



Banking & Financial Services Law Association

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**NZ Finance Companies
"The Way Forward"**

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Establishing a new NBDT Regime in New Zealand

**Presentation to
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Non-bank deposit takers landscape

- **NZ NBDTs: 106 in total**

- Credit Unions: 31
- Building Societies 9
- Finance Companies 66

- **AU ADIs: 193 in total**

- Includes Banks and specialised firms, but excludes Finance Companies
- Credit Unions 118
- Building Societies 11
- Banks and payment providers (64 all together)



Challenges in the Non-Bank Sector

| | Hh Financial Assets | Failures & Suspensions |
|---------------------------------------|------------------------------------|---------------------------------------|
| At Dec 08 | | |
| Banks | \$90bn | - |
| Managed funds & trusts | \$51bn | 4% |
| Finance coys, savings institutions | \$9bn | 30% |
| Total | \$150bn | 3% |



Background to law change

- **RBNZ raised concerns about sector 2003**
- **2004 Financial Sector Assessment Programme**
- **Number of failures in sector 2007**



RBNZ Amendment Bill #3

- **Introduced new Part 5D**
- **For the purpose of:**
 - **A sound and efficient financial system; or**
 - **Avoiding significant damage..from failure of NBDT**
- **Extended trustees as the ‘frontline’ supervisors**
- **Requires a review within 5 years**



Part 5D of RBNZ Act

- **Requires NBDTs to have:**
 - a risk management plan (September 2009)
 - a credit rating (March 2010)
 - appropriate governance arrangements (not in force)



Part 5D of RBNZ Act

- **Enables regulations:**
 - **Capital requirements (Q3 2010)**
 - **Related party requirements (Q3 2010)**
 - **Liquidity requirements (Q3 2010)**



Establishing the regime

- **So far consulted on requirements for:**
 - **Capital;**
 - **Related Party;**
 - **Credit Ratings; and,**
 - **Risk management.**



‘Second’ Bill to come

- **Main components**
 - Licensing powers for RBNZ
 - Fit and proper powers
 - Crisis management powers
- **To be introduced this year**



Section 157C

- **Section 157C defines a (Non-bank) deposit taker:**
 - Offers debt securities to the public in NZ; and
 - Carries on the business of borrowing and lending, or providing financial services, or both.
- **Enables the RBNZ to declare a person or class of persons to be a NBDT**



157C issues

- **Deliberately wide**
- **Raises ‘boundary’ issues:**
 - **Corporate bond issuers**
 - **‘Conduit’ issuers**
 - **Payment providers**
 - **Australian (and other) issues to NZ market**
 - **‘Moratoria’ companies**
 - **Companies without trust deeds**



RBNZ Approach

- **Exemption powers**
 - In part or in whole
- **On the other side ‘get in’ powers**
- **Extensive policy development on boundary issues**
- **And subsequent communication**

- Non-bank deposit takers
 - Insurance sector
 - Payment system oversight
 - Financial Stability Report
- Publications & research
- News releases
- Speeches
- Payments & settlements
- Financial market operations
- Crisis management
- For schools
- Careers
- Frequently asked questions

RBNZ Policy Positions

It will often be straightforward to determine whether an entity meets the definition of a non-bank deposit taker for the purposes of Part 5D of the Act. However there may be situations where the law is not so clear-cut, or where the law does appear to apply. In this regard the Reserve Bank will provide general guidance on such matters where it is considered appropriate (especially in the transitional stages of the regime). This guidance is detailed in the table below. The table will be updated from time to time to reflect any development or change in the Reserve Bank's policy stance.

The Reserve Bank wishes to emphasise that it is a matter for an entity to seek its own legal advice on the application and operation of the law, and it is the Court ultimately that is the final arbiter when it comes to this. Moreover, this table illustrates the Reserve Bank's general policy position, although any application for an exemption will be considered on a case-by-case basis.

| Category | RBNZ policy positions (updated June 2009) |
|---|---|
| Corporate issuers | Corporate issuers such as manufacturing companies or utility providers that issue bonds, debentures or other debt securities and that carry on non-financial business are generally not considered by the Reserve Bank to be deposit takers. |
| Funding conduits | <p>A genuine funding conduit may be exempted subject to conditions (upon application to the Reserve Bank) from related party, governance, risk management, liquidity and minimum capital ratio requirements, but not the credit rating requirement. To be eligible for these exemptions a funding conduit is expected to have all of the following attributes:</p> <ul style="list-style-type: none"> • it is a wholly owned subsidiary; • its primary purpose is to on-lend all (or at least 95%) of the funds raised to its parent or group; • its debt securities are unconditionally guaranteed by its parent; • the parent is party to a listing agreement with a registered exchange and has an established presence or track record in the market it operates in; and • neither the parent nor any member of the group is a financial institution (as defined in the Act). |
| Payment facility providers | <p>A genuine payment facility provider may be exempted subject to conditions (upon application to the Reserve Bank) from all the non-bank deposit taker requirements. In order to be eligible for an exemption, a payment facility provider is expected to have all of the following attributes:</p> <ul style="list-style-type: none"> • It does not provide any other financial service apart from that of a payment facility; • Its payment facility: <ul style="list-style-type: none"> • is a call security, i.e. the balance is repayable on demand; • can be used in a similar way to cash, i.e. to make payments for goods and services; • does not pay interest to the holder of the payment facility; and, • does not form part of another financial product e.g. the facility cannot be used by the holder to obtain credit. |
| Entities exempted under the Securities Act 1978 | <p>The following provisions of the Act require non-bank deposit takers to meet regulatory requirements that are imposed through trust deeds (once relevant regulations are in force):</p> <ul style="list-style-type: none"> • Section 157P which relates to minimum capital; • Section 157S which relates to a capital ratio (regulations are expected to be promulgated in 2009); • Section 157V which relates to a maximum limit on exposures to related parties (regulations are expected to be promulgated in 2009); • Section 157Z which relates to liquidity requirements (regulations are expected to be promulgated in 2010). <p>These sections apply to all non-bank deposit takers notwithstanding that they are exempt from having a trust deed for the purposes of the Securities Act. Non-bank deposit takers that fall within this category must either:</p> <ul style="list-style-type: none"> • adopt a trust deed in a manner that complies with both the Securities Act and the Act; or • apply to the Reserve Bank for an exemption from those sections listed above. |

In addition, the Reserve Bank is currently working on the following class exemptions to give effect to policy decisions relating to specific classes. In general terms these two exemptions are:

- a. a class exemption from the credit rating requirements (s.157I) for non-bank deposit takers with total liabilities of up to \$20 million (the exemption will provide greater detail on how this is to be calculated);
- b. a class exemption in relation to s.157N: the requirement to have a risk management programme signed off by a trustee. The class exemption will allow non-bank deposit takers that do not have a trust deed or trustee to obtain sign off for their risk management programme from an alternative governing body (the class exemption will define what an acceptable alternative governing body will be). This is not an exemption from having a risk management programme as required under s157M.

It is anticipated that both these class exemptions will be in place by the end of August 2009. The class exemptions will contain terms and conditions that must be met before an entity can rely on the class exemption.



Obligations on trustees

- **Ensure requirements in trust deeds**
- **Attest to compliance**
- **Disclose information**
- **Hefty penalties – up to 200k**



Looking forward

- **Five year review – trustee focus**
For most NBDTs regulations are manageable
- **Exemptions will be the exception**
- **Bigger issues loom for some:**
 - funding post DGS
 - Public confidence in pre-crisis business model