

# **SCHEDULE TO THE MEMORANDUM OF UNDERSTANDING CONCERNING CO-OPERATION AND THE EXCHANGE OF INFORMATION**

**December 2006**

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## **Background**

1. The Reserve Bank of New Zealand (Reserve Bank), Ministry of Economic Development (MED) and the Securities Commission (Commission) each have responsibilities for elements of financial sector regulation. Although each has its own statutory objectives and responsibilities, the agencies agree that there are situations when a coordinated approach to regulatory action is necessary and beneficial.
2. Effective coordination between regulatory agencies can assist each agency in the performance of its functions, enhance the capacity to respond promptly and effectively to a situation, and facilitate an effective whole-of-government approach to financial sector regulation. This is especially the case in situations where financial system participants may be in financial distress or conducting their affairs imprudently or in breach of regulatory requirements.
3. The Reserve Bank, MED and the Commission therefore agree that, within the limitations of their respective statutory obligations and powers, the agencies will work together to assist each other in the performance of their functions and to promote a coordinated approach to distress or failure in the financial system.
4. In October 2003, MED, the Reserve Bank and the Commission signed a Memorandum of Understanding (MOU) to facilitate cooperation and sharing of information between themselves and other parties to the MOU.
5. The MOU provides for Schedules to be agreed which provide for more specific information sharing agreement between particular agencies.
6. MED, the Reserve Bank and the Commission wish to share information as described in and under the terms stated in this Schedule. This Schedule replaces the Schedules previously prepared by the Reserve Bank and MED.

## **Definitions**

7. For the purposes of this Schedule:

**MED** includes the Official Assignee for New Zealand, the Registrar of Companies, the Government Actuary and all other statutory offices within the Companies Office.

**Reserve Bank Act** means the Reserve Bank of New Zealand Act 1989.

## **Objective of Schedule**

8. The objective of this Schedule is to encourage and facilitate cooperation, coordination and information sharing between the Reserve Bank, the Commission and MED in order to:
  - (a) assist each agency in the performance of its objectives and functions; and
  - (b) enable each agency and the government as a whole to identify, respond to, and manage distress in the financial sector.
  
9. The Schedule:
  - (a) identifies the types of information each party would like to receive;
  - (b) identifies the types of information each party holds;
  - (c) commits each agency to the timely sharing of information as outlined in this Schedule;
  - (d) describes, in general terms, the confidentiality status under relevant statutes of that information and the circumstances in which it can be disclosed between agencies;
  - (e) commits each party to protect the confidentiality of information disclosed in connection with this schedule, subject to applicable laws.

## **Information which each agency wishes to receive**

### **Reserve Bank**

10. The Reserve Bank wishes to receive information in the possession of the Commission and/or MED that may:
  - (a) indicate distress in the financial system;
  - (b) be relevant to the maintenance of a sound and efficient financial system;
  - (c) assist the Reserve Bank in advising government on the operation of the financial system; or
  - (d) indicate a possible breach of the Reserve Bank Act.
  
11. This information includes, but is not limited to, information that indicates possible insolvency, reckless trading or significant unlawful conduct by financial institutions and any of their officers, affiliates and associates.
  
12. The Reserve Bank's interest in this information is because it relates to its regulatory objectives and functions under the Reserve Bank Act, including:
  - (a) administering restrictions on the use of the word "bank" and its derivatives (Part 4 of the Reserve Bank Act);
  - (b) lender of last resort function (s 31);
  - (c) provision of advice to the Minister of Finance on the operation of the financial system (s 33);
  - (d) bank registration and supervision, and failure resolution of a distressed bank (Part 5);
  - (e) general oversight of the financial system; and
  - (f) oversight of the payment system (Part 5B).

### **Securities Commission**

13. The Securities Commission wishes to receive information relevant to the enforcement of securities and securities markets laws. This comprises information concerning participants in the primary and secondary securities markets that may provide evidence of unlawful or inappropriate conduct.
14. The Securities Commission seeks information for the purpose of performing its functions:
  - to review conduct relating to securities and conduct on securities markets;
  - to exercise its enforcement powers under the Securities Act 1978 and Securities Markets Act 1988.
15. For these purposes the Commission wishes in particular to receive information concerning possible:
  - misleading disclosure by issuers or investment advisers concerning public offers of securities (in a prospectus, investment statement, or advertising);
  - unlawful trading behaviour on registered exchanges (insider trading or market manipulation);
  - breaches of Securities Act obligations by trustees or statutory supervisors;
  - misleading advertising or disclosure by investment advisers;
  - misleading or deceptive conduct relating to securities on the part of any other person;
  - breaches of continuous disclosure obligations by listed issuers;
  - breaches of financial reporting obligations by any issuers;
  - non-disclosure of substantial security holdings in listed issuers;
  - unauthorised dealing in futures contracts (including unauthorised dealing in foreign exchange futures contracts);
  - breaches of statutory obligations of registered securities or futures exchanges.

