

Submission

to the

Senate Standing Committees on Economics

on the

Treasury Laws Amendment (Banking Executive Accountability Regime and Related Measures) Bill 2017

1 November 2017

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

Background

2. NZBA welcomes the opportunity to provide feedback to the Senate Standing Committees on Economics on the Treasury Laws Amendment (Banking and Executive Accountability and Related Measures) Bill 2017 (**Bill**) and commends the work that has gone into developing the Bill.
3. If you would like to discuss any aspect of the submission further, please contact:

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Background

4. Four of NZBA's sixteen registered bank members are subsidiaries of ADIs and therefore fall within the scope of the Bill. These banks are ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand, and Westpac New Zealand Limited (**NZ Subsidiaries**). Their respective Australian parents are Australia and New Zealand Banking Group Limited, Commonwealth Bank of Australia, National Australia Bank Limited and Westpac Banking Corporation.
5. NZBA supports the introduction of s 37AA and s 37BC to the Bill, which operate to clarify the relationship between the Bill and corresponding foreign laws, and considers that the inclusion of those sections brings greater alignment between the Bill and the intention of the legislation as that is expressed in the Explanatory Memorandum.
6. This submission proposes amendments to sections 37AA and s 37BC (and associated definitions) to further clarify the scope and application of those sections.

Proposed amendments to s 37AA, s 37BC and definitions

7. NZBA recommends the following drafting changes to the Bill (see amendments in italics and underlined):

The following two definitions would be included:

- “Foreign Law” means any applicable law, statute, rule, regulation, code, order, ordinance, judgment, injunction and decree of any Foreign Governmental Authority.
- “Foreign Governmental Authority” means any government or agency, regulatory body, board, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government of a foreign country.

37AA Inconsistency with corresponding foreign laws

- (1) If APRA is satisfied that an ADI *or a subsidiary of an ADI* would contravene a *Foreign Law* if the ADI were to comply with a particular obligation under section 37, APRA:
 - (a) may give to the ADI a written notice specifying that obligation; and
 - (b) may specify in the notice:
 - (i) the extent to which the ADI need not comply with that obligation; and
 - (ii) conditions to which the notice is subject.
- (2) An ADI is not required to comply with that obligation:
 - (a) to the extent compliance would result in the ADI or a subsidiary of an ADI contravening that *Foreign Law*; or
 - (b) if the notice specifies the extent to which the ADI need not comply with that obligation—to the extent so specified;if the conditions (if any) specified in the notice are complied with.

37BC Inconsistency with corresponding foreign laws

- (1) If APRA is satisfied that an accountable person, of an ADI or a subsidiary of an ADI, would contravene a *Foreign Law* if he or she were to comply with a particular obligation under section 37B, APRA:
 - (a) may give to the accountable person a written notice specifying that obligation; and
 - (b) may specify in the notice:
 - (i) the extent to which the accountable person need not comply with that obligation; and
 - (ii) conditions to which the notice is subject.
- (2) An accountable person is not required to comply with that obligation:
 - (a) to the extent compliance would result in the accountable person contravening that *Foreign Law*; or
 - (b) if the notice specifies the extent to which the accountable person need not comply with that obligation—to the extent so specified;if the conditions (if any) specified in the notice are complied with.
- (3) APRA must give a copy of the notice to the ADI or subsidiary.

Purpose of amendments to s 37AA, s 37BC and definitions

8. By way of the above amendments, NZBA seeks to ensure that s 37AA and s 37BC apply to all regulatory mechanisms, rules and instruments of appropriate Foreign Governmental Authorities. It is therefore certain those sections contemplate situations where the New Zealand subsidiary of an ADI is required to comply with the Bill, but that conflicts with an obligation that has similar force to legislation but is not directly linked to a legislative requirement. For example, requirements to comply with “minimum standards” of eligibility to be granted a financial market services licence specified by the New Zealand Financial Markets Authority.

9. In addition, NZBA recommends an amendment to s 37AA to enable APRA to provide a notice under that section when a subsidiary of an ADI, rather than the ADI itself, is at risk of breaching a Foreign Law. This would cover situations where the ADI would otherwise be required to ensure its subsidiary acts in a way that would be contrary to a Foreign Law, but no breach of Foreign Law by the ADI will occur (given that the ADI may not be subject to that Foreign Law).
10. We would be happy to discuss or provide further submissions on the above if required.