

3.23 NEW ZEALAND

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SUMMARY

The first covered bond was issued out of New Zealand in June 2010. At that time, New Zealand did not have a legislative covered bond framework and the domestic issuers used the well-tested general law-based covered bond approach following in the footsteps of the UK, France, and Canada. Since then, the regulatory authorities in New Zealand have developed dedicated covered bond legislation to support further growth of this market segment. In May 2012, the Minister of Finance introduced the Reserve Bank of New Zealand (Covered Bonds) Amendment Bill (Amendment Bill) into Parliament. Following a lengthy consultation process with the House of Representatives, the law on covered bonds came into force in December 2013, by virtue of the Reserve Bank of New Zealand (Covered Bonds) Amendment Act 2013.

Since the amendment act has come into effect and following a 9-month transition period, banks are only allowed to issue covered bonds under registered programmes. During the transition period, all issuers registered their covered bond programmes that existed before the legislation came into effect with the Reserve Bank of New Zealand. Once the programmes were registered, covered bonds issues under the programmes prior to registration also received the benefits of the new legislation.

I. FRAMEWORK

No covered bond regulation was in place in June 2010 when New Zealand covered bonds were first issued and issuance of covered bonds was neither prohibited nor limited by any prudential requirements or other regulation.

In October 2010, the central bank released a consultation paper on proposals for a regulatory framework to provide additional certainty to investors, and to improve the disclosure requirements in order to support the development of the covered bond market in New Zealand.

In January 2011, the Reserve Bank of New Zealand (RBNZ) introduced a regulatory issuance limit for the issuance of covered bonds by New Zealand banks (which came into force in April 2011). The regulation limits the value of assets encumbered for the benefit of covered bondholders to 10% of total assets of the issuing bank. At that time the RBNZ said that this was an initial limit and that its appropriateness would be reviewed by the Central Bank, taking into account the developments within the covered bond market in New Zealand.

In December 2011, the RBNZ conducted another public consultation. The final paper was in essence aligned with the earlier consultation paper. Following approval by Cabinet in April 2012, the Reserve Bank released a Cabinet paper and Regulatory Impact Statement confirming policy positions relating to the matters discussed in the Reserve Bank's December 2011 consultation paper on covered bonds.

In May 2012, the first reading on the Amendment Bill took place. Following its first reading, the Bill was referred to the Finance and Expenditure Select Committee. In February 2013 the second reading took place. Following a third and final reading, the Amendment Bill was passed by the Parliament and received Royal Assent in December 2013. It came into force on 10 December 2013.

The New Zealand covered bond legislation gave existing covered bond issuers nine months to register their covered bond programme with the RBNZ. Each issuance under the programme is also proposed to be registered with the RBNZ. All NZ issuers have registered their old programmes which means that all outstanding NZ covered bonds receive now the benefit of the legislation.

II. STRUCTURE OF THE ISSUER

As of June 2018, issuers from five New Zealand banking groups have issued covered bonds, being ANZ Bank New Zealand Limited (ANZ), ASB Bank Limited (ASB), Bank of New Zealand (BNZ), Westpac New Zealand Limited (Westpac) and Kiwibank Limited (Kiwibank). With the exemption of Kiwibank, all issuers are ultimately owned by Australian parent banks. However, the Australian parent companies ANZ, CBA, NAB and Westpac do not guarantee the covered bonds. Typically, NZD denominated bonds have been issued directly by the New Zealand banks, while non-NZD bonds have been issued through the London branches of their respective subsidiaries and are guaranteed by the New Zealand parent company. The RBNZ emphasised from the outset that it is supportive of the covered bond product. Banks can issue bonds backed by a dynamic pool of assets, and the covered bonds rank pari passu to each other. The covered bonds are irrevocably guaranteed by the covered bond guarantor (CB guarantor) under the covered bond guarantee. The CB guarantor will only make payments under the bonds when (a) an issuer event of default has occurred, and a notice to pay is served on the CB guarantor or, (b) a CB guarantor event of default has occurred and a covered bond guarantee acceleration notice is served on the CB guarantor and the issuer.

