



Memorandum of Understanding

between

the Commerce Commission

and

the Reserve Bank of New Zealand

Memorandum of understanding

Between the Commerce Commission (the **Commission**)

And the Reserve Bank of New Zealand (the **Reserve Bank**)

together, the “**parties**”

Background

1. The Commission is an independent Crown entity established under section 8 of the Commerce Act 1986 (**Commerce Act**) with statutory functions under that and other statutes including the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, the Telecommunications Act 2001, the Fuel Industry Act 2020, and the Dairy Industry Restructuring Act 2001.
2. The Reserve Bank is a statutory entity established under the Reserve Bank of New Zealand Act 1989 (**RBNZ Act**). The Reserve Bank is New Zealand’s central bank. It has statutory functions under the RBNZ Act, the Insurance (Prudential Supervision) Act 2010 (**IPSA**), the Non-bank Deposit Takers Act 2013 (**NBDT Act**), the Financial Market Infrastructures Act 2021 (**FMI Act**), and the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.
3. Both parties collect a wide range of information in order to give effect to the responsibilities they have to protect people, information and places, to ensure regulatory compliance, and to detect and prevent criminal offending.
4. The parties work together where they are considering matters where they have a mutual interest. The parties wish to record the operational protocols in regards to cooperation and information sharing, in particular in relation to matters where they have a mutual interest.
5. The parties understand that how they collect and share information is fundamental to fostering trust and confidence in the public sector. Each party’s policy on the collection, use and sharing of information is in accordance with the “Information Gathering and Public Trust” Model Standards issued by the Public Service Commission on 18 December 2018 (as may be updated from time to time).
6. This Memorandum of Understanding (**MOU**) will be published on the parties’ websites.

Purpose

7. The purpose of this MOU is to provide a framework for a formal relationship of cooperation and information sharing between the Commission and the Reserve Bank to enable effective and efficient performance of each party’s regulatory functions, particularly in respect of matters where the parties have a mutual interest.
8. This MOU sets out the framework for cooperation and information sharing. Schedules that accompany this MOU set out the protocols relating to joint interest matters and information handling requirements.

Cooperation principles

9. Where and to the extent appropriate, practicable and permitted by law the parties will:
 - 9.1 Communicate in an open, honest and timely manner.
 - 9.2 Raise issues promptly and respond promptly to requests or other contact from the other.
 - 9.3 Identify and consider opportunities to implement shared staff training and development and provide mutual operational support.
 - 9.4 Work together to avoid duplication of expenditure of taxpayer-funded resources.
 - 9.5 Advise each other in advance of actions to be taken, or proposed to be taken, of which the other might reasonably expect to be advised.
 - 9.6 Share information and provide assistance in relation to matters of joint interest. Specific procedures regarding to merger and change of control issues are set out in Schedule 1 of this MOU.
 - 9.7 Request advice or assistance on matters that are not of joint interest, but where the requesting party considers it would benefit from the expertise the other party could bring to bear on that matter.
 - 9.8 Where either party identifies a harm or potential harm falling within the jurisdiction of the other, pass relevant information to the other party.
 - 9.9 Advise each other's Relationship Manager of any operational or policy concerns.
 - 9.10 Implement policies, procedures and systems as appropriate to support the operation of this MOU.
10. Where and to the extent appropriate, practicable and permitted by law, having regard to regulatory policy and legislative development, the parties will:
 - 10.1 Advise the other of any proposed changes in legislation, regulatory policy, guidance or decisions on regulation that may materially impact on the objectives and/or functions of the other.
 - 10.2 Notify the other if the implementation of legislation, regulatory policy, guidance or decisions on regulation by one party may materially impact on the objectives and/or functions of the other.
11. When undertaking matters of joint interest, each party will, where and to the extent appropriate and practicable, consult with the other before publishing information.

Information sharing protocols

12. The parties acknowledge the importance of sharing information where practicable and to the extent permitted by law. However, the parties will also be mindful of their obligations under the Privacy Act 2020, including principle 11(e) of that Act, and other relevant legislation and published guidelines, when seeking to share information.

