

# **REGULATORY IMPACT STATEMENT**

## **REGULATION OF NON-BANK DEPOSIT TAKERS**

### **EXECUTIVE SUMMARY**

- 1 In 2007, Cabinet agreed to a new framework for the regulation of non-bank deposit takers (“NBDTs”) (CAB Min (07) 21/10 and CAB Min (07)33/4 refer). This framework was to be implemented in two pieces of legislation. The first, the Reserve Bank of New Zealand Amendment Act 2008, provided legislative support for much of the new regulatory framework, including capital adequacy, related party lending, governance, credit ratings, liquidity, and risk management.
- 2 The proposals addressed in this paper relate to the second piece of legislation, which implements the remaining elements of the regime, including licensing and de-licensing, fit and proper, or “suitability”, requirements, change of ownership requirements, and distress and failure detection and management.
- 3 This paper sets out the Regulatory Impact Statement (“RIS”) for the proposed regulation of NBDTs. It should be read in conjunction with the associated Cabinet paper to the Cabinet Economic Growth and Infrastructure Committee.

### **AGENCY DISCLOSURE STATEMENT**

- 4 This RIS has been prepared by the Reserve Bank of New Zealand. It provides an analysis of options to complete the regulatory framework for NBDTs.
- 5 The analysis builds on work undertaken by the Reserve Bank identifying problems in the industry and possible solutions to those problems.
- 6 That work, and various other changes that are currently underway in the NBDT regulatory environment, provides the framework for problem definition and the development of options in this RIS. For example, in the development of these proposals, it was assumed that the Financial Markets Authority Bill effectively determined the ambit of the Financial Markets Authority (“FMA”). It was similarly assumed that the Securities Trustees and Statutory Supervisors Bill represented the new regime for trustee supervision.
- 7 The proposals in this RIS have been subject to public consultation. No quantitative estimates of costs of compliance were provided by submitters.
- 8 The scope of this RIS is restricted to the main policy decisions with respect to each of the topics of regulation.

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## STATUS QUO AND PROBLEM DEFINITION

- 9 Prior to the enactment of the Reserve Bank of New Zealand Amendment Act 2008, now Part 5D of the Reserve Bank of New Zealand Act 1989 (“the Act”), there was a piecemeal approach to NBDT regulation, with different types of NBDTs subject to different requirements.
- 10 The regulatory framework for NBDTs was developed to overcome deficiencies in NBDT regulation, including inconsistency in prudential requirements across the sector, the absence of minimum entry requirements, and insufficient means for investors to assess and compare NBDT risk profiles. These deficiencies were identified as undermining competitive neutrality, and potentially impeding the maintenance of a sound and efficient financial system, and contributing to a misallocation of resources and instability in the sector.
- 11 In 2007, Cabinet agreed to a specific framework for NBDT regulation (CAB Min (07) 21/10 refers). Part 5D introduced the bulk of the prudential requirements, including governance, risk management, and capital and liquidity requirements. The Non-Bank Deposit Takers Bill (“the Bill”) provides for the implementation of the remaining elements, including licensing, suitability requirements for directors and senior officers, and detection and management of NBDT distress and failure.
- 12 The Bill proposes a licensing requirement that is intended to ensure that all NBDTs meet minimum basic standards, both at the time of licensing and on an ongoing basis.
- 13 The suitability requirements are designed to reduce the risk of NBDTs being imprudently managed or used for purposes that benefit related parties at the expense of depositors. Failures in the past few years have revealed significant managerial weaknesses in the sector. Investor confidence will be enhanced if investors know the organisations they are dealing with are not controlled by persons with a questionable track record. This in turn should promote confidence in the soundness of the financial system, and increase participation in the system.
- 14 The distress and failure management proposals provide the Reserve Bank with powers to intervene to detect and manage NBDT distress or failure, including enhanced information-gathering powers, and powers to issue directions and remove directors. They will bolster the Reserve Bank’s existing limited intervention powers.
- 15 The Reserve Bank is also proposing new change of ownership powers. These would allow the Bank to assess significant changes in NBDT ownership in much the same way as it can under the banking regime. The Reserve Bank’s main prudential concern is the suitability of ownership in the NBDT sector, both at the time of an application for licence and on an ongoing basis.
- 16 Changes in ownership are of particular concern to holders of debt securities who would have invested on the basis of the risk profile associated with the original ownership structure. Unrestricted changes in ownership could have a negative impact on the stability of the sector and may undermine investor confidence. Controls over changes of ownership would also have an important ancillary benefit to New Zealand in terms of improving its compliance with the Financial Action Task Force’s international anti-money laundering recommendations. These recommendations

highlight the importance from an anti-money laundering perspective of having requirements for licensing and ongoing supervision.