Under the covered bond law, issuers are required to register their programmes with the RBNZ.

III. COVER ASSETS

The covered bond law does not restrict the type of cover assets. The Reserve Bank stated on its website that the assets eligible to be included in the cover pool do not need to be prescribed by legislation because banks specify asset eligibility in programme documentation. In the Reserve Bank's opinion, legislative restrictions on cover pool assets may unnecessarily restrict an issuer's ability to develop covered bond programmes.

The existing covered bond programmes are backed by a dynamic pool of residential mortgage loans originated in New Zealand. The common eligibility criteria for these mortgage loans across the programmes are listed below:

- > Denominated and repayable only in New Zealand Dollars (NZD);
- > Secured by first ranking residential mortgages in New Zealand;
- > Mortgage loans with a term not exceeding 30 years;
- > Outstanding principal balance of no more than NZD 1.5m (Westpac)/NZD 2.0m (ANZ, ASB, Kiwibank)/NZD 2.5m (BNZ); and,
- > Not in arrears/have not been in default for more than 30 days.

Some of the issuers have additional features beyond these requirements. Moreover, issuers are also allowed to hold liquid substitution assets. These assets, are subject to an overall limit of 10%-20% of the cover portfolio depending on the issuer (Westpac 20%, BNZ 15%, ANZ, ASB and Kiwibank 10%), with the exception of cash that has no limit.

IV. VALUATION AND LTV CRITERIA

In New Zealand, every property is typically valued during the underwriting process. All five existing covered bond programmes do not restrict the LTV limit for mortgage loans in the cover pool. However, in the case of ASB and Westpac, the Asset Coverage Test (ACT) caps the valuation of the property at 75%. In case of ANZ, BNZ and Kiwibank this cap is set at 80%. In effect, this means the maximum amount of a loan that can count in the ACT test is 75% or 80% of the property value respectively.

V. ASSET-LIABILITY MANAGEMENT

Issuance limit: As mentioned above, there is a regulatory issuance threshold which limits the value of assets encumbered for the benefit of covered bond holders to 10% of the total assets of the issuing bank. The RBNZ highlights that this is an initial limit and its appropriateness will be reviewed taking into consideration

the development of the covered bond market. The RBNZ stated that the 10% limit is “similar to the limit set in Australia” of 8%. However, the limit is “specified differently” from Australia’s. “The New Zealand limit applies at all times, whereas the Australian limit applies only at the time of issuance. In addition, if an Australian bank holds cover pool assets in excess of the limit, it must deduct the value of the excess amount from its capital in calculating its regulatory capital adequacy ratios: if a New Zealand bank breaches its cover pool limit, it is in breach of its conditions of registration.”

Currency and interest hedging: The underlying mortgage loans are denominated in NZD. However, covered bonds can be issued in other currency denominations, which introduces currency risk for the issuer. Moreover, the interest payable for the covered bonds will not exactly match the interest received on the mortgage loans in the collateral pool. Under the existing covered bond programmes, the issuers are required to hedge the interest and currency risks.

Soft vs hard bullet structures: The existing issuers (ANZ, ASB, BNZ, Kiwibank and Westpac) can issue hard bullet covered bonds, or covered bonds with extendable maturity of one year (“soft bullet” bonds). Hard bullet covered bonds will be subject to a 12-month pre-maturity test giving the CB guarantor 12 months to raise liquidity by selling assets of the pool.

Overcollateralisation (OC): The issuers have committed to various OC levels under the prospectuses and to the rating agencies. The covered bond law only requires that the value of the cover pool assets is at least equal to the principal amount outstanding on the covered bonds.

VI. COVER POOL MONITOR AND BANKING SUPERVISION

The law stipulates that registered covered bond issuers must appoint an independent asset monitor. The asset monitor must either be a licensed auditor or an auditing firm (or a person/firm that has been approved by the RBNZ). In this context independent means independent from both the issuer and any associated person of the issuer, whereby a person’s appointment as auditor does not affect his, her, or its independence.