13. Where a party (the “**Receiving Party**”) wishes to make a request for information, advice or assistance (referred to collectively as “**requests for information**”) from the other party (the “**Disclosing Party**”), it will make a written request to the Disclosing Party’s Relationship Manager. Oral requests must be followed up by a written request as soon as practicable, or as agreed at the time of the request.
14. The Receiving Party may make a request for information from the Disclosing Party, for the purpose of facilitating the effective and efficient performance of the Receiving Party’s powers and regulatory functions. Requests for information will specify:
 - 14.1 the information requested (identifying the type of documents or information sought);
 - 14.2 which of the Receiving Party’s teams or people will have access to the information;
 - 14.3 the purpose for which the information is sought;
 - 14.4 the timeframe in which the information is needed, and the reasons for any urgency requested;
 - 14.5 a description of how the requesting party plans to use the information, and any outputs for the information;
 - 14.6 any risks identified as part of any risk assessment, and any risk mitigation measures to be adopted; and
 - 14.7 any other relevant matters.
15. The Disclosing Party will respond to a request for information as soon as is practicable or within the timeframe requested. In the case of an urgent request, the parties will endeavour to consult to ensure a response to the request is expedited if possible.
16. Where the Disclosing Party holds the information requested but declines to provide it to the Receiving Party, it will (to the extent it is able to do so) inform the Receiving Party of the reason for declining the request.
17. Obligations regarding the use, storage and retention of any information shared between the parties are set out in **Schedule 2** to this MOU.
18. Before requesting information, a party should consider whether the information is already in the public domain and can be obtained without the need for a formal request.

Prudential Information

19. **Prudential information** is information that is confidential under sections 105 or 156G of the RBNZ Act, section 135 of IPSA, section 54 of the NBDT Act, or section 142 of the FMI Act; and is generally information received by the Bank pursuant to its powers and functions under the relevant Acts.
20. The Reserve Bank may elect to disclose prudential information to the Commission, where the Reserve Bank considers the Commission has a proper interest in receiving that information (for example, under Schedule 1 of this MOU).

Representatives and reviews

21. Each party will appoint a “**Senior Representative**” and a “**Relationship Manager**” to assist with the implementation of this MOU and continued relationship between the parties. The initial Senior Representative and Relationship Manager for each party are:

Commerce Commission	Reserve Bank of New Zealand
<p>Senior Representative General Manager Competition 44 The Terrace Wellington <i>At the date of this MOU:</i> Antonia Horrocks antonia.horrocks@comcom.govt.nz</p>	<p>Senior Representative Assistant Governor/GM Governance, Strategy and Corporate Relations 2 The Terrace Wellington <i>At date of this MOU:</i> Simone Robbers simone.robbers@rbnz.govt.nz</p>
<p>Relationship Manager: Cartels Manager 44 The Terrace Wellington <i>At the date of this MOU:</i> Grant Chamberlain grant.chamberlain@comcom.govt.nz</p>	<p>Relationship Manager: Director of Enforcement and Resolution 2 The Terrace Wellington <i>At the date of this MOU:</i> Kerry Beaumont kerry.beaumont@rbnz.govt.nz</p>

22. The Relationship Managers will:
- 22.1 be the first point of contact between the parties with respect to the day to day implementation of this MOU;
 - 22.2 meet every three months (unless otherwise agreed), to discuss the progress of activities undertaken pursuant to this MOU, activity that could constitute current or future matters of joint interest, and any other matters relevant to the relationship between the parties;
 - 22.3 develop or amend protocols relating to specific procedures and activities regarding joint interest matters, as required; and
 - 22.4 notify each other of any changes to their representatives under this MOU.
23. The Senior Representatives will meet every three years, or as otherwise agreed by the parties, to review this MOU and its schedules.
24. Either party may terminate the MOU by giving three months’ notice in writing to the other party.

25. Any modification of this MOU, including modification or termination of the Schedules, shall first be discussed by the Senior Representatives, and then agreed in writing between the parties.

Issues or dispute resolution

26. All issues, disputes and differences between the Parties about the interpretation or performance of this MOU will be resolved at the earliest opportunity between the Relationship Managers, wherever possible.
27. Only when matters remain unresolved or require further adjudication should they be referred to the Senior Representatives.

Costs

28. Unless the parties mutually determine otherwise, the cost of meeting the commitments of this MOU shall be met by the party incurring the cost.

Legal

29. Nothing in this MOU shall make either party liable for the actions of the other or constitute any legal relationship between the parties.
30. The provisions in this MOU are to be read subject to any Chief Executive, Public Service Commission or Cabinet directives, and any enactment, regulations, rules or applicable case-law. For the avoidance of doubt, nothing in this MOU should be interpreted or applied inconsistently with either party's statutory functions, powers or obligations.
31. Where there are changes to Government policy or legislation which affect the purpose and functions of this MOU, each party agrees to inform the other of those changes at the earliest possible time thereafter and both parties agree to meet to re-negotiate, if necessary, any aspects of the MOU.
32. A reference to any legislation includes that legislation as amended or replaced from time to time.

Signed by the Commerce Commission



Adrienne Meikle
Chief Executive Officer
Commerce Commission

Date: 30/5/22 .

Signed by the Reserve Bank of New Zealand



Adrian Orr
Governor
Reserve Bank of New Zealand

Date: 29 June 2022

Schedule 1: Joint Interest Matters

Purpose

1. The purpose of Schedule 1 is to facilitate the sharing of information to enable the parties to achieve the objectives of the MOU and in particular the assessment of particular joint interest matters. This schedule does not supersede, and should be read together with the more general obligations regarding sharing of information that are set out, in the main body of the MOU.
2. The parties may identify further joint interest matters from time to time. The parties will meet to discuss the most appropriate way to proceed on such matters and, where appropriate, append any protocols relating to such matters to this schedule.