## **OBJECTIVES**

- 17 The Bill seeks to promote a sound and efficient financial system, and avoid significant damage to the financial system that could result from the failure of an NBDT.

## **REGULATORY IMPACT ANALYSIS**

- 18 As noted above, the Bill will include new regulatory requirements in four distinct areas. The options considered by the Reserve Bank on each of these issues are outlined below. The first section discusses licensing requirements. The second section identifies options for implementing suitability requirements, and the third section deals with change of ownership requirements. The fourth section will address options regarding distress and failure of NBDTs.

### **Section 1: Licensing**

- 19 The Bill will introduce a requirement for all NBDTs to be licensed by the Reserve Bank. In 2007, Cabinet agreed to a framework for the licensing of NBDTs. Under this framework, all persons that meet the definition of NBDT must be licensed (CAB Min (07) 21/10 refers). Cabinet agreed that an applicant would be granted a licence if it was able to demonstrate (or would be able to demonstrate) its ability to meet prudential requirements; its compliance with the suitability requirements; and its compliance with company and securities law (EDC Min (07) 19/1, confirmed by CAB Min (07) 33/4, refers).
- 20 The Bill seeks to implement these decisions of Cabinet, with a few additional licensing considerations, including the appropriateness of the applicant's ownership; compliance with any conditions imposed on the licence; the suitability of its directors and senior officers; and, for overseas applicants, the regulatory requirements in its home jurisdiction.
- 21 The licensing requirement will impose costs on both NBDTs and the Reserve Bank. The self-certification approach for assessing the suitability of applicants' directors and senior officers (discussed in the next section) means that licensing costs will be kept to a minimum. Applicants will be required to provide information broadly analogous to the material required to be produced with an exemption application, and the Reserve Bank expects that the licensing process will be similar to the exemption process, although less time-consuming. Therefore, the Reserve Bank expects that the administrative costs of licensing will be comparable to the costs of the exemption process, and that the cost of licensing all the expected applicants will be approximately \$160,000.
- 22 The cost of licensing can be met through:
- *Option 1:* Industry, i.e. charge a licensing fee; or
  - *Option 2:* Public funds, i.e. no licensing fee.

#### *Option 1: Charge a licensing fee*

- 23 Under this option, a licence applicant would be required to pay a fee to the Reserve Bank as part of its application. This would be a one-off fee, and an applicant would

be unable to obtain a licence without paying the fee. The fee would be based on cost recovery, enabling the Reserve Bank to cover the administrative costs of licensing.

- 24 Prudential regulation by the Reserve Bank, including licensing, should reduce the risk of NBDT failure, which will benefit NBDTs and depositors. It could therefore be argued that it would be appropriate for NBDTs to bear some or all of the cost of such regulation (and to pass some or all of the cost of this on to depositors).
- 25 A specific licensing fee would add to the direct costs of the regulatory regime for NBDTs. Although it is unlikely that the imposition of a licensing fee would itself cause NBDTs to exit the sector, a licensing fee would increase NBDTs' costs to comply with the regime. Due to the nature of the information to be provided, it is likely that the cost to NBDTs of a licence application will be similar to the cost of an exemption application. The Reserve Bank estimates the cost to an NBDT of an exemption application to range from approximately \$5,000, to \$15,000. The actual cost depends on the complexity of the application, with most exemption applications falling at the lower end of that cost range. The Reserve Bank expects that most licence applications will also be less complex, and will also fall at the lower end of that cost range.