The existing issuers provide investor reports on a monthly or quarterly basis. In addition, monthly or quarterly reports are prepared for the rating agencies. The agencies re-calculate the required asset percentage used in the ACT on a regular basis and prior to each issuance under the respective covered bond programme. On an annual basis the asset monitor checks the arithmetic accuracy of the calculations performed by the calculation manager (usually the issuer), with respect to the asset coverage test or amortisation test (as applicable).

The law introduces the requirement for an asset register to be maintained. The asset monitor also carries out an annual check that the asset register has been updated accurately and in a timely manner.

If the issuer rating of the calculation manager is downgraded below a certain trigger level, the asset monitor will check the arithmetic accuracy of the calculations performed by the calculation manager on a monthly basis. Moreover, (1) if the asset monitor identifies any errors in the calculations performed by the calculation manager which result in a failure in the asset coverage test, or (2) if the adjusted aggregate mortgage loan amount or the amortisation test aggregate mortgage loan amount is misstated by the calculation manager by an amount exceeding 1%, or (3) if the asset register has not been maintained as required, then the asset monitor will be required to carry out the applicable check on a monthly basis until the asset monitor is satisfied that no further inaccuracies exist.

VII. SEGREGATION OF COVER ASSETS AND BANKRUPTCY REMOTENESS OF COVERED BONDS

The covered bonds are direct, unsecured, unsubordinated and unconditional obligations of the relevant issuer. In addition, the CB guarantor guarantees the payments of interest and principal of the covered bonds. The issuer provides a subordinated loan to the CB guarantor which allows the CB guarantor to acquire a mortgage loan portfolio. The portfolio includes mortgage loans and the related security sold by the seller in accordance with the terms of the mortgage sale agreement.

The mandatory registration required by the new covered bond law involves the recognition of a covered bond issued with the effect that the cover assets would be explicitly protected from the insolvency or statutory management of the issuer. The RBNZ must keep a public register of registered covered bond programmes and issuances under each programme. Moreover, the covered bond law requires that the cover pool assets are held by a Special Purpose Vehicle (SPV), which is a separate legal entity from the issuer.

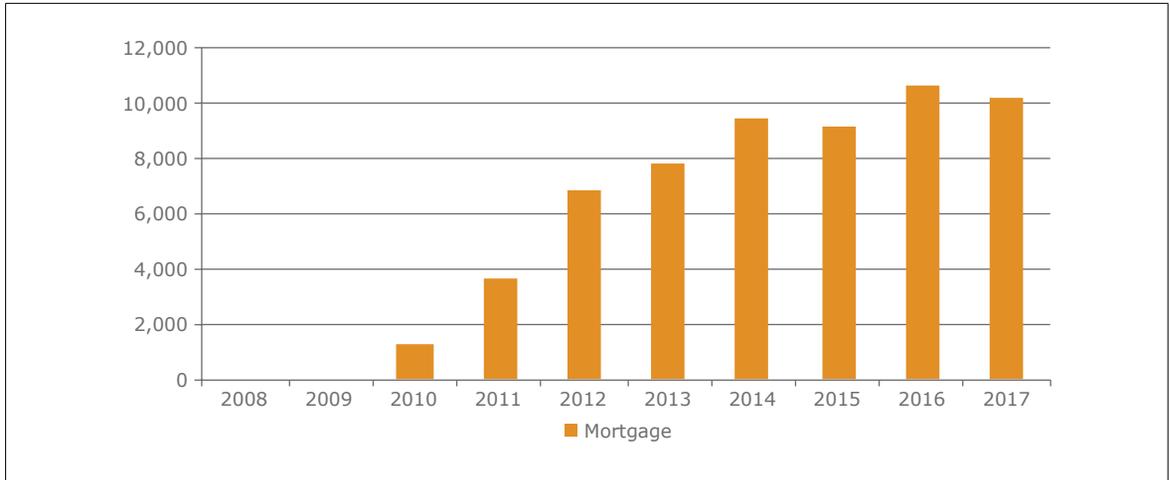
Under the existing covered bond programmes, the sale of the loans and their underlying security by the seller to the CB Guarantor is in the form of equitable assignment of the seller's rights, title, interest and benefit in and to the loans, their related security and the other assets which are being sold. The equitable assignment requires neither a notice to the borrowers nor a registration in the land registry. As a result, the legal title to the mortgage loans remains with the seller until legal assignment is delivered to the CB guarantor and notice of perfection of legal title is given to the borrowers. The perfection of title of the mortgage security to the CB guarantor will be triggered by certain trigger events including the notice to pay on the CB guarantor, downgrade of the issuer to sub-investment grade or insolvency of the issuer. The equitable assignment is a well-known procedure in the UK and is usually used by the covered bond issuers in the UK.

