

## **ARE YOU A DEPOSIT TAKER?**

New rules are coming in that could affect the way some charities are governed and managed. Please read the following notice from the Reserve Bank and if you have any questions you should talk to your solicitor or trustee, and go to the Bank's website ([www.rbnz.govt.nz](http://www.rbnz.govt.nz)).

From September 2008, The Reserve Bank became the regulator of non-bank deposit takers in New Zealand. This means that all persons who meet the definition of "deposit taker" will be regulated by the Bank and will be required to comply with specific prudential requirements set out by the Bank.

Most charities won't be affected – because they do not take deposits as defined. Even for those that are caught, the Bank has the power to exempt entities from these obligations where they can be proven to be unduly onerous and burdensome.

### **What is a "deposit taker"?**

Deposit takers are entities that are not registered banks, but which issue debt securities to the public and carry on the business of borrowing and lending money, or providing financial services (or both). The definition includes all registered building societies and credit unions, but specifically excludes collective investment schemes.

A debt security could be a call deposit, term deposit, debenture security, or any other security which promises to pay you a specific return (rate of interest), over a specific time period, and to pay you back your funds in full at maturity of the deposit.

### **What if I have an exemption from the Securities Act regime?**

If you have an exemption from the Securities Act regime, in respect of having a trust deed, but still meet the above definition, you will still be captured by the legislation and the regulatory requirements imposed by the Bank. You will have to either:

- adopt a trust deed in a manner that complies with both the Securities Act and the Reserve Bank of New Zealand Act; or
- apply to the Bank for an exemption.

### **What requirements are being imposed?**

The requirements can be broadly categorised into the following six areas:

- Risk management (to apply from 1 September 2009);
- Credit ratings (to apply from 1 March 2010); and

- Capital (to apply once regulations have been promulgated under section 157P and/or section 157S of the Act);
- Governance (to apply at a date to be set by Order in Council);
- Restrictions on related party exposures (to apply once regulations have been promulgated under section 157V of the Act);
- Liquidity (to apply once regulations have been promulgated under section 157Z of the Act),

### **Can I be exempt from these obligations??**

The Bank has the power to exempt entities from these obligations where they can be proven to be unduly onerous and burdensome. You are entitled to apply to the Bank for an exemption if you can prove that this is the case. The Bank is currently considering exemptions from the credit rating and risk management requirements.

### **What exemptions has the Bank considered?**

Exemptions that the Bank is considering at the moment are:

- For deposit takers that are exempt from, or do not require a trustee under the Securities Act 1978, the Bank intends to issue a class exemption. Under this exemption, these deposit takers will be required to obtain approval of their risk management programme from their governing body (as defined in the Act) rather than a trustee.
- The Bank intends to issue a class exemption from the requirement to have a credit rating for all deposit takers who have liabilities of less than \$20 million.

Details of the both of these class exemptions will be available on the Bank's website, 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.

The Bank has also issued determinations on its website in respect of corporate debt issuers, conduit funding issuers, and will soon be issuing determinations in respect of entities that no longer have a current prospectus, or are in receivership or being liquidated, but still have debt security on issue.

### **Where can I go for more information?**

The Bank's website ([www.rbnz.govt.nz](http://www.rbnz.govt.nz)) is the best place to get more information on the regime. However we recommend that if you are concerned about being captured you should talk to your solicitor and trustee.