*Option 2: No licensing fee*

- 26 Under this option, the Reserve Bank would absorb the cost of licensing, in addition to the ongoing costs of regulation. The cost would be publicly funded through the Reserve Bank's Funding Agreement.
- 27 Public funding of licensing may be appropriate, as the Reserve Bank must exercise its regulatory powers to promote the maintenance of a sound and efficient financial system. It can be argued that the cost of licensing should therefore be met mainly by the public. While NBDTs and depositors also benefit from licensing, promotion of their interests is not the primary purpose of the regulatory regime.
- 28 The NBDT regulatory regime is also not a voluntary regime. Under other Reserve Bank-run regulatory regimes, namely the registering of banks and the designation of payment and settlement systems, entities opt in and therefore have a choice as to whether or not they pay a fee to the Reserve Bank. However, under the NBDT regime, a person that meets the definition is automatically required to be licensed and to meet the prudential requirements. The compulsory nature of this regime suggests that a licensing fee should not be imposed. This is also the case for insurers under the Insurance (Prudential Supervision) Act 2010 ("the Insurance Act").

*Preferred option*

- 29 NBDTs are already required to conform to the brunt of the regulatory regime, and licensing should be a relatively straightforward process relative to the adjustments already made. Currently, the preferred option is not to charge NBDTs a licensing fee. Although the benefits of licensing fall partly to the NBDTs themselves, NBDTs already incur the costs of supervision by trustees as part of the regulatory regime. A licensing fee would simply add to NBDTs' compliance costs, and as the regulatory regime is not a voluntary regime, it seems inappropriate at this stage to add a licensing fee to the costs NBDTs are already incurring as a result of regulation.

## Section 2: Suitability requirements

- 30 Suitability assessments provide a background check on the suitability of those who run an NBDT. To establish a regulatory framework in this area, it must first be determined which individuals within an NBDT should be subject to suitability requirements, and then a process for making assessments needs to be identified.
- 31 In 2007, Cabinet agreed that directors, senior managers and persons with the ability to exercise control or significant influence over the NBDT should be subject to suitability assessments. Where a director or senior manager did not meet the requirements, Cabinet agreed that the Reserve bank should be able to disallow their appointment, or require their removal (EDC Min (07) 19/1, confirmed by CAB Min (07) 33/4, refers). The Reserve Bank sees no reason to depart from this position, and has identified directors and senior officers as those who should be subject to the requirements.
- 32 In terms of the process, the Reserve Bank has considered three options for carrying out suitability assessments, as follows:
- *Option 1:* The banking regime;
  - *Option 2:* The insurance regime under the Insurance Act; or
  - *Option 3:* A hybrid approach.

### *Option 1: The banking regime*

- 33 All banks must be registered by the Reserve Bank. Section 73 of the Act requires the Reserve Bank to have regard to the suitability of the directors and senior managers of an applicant for registration. However, generally the primary responsibility for assessing suitability remains with the bank's shareholders (for director appointments) and with its board (for senior management appointments). The Reserve Bank's assessment takes the form of a negative assurance (i.e. not objecting to an appointment), rather than a positive affirmation of suitability.
- 34 A bank is required to supply curriculum vitae for all proposed directors, the chief executive officers, and the executives that report directly to the chief executive, before any appointment is made. Criminal records are also checked, and checks with other regulators in New Zealand and overseas may also be carried out.
- 35 Adopting such an approach for the NBDT sector would provide a robust framework, which could be expected to have a positive impact on the quality of management in the sector in the long run. This might be considered appropriate in light of the failures that have occurred in the sector that could, in part, be attributed to directors and senior managers with previous involvement in failed financial institutions.
- 36 However, this option may impose delays on the licensing of NBDTs and the appointment of new directors and senior officers, as the Reserve Bank would have to assess the suitability of each proposed appointment, and unsuitable candidates would have to be replaced. Under the banking regime, it can take up to 5 weeks to process a fit and proper application. As applications must be provided for each appointment, this would add to NBDTs' compliance costs. The number of NBDTs compared to the number of registered banks means that this option would impose extra administrative costs on the Reserve Bank.

