

# The Treasury

## Reserve Bank Act Review Phase 2 Submission Information Release

October 2019

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Key to sections of the Act under which information has been withheld:

[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people

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**From:** Christian Hawkesby  
**To:** [RBNZ Act Review \[TSY\]](#)  
**Subject:** Attention - Bernard Hodgetts - Submission re Reserve Bank supervision of non bank deposit takers.  
**Date:** Wednesday, 17 July 2019 8:46:51 AM

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[1]

**Subject:** Submission re Reserve Bank supervision of non bank deposit takers.

Sir,

I wish to submit the following to those currently reviewing The Reserve Bank Act.

My submission relates to the founding supervisory regulations for non bank deposit takers, to the need to define the penalties for wilful breach of those rules, and the need to enforce the penalties.

I have formed my views after more than forty years in capital markets, including eight years in executive roles of a large, bank-owned finance company, decades as a financial adviser who analysed finance companies and, more recently, as a researcher and then writer of an account of why South Canterbury Finance collapsed, leading to catastrophic losses. My research has made it clear that review and reform is essential to break the boom and bust cycles of the past.

My submission will cover the need for:

1. Wider consultation when considering the Fit and Proper Person assessment
2. Regulatory involvement in the creation of Trust Deeds, and the need for commonality in such deeds, ensuring they address all relevant factors
3. Binary outcomes for wilful or negligent breach of duty, applicable to all parties involved in presenting information to the regulators and the public; that is, executives, directors, trustees, auditors, and all professional advisers, legal, accounting and investment banking.

#### Fit and Proper Person

Currently potential governors and key executives must meet the fit and proper person criteria required by the Reserve Bank. I submit:

1. That "Fit" should be defined as having an appropriate level of knowledge and experience to perform the duties of the role. "Proper" should be defined as having a clean legal and moral personal background.
2. That all such positions should be subject to RB examination BUT also should be

notified to the public, allowing the public to submit relevant information, thus strengthening the process.

3. That the Fit and Proper status should be withdrawn for proven, egregious behaviour. Regulators, trustees and auditors ought to be empowered, indeed required, to bring to the RB's attention evidence of unacceptable behaviour.

4. That the RB should develop a channel through which the public can report behaviour that might lead to a reversal of the Fit and Proper status.

5. That all partners ( or executive owners) of law firms, trust companies, audit/accounting firms, investment banks, sharebrokers and financial advisers should meet Fit and Proper people criteria, as well as all key people involved in accepting deposits from the public.

### Trust Deeds

I submit:

1. That deeds be a statutory document, not a contractual document, and that the RB be required to approve the deed of every non bank deposit taker.

2. That each deed must contain the following specific information:

A) A definition of what is real capital ( for the purpose of defining leverage)

B) A commitment to match, and display, the duration of assets and liabilities, month by month

C) A definition of the sectors to which it may lend, with maximum percentages disclosed

D) A maximum percentage level that may be lent on a non instalment basis

E) An explanation of how it will define loans, in particular identifying property development loans and differentiating

these from lending to established ventures

F) A commitment to report on the quantum of all loans in arrears, differentiating with logical milestones; i.e thirty,

sixty, ninety days etc

G) Identify the quantum of all loans rewritten and rolled over

H) Define the maximum level, if any, of allowable related party lending, displayed as a

percentage of capital

I) Define the maximum quantum of loans, if any, where fees and/or interest may be capitalised.

J) Define the maximum allowed gearing of real capital ( which by definition should exclude any notes that may be

repaid in cash).

K) Define the maximum allowable individual loan, as a percentage of capital, and of total loans

L) Covenant that in the event of insolvency a committee which includes unsecured creditors and at least one

person elected by unsecured creditors be appointed to oversee the insolvency practitioner, and be obliged to

refer disputed decisions to the Court.

### Trustees

I submit trustees should be:

1. Fit and Proper people
2. Responsible for ensuring the covenants in the deed are met
3. Financially liable for negligence leading to investor losses caused by breaches of covenants
4. Permitted to waive covenants but liable for losses caused by such a waiver
5. Required to authorise all loans that exceed a specific size, after confirming the loans are in accordance with the deed.

### Binary Outcomes

I submit that:

1. Fraudulent or negligent behaviour causing investor losses must lead to court hearings.
2. The courts must have the additional powers to:

A) Bar the miscreant from future positions that must be held by Fit and Proper people

B) Apply financial penalties relative to the losses directly caused by the fraud or negligence.

## SUMMARY

I have learned that the only way to ignite confidence in the important non bank deposit-taking sector is by ensuring that the sector is managed and governed by fit and proper people, and by ensuring that the founding document is unambiguous, comprehensible and addresses all of the issues relevant to the company and to investors.

By introducing RB approval of the trust deed, and ensuring it covers all relevant factors, there would be a real prospect that investors and advisors would be able to make informed judgement of risk.

By having binary outcomes for fraud or negligence, the risk/return for potential miscreants would be apparent.

My analogy is that the drink driving prevalence in NZ was changed only after the law was defined, widely displayed, published, policed and enforced with binary outcomes.

To restore the confidence broken by the sector collapse ten years ago, the regulators and politicians must devise specific, meaningful rules, supervise behaviour and demonstrate that enforcement will follow, with unavoidable consequences.

I offer to present and justify my views in person, if required. I return from Europe on August 17.

Yours faithfully,

C.J.Lee AFA.

Managing Director,

Chris Lee and Partners Ltd.

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