

# Acceleration of reform of Non-Bank Deposit Taking Institutions framework

In July this year, we summarised the then current state of play in relation to the Government's proposed reforms of the Non-Bank Deposit Taking Institution (NBDT) sector.

The Government's communications with the sector at that stage highlighted the key aspects of the regulatory framework that the Government wanted to change. It was, however, clear that a lot of work on the detail needed to be done. Combined with the necessary transition periods for NBDTs, the legislation and subsidiary regulations and rule changes were not anticipated to take effect until between 2010 and 2012.

## Motivation for the Government's move

Of course, since July, the NBDT sector has been severely shaken by the receiverships of a range of finance companies. This has prompted the Government to expedite not just the enactment of the legislation (now scheduled to be introduced into Parliament before the end of the year) but also for it to come into force by 2009.

Under the proposed regulations, all NBDTs, including finance companies, building societies and credit unions, will be required to have a credit rating from a rating agency approved by the Reserve Bank,

unless they have total assets of less than \$10 million. Such NBDTs will however have to disclose that they are unrated.

The Government has made it clear that the acceleration of amendments to the regulatory framework is not designed to be a quick fix or to solve the liquidity problems that some finance companies are currently facing.

In addition, Cabinet has this week signed off regulations to ensure that all trust deeds provide trustees with robust powers to get the information they need in order to carry out their duties in the interest of investors. In an unusual move, Cabinet has allowed these regulations to come into force on Friday 21 September 2007.

The regulations amend the Securities Regulations 1983 by providing additional clauses that are deemed to be included in the trust deeds of finance companies. The new deemed clauses will apply to both existing and future trust deeds. The regulations only affect issuers that continuously offer debt securities to the public, and either lend money or provide financial services, but that are not a building society, credit union, or cooperative company. In essence, the finance companies must report much more regularly to their trustees about their financial position and matters relevant to their financial position. The trustees have stronger supervisory powers including the power to appoint an expert to assist the trustee to determine the true financial position of an issuer.

## Comment

Apart from tightening the regulations regarding the powers of trustees, the Government's recent announcements only represent an acceleration of regulatory reform of the NBDT sector, not changes to what has already been well telegraphed and effectively agreed. The Government has resisted the temptation to regulate for regulation's sake to address the fallout in the NBDT sector, pragmatically acknowledging that there is only so much that regulation can achieve.

It is not clear what effect, if any, the acceleration of some aspects of the regulatory reform will have on the associated reforms around financial products and providers generally, and also the proposed anti-money laundering reforms which are on a parallel track. Our understanding in relation to the AML reforms is that they are likely to be in force just in time for the 2009 FATF review of New Zealand's compliance with its obligations under the FATF accords.

*To tell us what you think of this newsletter, or to have colleagues added or yourself deleted from the mailing list, contact [moreinfo@minterellison.co.nz](mailto:moreinfo@minterellison.co.nz)*

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