses (2) and (3).
- (2) The credit conversion factor must be determined under the following table according to the type of contract and its original maturity:

Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010

Part 4 r 27

2010/167

Type of contract	Original maturity	Credit conversion factor
Interest rate contract	less than 1 year	0.5%
	1 year or more	aggregate of 1% for each year (or part of a year) of maturity
Exchange rate contract	less than 1 year	2%
	1 year or more	aggregate of 2% for 1st year and 4% for each additional year (or part of year) of maturity
Equity or commodity contract	less than 1 year	5%
	1 year or more, but less than 2 years	7%
	2 years or more	10%

- (3) In this regulation and regulation 26,—
- (a) a **market-related contract** means a contract that is settled on a future date and the value of which is determined by reference to the price of an underlying equity or commodity, to an interest rate or exchange rate, to changes in any of those rates or prices, or to an index of any of them (the **underlying market**); and
 - (b) a market-related contract is—
 - (i) an **interest rate contract** if the underlying market is an interest rate, changes in an interest rate, or an index of interest rates;
 - (ii) an **exchange rate contract** if the underlying market is an exchange rate, changes in an exchange rate, or an index of exchange rates;
 - (iii) an **equity or commodity contract** if the underlying market is an equity or commodity, or changes in the prices of an equity or commodity, or an index of equity or commodity prices; but
 - (c) if a market-related contract is more than 1 type of market-related contract under paragraph (b), it must be classified as being the type of those market-related contracts that has the highest credit conversion factor under the table in subclause (2); and

- (d) **original maturity** means the maturity of the contract under its terms as at the date it takes effect (rather than the residual maturity at the time of the calculation).

Part 5 Revocation

28 Revocation

The Deposit Takers (Credit Ratings) Regulations 2009 (SR 2009/420) are revoked.

Schedule Tables 1 to 3

rr 12,13,15

Table 1

Risk-weighted exposures for on-balance sheet assets

Item	Class	Risk weight
1	Cash (notes, coin, and gold bullion held by deposit taker or borrowing group member (as applicable) on site)	0%
2	Claims on Crown and Reserve Bank	0%
3	Claims on public sector entities	20%
4	Claims on New Zealand registered banks	20%
	Rated short-term claims (see regulations 14 and 15)	
5	– with a rating grade of 1	20%
6	– with a rating grade of 2	50%
7	– with a rating grade of 3	100%
8	– with a rating grade of 4	150%
	Rated long-term claims (see regulations 14 and 15)	

Table 1—*continued*

Item Class		Risk weight
9	– with a rating grade of 1	20%
10	– with a rating grade of 2	50%
11	– with a rating grade of 3	100%
12	– with a rating grade of 4	100%
13	– with a rating grade of 5	150%
14	– with a rating grade of 6	150%
15	Qualifying insured residential mortgage loans Residential mortgage loans (<i>see</i> regulation 16)	20%
16	– first ranking with a loan-to-valuation ratio not exceeding 70%	35%
17	– first ranking with a loan-to-valuation ratio exceeding 70% but not exceeding 80%	50%
18	– first ranking with a loan-to-valuation ratio exceeding 80% but not exceeding 90%	100%
19	– first ranking with a loan-to-valuation ratio exceeding 90% but not exceeding 100%	125%
20	– first ranking with a loan-to-valuation ratio exceeding 100%	150%
21	– second or subsequent ranking Property development loans (<i>see</i> regulation 17)	150%
22	– first ranking security with a loan-to-valuation ratio not exceeding 60%	150%
23	– first ranking security with a loan-to-valuation ratio exceeding 60% but not exceeding 100%	200%

Table 1—*continued*

Item Class		Risk weight
24	<ul style="list-style-type: none"> – any other property development loans, including those with second or subsequent ranking security, no security, and first ranking security with a loan-to-valuation ratio exceeding 100% 	300%
	Other loans with qualifying security over land and/or buildings (<i>see</i> regulation 16)	
25	<ul style="list-style-type: none"> – first mortgage over land and/or buildings with a loan-to-valuation ratio not exceeding 70%, excluding property development loans and residential mortgage loans 	100%
26	<ul style="list-style-type: none"> – first mortgage over land and/or buildings with a loan-to-valuation ratio exceeding 70% but not exceeding 100%, excluding property development loans and residential mortgage loans 	150%
27	Loans secured over qualifying moveable machinery) (<i>see</i> regulation 18) <ul style="list-style-type: none"> – first ranking in respect of which a financing statement has been registered and perfected under the Personal Property Securities Act 1999 and when an identification number is used to describe the collateral with a loan-to-valuation ratio not exceeding 70% 	100%
	Personal loans	
28	<ul style="list-style-type: none"> – in respect of which a financing statement has been registered and perfected under the Personal Property Securities Act 1999 	100%
29	<ul style="list-style-type: none"> – in respect of which a financing statement has not been registered under the Personal Property Securities Act 1999 	150%