*Option 2: The insurance regime*

- 37 Under the Insurance Act, all insurers must be licensed by the Reserve Bank. A licensed insurer must provide an appropriate fit and proper policy to the Reserve Bank, and take all practicable steps to comply with that policy.
- 38 The fit and proper policy must clearly specify the qualifications, experience, requirements, and other criteria for a particular position. The policy must also include a process for assessing the fitness and propriety of a person for a position. This policy must be approved by the Reserve Bank, and any material amendments must also have the Reserve Bank's approval.
- 39 The primary responsibility for assessing suitability remains with the insurer. The Reserve Bank has the power to remove individuals only where it has reasonable grounds to believe that person is not suitable to hold the particular position.
- 40 If this approach was adopted for the NBDT sector, it would avoid the potential for delay that may arise under option 1, as the time required for the Reserve Bank to review a policy would be less than that required to process a number of individual fit and proper applications. It represents a reasonably low-cost option for NBDTs, and would allow the Reserve Bank to retain the ultimate power to block appointments if necessary. However, it would mean that the onus is on the Reserve Bank to identify any potentially undesirable appointments. This would create a challenging and potentially costly monitoring role for the Reserve Bank, which is likely to be inefficient given the range of entities operating in the sector.

*Option 3: Hybrid approach*

- 41 The third option is a hybrid approach, which is to require potential appointees that trigger certain criteria to be referred to the Reserve Bank for its consideration. This retains the low cost, self-assessment dimension of the insurance regime, whilst providing some of the stronger protections in the banking regime. It seeks to create a risk-based approach to regulation, allowing the industry to self-certify where there is low risk, while bringing persons of potential risk to the attention of the Reserve Bank.
- 42 The responsibility for ensuring that directors and senior officers are fit to perform their duties would remain with the shareholders (for directors) and the NBDT (for senior officers) in the first instance. This would be buttressed by a scheme whereby the appointment of any person that triggers a pre-defined set of criteria would require vetting by the Reserve Bank.
- 43 These criteria are likely to include considerations such as:
- bankruptcy;
  - involvement in an entity that has gone into receivership, liquidation, voluntary administration, or been the subject of statutory or judicial management;
  - criminal offending;
  - disciplinary action or adverse findings by a professional or regulatory body for persons engaged in that profession;
  - adverse findings or action taken by any other regulatory authority, market operator, or government agency (whether taken directly or indirectly through a court or tribunal); and

- conflicts of interest that could impact on the proper performance of the business.
- 44 This co-regulatory approach would require the Reserve Bank to make fewer assessments than under option 1, which would reduce costs for NBDTs, as well as administrative costs for the Reserve Bank.
- 45 The costs of co-regulation will fall to both NBDTs and the Reserve Bank. That said, NBDTs are likely to, or should, already have an internal policy for appointments that canvasses similar ground to the proposed criteria. Therefore, in practical terms, the new suitability requirements are likely to simply amount to a notification requirement, minimising the costs to the NBDT of replacing an appointee, and the costs to the Reserve Bank of assessing appointments.

*Preferred option*

- 46 The preferred option is the hybrid approach of referral to the Reserve Bank of only those appointees that breach the trigger criteria. The suitability of those responsible for the management of the NBDT is still assessed, but co-regulation reduces costs by limiting the number of assessments that are made by the regulator. As NBDTs are likely to already be carrying out due diligence on appointments, the marginal cost of this new requirement for NBDTs is expected to be minimal.

**Section 3: Change of ownership controls**

- 47 The proposed controls on changes of ownership will allow the Reserve Bank to assess significant changes of ownership in much the same way as it can under the banking regime. The aim of these powers is not to prevent changes of ownership as a matter of course; rather it is to empower the Bank to disallow changes of ownership that are undesirable from a financial stability perspective.
- 48 In analysing the appropriate regulatory structure, the Reserve Bank has had regard to three options, namely:
- *Option 1*: No restrictions on change of ownership;
  - *Option 2*: The banking regime; and
  - *Option 3*: The banking regime recalibrated for the NBDT sector.

