

## The 26th Annual Banking and Financial Services Law and Practice Conference

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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

At Dec 08	Hh Financial Assets	Failures & Suspensions
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

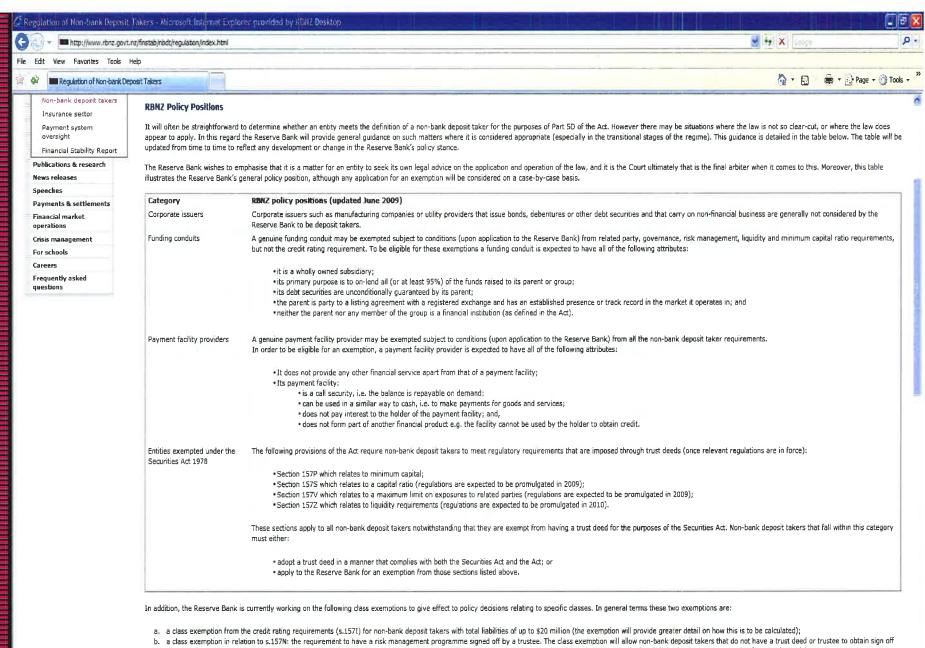
- Section 157C defines a (Non-bank) deposit taker:
  - Offers debt securities to the public in NZ; and
  - Carries on the business of borrowing and lending, or providing financial services, or both.
- Enables the RBNZ to declare a person or class of persons to be a NBDT

#### 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



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