Table 1—*continued*

Item	Class	Risk weight
	Other loans (not within classes 15 to 29, except in a case to which regulation 13(2) applies)	
30	– where a financing statement has been registered and perfected under the Personal Property Securities Act 1999	150%
31	– where a financing statement has not been registered and perfected under the Personal Property Securities Act 1999	200%
32	Assets in respect of which deposit taker or other borrowing group member (as applicable) is lessor under an operating lease (excluding operating leases over assets that are land and buildings)	175%
33	Equity holdings (not deducted from capital)	600%
34	Other assets	350%

Table 2
Rating grades for short-term credit assessments

Rating grade	Rating agency credit assessments		
	Standard & Poor's Ratings Services	Moody's Investors Service	Fitch Ratings
1	A-1	P-1	F1
2	A-2	P-2	F2
3	A-3	P-3	F3
4	Other	Other	Other

Table 3
**Rating grades for long-term or issuer credit
assessments**

Rating grade	Rating agency credit assessments		
	Standard & Poor's Ratings Services	Moody's Investors Service	Fitch Ratings
1	AAA	Aaa	AAA
	AA+	Aa1	AA+
	AA	Aa2	AA
	AA-	Aa3	AA-
2	A+	A1	A+
	A	A2	A
	A-	A3	A-
3	BBB+	Baa1	BBB+
	BBB	Baa2	BBB
	BBB-	Baa3	BBB-
4	BB+	Ba1	BB+
	BB	Ba2	BB
	BB-	Ba3	BB-
5	B+	B1	B+
	B	B2	B
	B-	B3	B-
6	CCC+	Caa1	CCC+
	CCC	Caa2	CCC
	CCC-	Caa3	CCC-
	CC	Ca	CC
	C	C	C
	D		D

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 December 2010, prescribe various matters for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989 (the **Act**), which relates to the prudential regulation of deposit takers.

The regulations—

- specify the type of credit rating that a deposit taker is required to have:
- require every deposit taker and trustee to ensure that the deposit taker's trust deed includes the minimum capital ratio that the deposit taker must maintain:
- specify that the minimum capital ratio that must be included in the trust deed is not less than 8% if the deposit taker has a credit rating under the Act and not less than 10% if it does not have such a credit rating:
- set out how the minimum capital ratio must be calculated:
- declare additional classes of persons to be related parties of deposit takers for the purposes of Part 5D:
- require every deposit taker and trustee to ensure that the deposit taker's trust deed includes a maximum limit on aggregate exposures to related parties relative to capital, fixed by agreement between the deposit taker and trustee:
- provide that the maximum limit on related party exposures included in the trust deed must not exceed 15%:
- set out how the maximum limit on related party exposures must be calculated.

The regulations are organised into 5 parts as follows:

Regulations 1 and 2 relate to the title and commencement of the regulations.

Part 1: preliminary provisions

Regulation 3 defines terms used in the regulations. The Act also defines a number of terms used in the regulations.

The effect of *regulation 3(4)* is that if a term is used in the regulations but is not defined and that term has a meaning according to generally

accepted accounting practice, then the term must be given the meaning according to generally accepted accounting practice.

Regulation 4 restates the statutory definition of related party and extends that definition so that any related party of a member of the borrowing group is treated as also being a related party of the deposit taker for the purposes of Part 5D. The following classes are also added:

- sister entities of the deposit taker or any member of the borrowing group:
- persons in which the deposit taker or any member of the borrowing group has a substantial interest (which, in essence, is 10% control over the entity or control or significant influence over 25% of the board composition):
- persons with which the deposit taker or a group member (or a person with a substantial interest in the deposit taker or group member) have interlocking boards (in essence, 40% common membership).