*Option 1: No restrictions*

- 49 This option represents the continuation of the *status quo*. Under this approach, the Reserve Bank would not have the ability to intervene in respect of changes of ownership within the NBDT sector, and licences would transfer with the entity. This approach would not impose compliance costs on the industry, nor any material monitoring or administrative costs on the Reserve Bank.
- 50 However, the Reserve Bank considers that open and unchecked changes of ownership could result in undesirable ownership structures that may present a significant risk to depositors of the NBDT, with possible spill over impacts to depositors in other NBDTs. It may also hinder effective supervision and monitoring. Similarly, unchecked changes in ownership may increase complexity for depositors seeking to assess the risk profile of individual NBDTs and the financial position and circumstances of NBDTs' ultimate shareholders.

*Option 2: The banking regime*

- 51 Following the approach adopted under the banking regime, all transactions that would result in a person acquiring a significant influence over an NBDT would require the consent of the Reserve Bank. A “significant influence” under the banking regime is the ability to appoint 25 per cent or more of the board of directors or to control 10 per cent or more of the entity’s voting securities.
- 52 Allowing the Reserve Bank to object to certain changes of ownership would help avoid ownership arrangements that are likely to increase the risks of a major shareholder’s problems adversely affecting an NBDT. Such a power may also contribute to overall confidence in the wider deposit taking sector. For example, term depositors would be particularly concerned that a change in ownership should not dramatically alter the risk profile of the NBDT during the term of their deposit.
- 53 The problem with simply adopting the banking regime approach for the NBDT sector is that the calibration may not be appropriate for the NBDT sector. The greater number, and smaller scale, of organisations in the NBDT sector, makes significant changes of ownership more likely than in the banking sector. Therefore, the Reserve Bank’s consent might be required for a large number of transactions. This could mean higher costs for the sector, in terms of the actual cost of notification and providing information to the Reserve Bank, and potential delays in having transactions approved. It would also have greater resource implications for the Reserve Bank.

*Option 3: The banking regime recalibrated*

- 54 This option recalibrates the banking regime to provide a less restrictive hurdle to changes in ownership. The Reserve Bank’s consent would be required where a transaction would result in a person acquiring the ability to appoint 25 per cent or more of an NBDT’s board of directors, or to control 20 per cent or more of an NBDT’s voting securities (compared to 10 per cent under the banking regime).
- 55 The 20 per cent threshold mirrors a control threshold under the Takeovers Code. This higher threshold will impose a less onerous regulatory requirement on NBDTs. The threshold also reflects the reduced risks to system-wide financial stability posed by NBDTs, while still addressing the potential for mischief in the NBDT sector. A higher threshold can also be expected to reduce the compliance costs, as fewer transactions will be caught, resulting in fewer notifications to the Reserve Bank and fewer delays.

*Preferred option*

- 56 The preferred option is to restrict certain changes in ownership, but at a higher threshold than under the banking regime, i.e. option 3. Restricting changes in ownership will prevent unsuitable changes, while still allowing changes in ownership to occur at a level that will allow consolidation and strengthening of the NBDT sector. By setting an appropriate threshold for restrictions, the change of ownership requirements should not impose material costs on NBDTs.



#### Section 4: Distress and failure detection and management

- 57 In 2007, Cabinet also agreed that the Reserve Bank have powers to respond to NBDT distress and failure in situations where the Reserve Bank is satisfied that intervention is required to maintain the soundness and efficiency of the financial system or to avoid significant damage to the financial system that could result from the distress or failure of an NBDT (CAB Min (07) 21/10 refers).
- 58 In September 2007, Cabinet agreed that the powers available to the Reserve Bank to manage the distress and failure of a registered bank should be extended to NBDTs (EDC Min (07) 19/1, confirmed by CAB Min (07) 33/4, refers). In light of the Reserve Bank's experience of the NBDT sector, the Reserve Bank has revisited this decision on the appropriate level of intervention into the NBDT sector. The Reserve Bank considered three options:
- *Option 1:* Limited distress and failure management powers for the Reserve Bank;
  - *Option 2:* Distress and failure management powers based on the banking regime; or
  - *Option 3:* Distress and failure management powers based on the banking regime but recalibrated to reflect the nature of the NBDT sector.