VIII. RISK-WEIGHTING AND COMPLIANCE WITH EUROPEAN LEGISLATION

The RBNZ accepts NZD denominated AAA rated covered bonds for its Domestic Markets Operations. For maturities of less than three years the haircut is 5% while covered bonds with a maturity of three years or longer are subject to a higher haircut of 8%. This includes covered bonds issued by New Zealand banks.

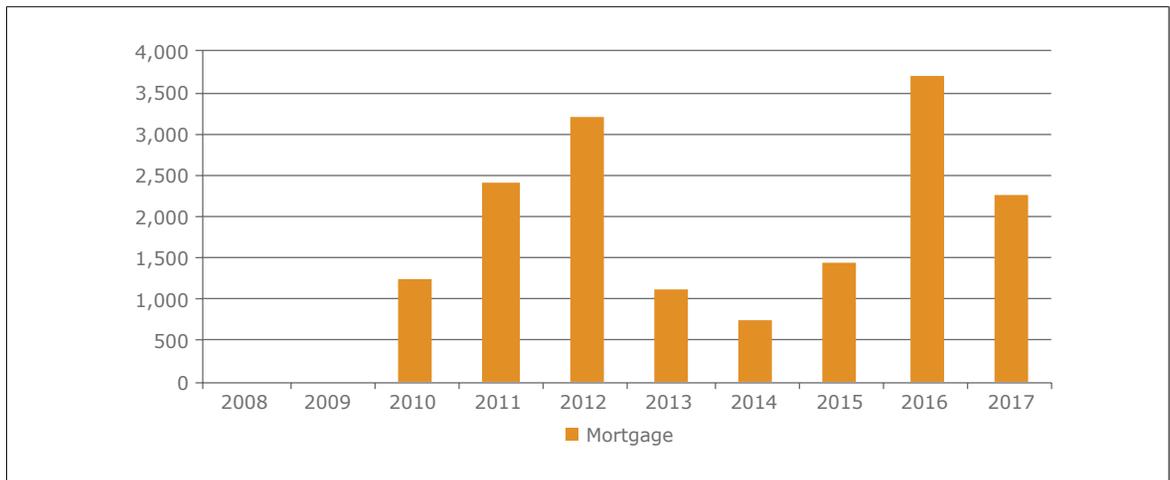
The covered bonds issued directly by financial institutions with registered offices in New Zealand are neither CRR nor UCITS compliant as both frameworks require the issuer to be based in the EU. The New Zealand covered bonds, therefore, do not benefit from the lower risk weighting for bank treasuries in the EU.

> FIGURE 1: COVERED BONDS OUTSTANDING, 2008-2017, EUR M



Source: EMF-ECBC

> FIGURE 2: COVERED BONDS ISSUANCE, 2008-2017, EUR M



Source: EMF-ECBC

Issuers: ANZ Bank New Zealand, ASB Bank, BNZ, Kiwibank, Westpac Securities NZ.

ECBC Covered Bond Comparative Database: http://www.ecbc.eu/framework/114/New_Zealand_Covered_Bonds.