The extended definition of related party applies for the purposes of Part 5D of the Act. The term is used in section 157L of the Act (which relates to governance requirements for deposit takers) and in sections 157V to 157Y of the Act and *Part 4* of these regulations (which impose limits on aggregate related party exposures).

Regulation 5 provides that where a deposit taker is a member of a borrowing group, every calculation that the regulations require a deposit taker to make must be made on a consolidated basis for the deposit taker's borrowing group.

Part 2: requirements relating to credit ratings

Regulation 6 requires the rating of creditworthiness that a deposit taker must have from an approved rating agency under section 157I of the Act to be a local currency (New Zealand dollar), long-term, issuer rating. These are the same requirements as prescribed by the Deposit Takers (Credit Ratings) Regulations 2009 (which are revoked by these regulations). A long-term issuer rating expresses an opinion about the overall capacity of a deposit taker to meet its financial obligations (in contrast to an issue rating, which relates only to a specific financial obligation).

Part 3: requirements relating to maintenance of minimum capital ratio

This Part sets out the regulations needed under sections 157S to 157U of the Act.

Regulation 8 requires every deposit taker and trustee to ensure that the deposit taker's trust deed includes the minimum capital ratio that the deposit taker has to maintain. This must be not less than 8% if the deposit taker has a credit rating under section 157I of the Act and not less than 10% if the deposit taker does not have such a credit rating.

Regulation 9 provides that the capital ratio must be calculated as the ratio (expressed as a percentage) of the deposit taker's capital (calculated as set out in *regulation 10*) to the sum of 2 amounts: its risk-weighted amount for credit risk (calculated as set out in *regulation 11*) and its aggregate amount for market risk and operational risk (calculated as set out in *regulation 21*). If the deposit taker has a borrowing group, the calculation must be done on a consolidated basis.

To calculate its risk-weighted amount for credit risk, the deposit taker must classify each of its on-balance sheet exposures into the first class that applies to the asset in *table 1 of the Schedule* (unless the asset is a loan secured over more than 1 form of security) and then multiply the value of each asset by the risk-weight that applies to that class set out in the second column of the table. The resulting total amount for risk-weighted on-balance sheet exposures must then be added to the deposit taker's following off-balance sheet exposures: direct credit substitutes, asset sales with recourse, and forward asset purchases. In the case of a loan secured over more than 1 form of security, instead of classifying that asset into the first class that applies in *table 1*, it must be classified into the class that refers to one of those forms of security and that produces the highest risk weight. *Regulations 12 to 20* contain more detailed provisions about when certain assets must be included in the calculation of risk-weighted on-balance sheet exposures and requirements that must be satisfied before certain on-balance sheet assets are able to be classified into various of the classes listed in *table 1*.

Regulation 21 sets out a formula for calculation of the deposit taker's aggregate amount of market risk and operational risk. Two values need to be determined to apply the formula: the deposit taker's total assets (taken from the book value) and the deposit taker's

risk-weighted amount for credit risk (taken from the calculation made under *regulation 11*).

Part 4: restrictions on related party exposures

This Part sets out the regulations needed to implement sections 157V to 157Y of the Act. The combined effect of the Act and these regulations is to require deposit takers and trustees to include an agreed maximum limit on aggregate exposures to related parties in the trust deed of no more than 15% of capital (expressed as a ratio). It is a limit on aggregate related party exposures, not a limit on exposures to individual related parties. If the deposit taker is part of a borrowing group, the ratio must be calculated on a consolidated basis so that it captures exposures of every member of the borrowing group to a related party of any member of the borrowing group and applies relative to the consolidated capital of the borrowing group.

Regulation 24 sets out the ratio calculation. For the purposes of that calculation, the related party exposures must be identified in accordance with *regulation 25* and measured in accordance with *regulations 26 and 27*. *Regulation 25* requires the inclusion of not just the standard forms of lending, but all on- and off-balance sheet exposures. Exposures of a capital nature are excluded because they are required to be deducted from capital. *Regulation 26* requires the full potential exposure to be measured. However, market-related contracts must be measured under *regulation 27* by applying a credit conversion factor that is intended to approximate their replacement cost over the lifetime of the contract.

Part 5: revocation

Regulation 28 revokes the Deposit Takers (Credit Ratings) Regulations 2009.

**Deposit Takers (Credit Ratings, Capital
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Regulations 2010**

2010/167

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