Interaction in relation to insurance mergers and changes of control

3. A merger, acquisition or amalgamation in relation to licensed insurers active in New Zealand ("**insurance merger**") may require approval and/or investigation by each of the Reserve Bank and the Commission:
 - 3.1 The IPSA provides that a licensed insurer that wishes to enter into a transfer or amalgamation of all or part of its insurance business must obtain the approval of the Reserve Bank.
 - 3.2 The Commerce Act provides for the Commission to administer a voluntary clearance and authorisation regime for mergers and acquisitions. The Commission can also take enforcement action in relation to transactions not notified to it where it considers that they have resulted, or are likely to result, in a substantial lessening of competition in breach of section 47 of the Commerce Act.
4. A change of control in relation to banks or non-bank deposit takers active in New Zealand ("**change of control**") may require approval and/or investigation by each of the Reserve Bank and the Commission:
 - 4.1 The RBNZ Act provides that a person must obtain the written consent of the Bank before giving effect to a transaction if that transaction has the effect of that person acquiring a significant influence over a registered bank, or increasing the level of that person's significant influence over a registered bank beyond the permitted or existing level (as the case may be).
 - 4.2 The NBDT Act provides that a person must obtain the written consent of the Bank before giving effect to a transaction, if the completion of the transaction would result in the person's level of influence over a licensed NBDT increasing beyond levels permitted under that section.
 - 4.3 The Commerce Act provides for the Commission to administer a voluntary clearance and authorisation regime for mergers and acquisitions. The Commission can also take enforcement action in relation to transactions not notified to it where it considers that they have resulted, or are likely to result, in a substantial lessening of competition in breach of section 47 of that Act.

5. Where and to the extent appropriate, practicable and permitted by law:
- 5.1 Each party will promptly notify the other of an proposed insurance merger or change in control after receiving notice or otherwise becoming aware of that insurance merger or change of control, in accordance with paragraph 6 below. If the fact of the proposed insurance merger or change of control is confidential, the party will notify the other as soon as practicable after the insurance merger or change of control may be made public.
- 5.2 Where an insurance merger or change of control requires approval from the Reserve Bank and is subject to approval from, or the subject of investigation by, the Commission, the parties will share information on their respective processes, including the likely timing of relevant assessment processes.
- 5.3 The parties will share information and provide assistance in relation to insurance mergers and changes of control.
6. Each party will nominate a primary contact for notifications regarding insurance mergers and changes of control, who should be notified such by the other party in addition to the other party's Relationship Manager (as required by clause 22, if the Relationship Manager differs from the contact below). The initial primary contact person for each party is:

Commerce Commission

Michael Tilley
Mergers Manager
Level 12, 55 Shortland Street
Auckland 1143

Reserve Bank of New Zealand

Stan Christian
Senior Manager Prudential Supervision
Level 13, Tower Two, 205-209 Queen Street
Auckland 1010

7. Following the initial contact under paragraph 5.1, either party may advise the other of a designated person(s) that is authorised to make and receive requests for information for a particular insurance merger or change of control.

Schedule 2: Use, storage and retention of information

1. Any information shared between the parties will:
 - 1.1 be used and kept by the Receiving Party for legitimate purposes and in line with the law and that party's policies, processes and systems;
 - 1.2 be held in accordance with any stated security classifications, terms or restrictions requested in writing by the Disclosing Party at the time that the information is shared; and
 - 1.3 be stored with appropriate security measures, whether the information is in electronic form, hard copy or otherwise.
2. The Receiving Party will upon request provide the Disclosing Party with its internal guidelines and policies relating to the use, storage and retention of information, together with any other information required to verify that the Receiving Party is meeting its obligation in paragraph 1 above.
3. The Receiving Party may disclose shared information to a third party only with the prior consent of the Disclosing Party, or where the Receiving Party is legally required to disclose that information and has informed the Disclosing Party of this requirement prior to disclosure.
4. The parties will store and retain any information shared in accordance with this MOU as required by the Public Records Act 2005.
5. The parties acknowledge that:
 - 5.1 If any criminal proceedings are initiated, the Criminal Disclosure Act 2008 will apply in relation to all relevant information held by the prosecuting party.
 - 5.2 If any civil proceedings are initiated, the High Court Rules 2016 will apply in relation to all relevant information held by either party.
6. Where a party receives a request under the Official Information Act 1982, it will consult the other party before making any decision regarding disclosure of information covered by this MOU (including prudential information).
7. Where a party is legally required to disclose information obtained pursuant to this MOU, and to the extent it is able given the nature of the request, before making any disclosure, that party will consult with the other party to allow the other party to raise concerns about the potential disclosure.