##### *Option 1: Limited distress and failure management powers for the Reserve Bank*

- 59 This option represents the continuation of the *status quo*. Under the *status quo*, the distress or failure of an NBDT is primarily the trustee's responsibility. General insolvency law provides a number of options at the later stages of distress, including liquidation, receivership, and statutory management. The Reserve Bank's ability to intervene is limited to investigations to check compliance with prudential requirements.
- 60 This option reduces the potential moral hazard created by the Reserve Bank's involvement in the NBDT sector. It diminishes any expectations that the Reserve Bank will intervene, and perhaps even bail out NBDTs. Monitoring and administrative costs for the Reserve Bank are also reduced.
- 61 However, the status quo leaves the Reserve Bank unable to act if the distress or failure of an NBDT may threaten the soundness and efficiency of the financial system. General insolvency law does not take systemic concerns into account. The *status quo* also results in a piecemeal approach to distress and failure management, as the different insolvency mechanisms available under general insolvency law may have potentially different effects on different types of NBDTs.

##### *Option 2: The banking regime*

- 62 Cabinet agreed to this option in 2007. Extending the banking regime to NBDTs would give the Reserve Bank a full range of powers to intervene where financial system stability is at risk, in accordance with the purposes in Part 5D of the Act. This would involve the Reserve Bank having the power to make a recommendation to the Minister that an NBDT be placed in statutory management.
- 63 Adopting the banking regime could be seen to be a relatively heavy-handed intervention, given the differences between the sectors. NBDTs do not present the

same financial stability and systemic concerns as registered banks, and simply adopting the banking regime does not recognise the disparity between the risks posed by the failure of a registered bank and the failure of an NBDT. Such intervention is not in accord with the Reserve Bank's role as the regulator of the sector, as opposed to the supervisor (a role that is carried out by trustees). It would also be the most costly option for the Reserve Bank, and increase the risk of moral hazard that comes from intervention.

*Option 3: The banking regime recalibrated*

- 64 The third option represents a middle ground between the status quo of limited intervention and extending the intrusive provisions of the banking regime. As the supervisors of NBDTs, trustees should have the primary responsibility for managing the distress or failure of individual NBDTs. However, the Reserve Bank should have the ability to intervene for wider financial stability purposes.
- 65 This option involves the Reserve Bank having the power to require information from, and to investigate, NBDTs for prudential purposes, and also to issue directions to NBDTs, their associated persons, and their trustees. The most intrusive power available, statutory management, will remain with the FMA under the Corporations (Investigation and Management) Act 1989. This reduces the moral hazard arising from intervention by the Reserve Bank, as well as the cost of intervention for the Reserve Bank.

*Preferred option*

- 66 Each of these options has minimal cost implications, as the purpose of the legislation would put significant constraints on the Reserve Bank's use of distress and failure management powers. However, each of these options is also affected by the split between supervision and regulation in the NBDT sector, in that the Reserve Bank regulates NBDTs, while the trustees are responsible for their supervision.
- 67 Option 3 is the preferred option. This option gives the Reserve Bank a number of tools to intervene in the distress or failure of an NBDT. Moral hazard is minimised as the Reserve Bank can only intervene to the extent necessary to achieve its statutory purposes which reflect systemic considerations. Any risk of uncoordinated regulatory action due to the involvement of the Reserve Bank, the trustees, and the FMA can be minimised by information sharing and collaboration.

**CONSULTATION**

- 68 The Reserve Bank undertook a broad consultation with industry regarding the appropriate approach to licensing and suitability requirements prior to submitting the initial proposals to Cabinet in 2007. A reasonable period of time has passed since then, and the NBDT sector has changed considerably, so the Reserve Bank has undertaken further consultation. A consultation paper was publicly released in October 2010, outlining the Reserve Bank's proposals.
- 69 The submissions received in response to the consultation paper were considered when developing the proposals set out in this paper. Approximately fifteen responses were received, from the public, individual NBDTs, the Financial Services Federation, the Trustee Corporations Association, and the New Zealand Association of Credit Unions. The overall response to the consultation paper was supportive in principle.

- 70 Respondents were supportive of the proposed licensing requirements, and for the Reserve Bank to be able to impose conditions on licences. Respondents supported de-licensing for persistent/serious non-compliance with requirements, as long as the threshold for de-licensing was sufficiently high to reflect the consequences of this for the NBDT.
- 71 The majority of respondents also supported, in principle, suitability checks for directors and senior officers of NBDTs. However, a number of respondents perceived the proposed suitability concerns as hard-line tests rather than triggers for discussion with the Reserve Bank. This caused some respondents to be concerned about the width of the suitability concerns.
- 72 Respondents also supported introducing restrictions on changes in NBDT ownership, which was a new proposal in the 2010 consultation.
- 73 Respondents supported the gathering of information for prudential purposes, in relation to associated persons of the NBDT as well as the NBDT itself. There was a variety of opinions regarding the Reserve Bank's proposed power to request the auditing of any information supplied.
- 74 In relation to distress and failure management, support for the Reserve Bank's proposed direction powers was only on the basis that these powers be used restrictively. Respondents agreed that a distressed NBDT should be managed according to general insolvency law, rather than through a Reserve Bank-run statutory management regime.
- 75 Following release of the Consultation Paper, the Reserve Bank met with, or obtained feedback from, the Treasury, the Ministry of Economic Development, the FMA, the Ministry of Justice, Parliamentary Counsel Office, and the Department of the Prime Minister and Cabinet.

## CONCLUSIONS AND RECOMMENDATIONS

- 76 The Reserve Bank's analysis of the options outlined above has resulted in the following conclusions:
- Licensing: Applicants for an NBDT licence will not be charged a license fee at this stage.
  - Suitability requirements: All directors and senior officers should be subject to suitability checks. The Reserve Bank considers that this test should be a self-certification exercise in the first instance, to minimise the regulatory burden and compliance costs. The self-certification process will be supported by an additional requirement to refer any appointments that trigger a pre-defined set of criteria to the Reserve Bank.
  - Change of ownership: The Reserve Bank's prior consent should be required for any transaction that results in a person holding, or increasing, a significant influence over an NBDT. This is the ability to appoint 25 per cent or more of the board of directors or to control 20 per cent or more of an NBDT's voting securities.
  - Distress and failure management: The distress and failure management framework must be calibrated to reflect the risk posed by NBDTs, and the role of trustees as the supervisors of NBDTs. The Reserve Bank will have the

ability to gather information regarding NBDTs, their associated persons, and their trustees, as well as investigation and direction powers. The power to place an NBDT into statutory management will remain with the FMA.

## **IMPLEMENTATION**

- 77 It is expected that the licensing requirement will come into force 12 months from the date the legislation is enacted. All NBDTs will then be required to comply with the licensing requirements. The Reserve Bank considers that, as all the other prudential requirements are already in force, a 12 month transition period will provide sufficient time for NBDTs to obtain a licence.
- 78 At the time the licence is granted, and for any future appointments, the directors of the NBDT will have to self-certify their suitability, and certify the suitability of senior officers. The Reserve Bank will vet the appointment of a person who raises a suitability concern. The Reserve Bank must be notified if a person raises a suitability concern after their appointment.
- 79 One of the issues that the Reserve Bank will consider as part of any licence application is the ownership of the applicant. The requirement to obtain the Reserve Bank's consent for certain transactions will apply on an ongoing basis.
- 80 Trustees will continue to be responsible for enforcing compliance with those requirements that must be included in trust deeds. The Reserve Bank will take direct enforcement action in respect of matters that are not part of trust deed arrangements. New enforcement action will include issuing directions to the NBDT, the NBDT's trustee, and any associated persons of the NBDT; prosecuting offences; and de-licensing NBDTs.
- 81 The Reserve Bank's costs in performing its functions in relation to NBDTs will be funded through its Funding Agreement under the Act.

## **MONITORING, EVALUATION AND REVIEW**

- 82 The Reserve Bank will monitor the operation of these provisions, and their impact on the NBDT sector, on an ongoing basis.
- 83 Under section 157ZZ of the Act, the Reserve Bank is required to review and report on the operation of Part 5D no later than 5 years after commencement. This review will continue notwithstanding the incorporation of Part 5D into the Bill. The review is intended to be a fundamental review of all aspects of the regime, and will include the new aspects introduced by the Bill, i.e. licensing, change of ownership, etc. Upon completion of the review, the Reserve Bank will prepare a report for the Minister of Finance, who will table the report in the House of Representatives.