### **MED**

16. MED wishes to receive information in the possession of the Commission and/or the Reserve Bank that:
  - (a) may indicate possible insolvency, fraudulent or reckless trading or significant unlawful conduct by individuals or corporate entities and any of their officers, affiliates and associates; and
  - (b) may be relevant to MED's compliance, prosecution and enforcement functions and powers, including functions and powers of statutory offices, under:
    - i. the Corporations (Investigation and Management) Act 1989 in relation to corporations that are or may be operating fraudulently or recklessly;

- ii. the Companies Act 1993, including information in relation to fraud related investigations (see sections 377-380), being involved in the management of a company while disqualified, potential candidates for director prohibition, and other breaches of director responsibilities outlined in the Act;
- iii. the Insolvency Act 1967 and/or the Insolvency Act 2006, including offending by undischarged bankrupts by being involved in business or involved in the management of companies, incurring credit without disclosure, materially contributing to or increasing the extent of insolvency and concealing assets;
- iv. the Securities Act 1978 and the Securities Act (Contributory Mortgage) Regulations 1988, in particular potential offending under sections 33 and 37 (failure to register a prospectus and void allotment of securities), section 58 and 59 (where a prospectus includes an untrue statement and offering, distributing or allotting securities in contravention of the Act);
- v. the Financial Reporting Act 1993, including potential offending in relation to the failure to prepare financial statements, failure to have financial statements audited or to have statements registered with the Registrar of Companies; or
- vi. any other legislation under which the Registrar of Companies, the Official Assignee for New Zealand, the Government Actuary or any other statutory office that is part of MED has compliance, prosecution or enforcement functions.

## **Information held by each agency**

### **Reserve Bank**

- 17. Information about the corporate, financial, prudential and other matters relating to the business, operation, or management of registered banks and applicants for registration. This information comes from the following sources:
  - (a) public information;
  - (b) information obtained from an applicant for registration as a bank;
  - (c) information publicly disclosed by banks as required under s 81 of the Reserve Bank Act; and
  - (d) information obtained by the Reserve Bank using specific information gathering powers under Part 5 of the Reserve Bank Act.
- 18. Information from financial institutions in statistical summary form gathered using statutory powers in Part 2 of the Reserve Bank Act, primarily for monetary policy purposes.
- 19. Information and data relating to a payment system collected voluntarily or under statutory powers in of the Reserve Bank Act.
- 20. Information and data obtained in connection with an application for, or pursuant to, the designation of a payment system under Part 5C of the Reserve Bank Act.

21. Information gathered using statutory powers under Part 4 of the Reserve Bank Act. Part 4 restricts the use of the word “bank” and its derivatives in a name or title and in advertising material.

### **Securities Commission**

22. The Securities Commission holds information about the following entities that are authorised or approved by the Commission:
- trustees and statutory supervisors (except statutory trustee corporations);
  - futures dealers;
  - registered futures exchanges.
23. The Securities Commission also holds information relating to specific issuers or offers of securities where an issuer has applied for an exemption from any provisions of the Securities Act or Securities Regulations or where a registered exchange has consulted with the Commission regarding an application for a waiver from continuous disclosure provisions of the listing rules.
24. The above information is supplied voluntarily to the Commission, usually in the expectation that it will be held confidential.
25. The Securities Commission also holds information related to matters that have been investigated by the Commission or that are the subject of a current investigation. This information may be obtained from publicly available sources, may be supplied voluntarily, or may have been obtained under statutory powers to summons information and conduct inspections. The information may, during the term of an investigation, be subject to confidentiality orders of the Commission (which can be amended or waived by the Commission).
26. The Securities Commission holds limited general information about market participants.

### **MED**

27. MED, through the Companies Office, administers 17 registers encompassing companies, personal property securities, superannuation funds, incorporated societies, building societies, charitable trusts, unit trusts, friendly societies and credit unions. The registers include information relating to those entities that are registered.
28. The Insolvency and Trustee Service which is part of MED holds information on personal bankruptcies in accordance with the Insolvency Act 1967 and Insolvency Act 2006 and company liquidations where the Official Assignee has been appointed to administer the estate.
29. The Insurance and Superannuation Unit, which is part of MED, supervises the management of registered superannuation schemes, encouraging compliance with the Superannuation Schemes Act 1989. It also ensures insurance companies comply with the statutory obligations under the Life Insurance Act 1908 and Insurance Companies' Deposits Act 1953, and administers the

Insurance Companies (Ratings and Inspections) Act 1994. In addition the Insurance and Superannuation Unit will ensure compliance by providers and administer the registration of schemes that meet the prescribed requirements specified in Part 4 of the KiwiSaver Act 2006.

## **Statutory restrictions on information passed to other agencies and on the use of that information and statutory protections**

### **Reserve Bank**

30. Information gathered by the Reserve Bank in connection with its bank supervisory powers under Part 5 of the Reserve Bank Act, and its payment system oversight powers under Part 5B of the Reserve Bank Act is confidential under sections 105 and 156G respectively. Unauthorised disclosure is an offence. Similar provisions apply to information gathered pursuant to an investigation using powers under Part 4 of the Reserve Bank Act.
31. However, in all cases the Reserve Bank may disclose the information to any person it is satisfied has a proper interest in receiving such information and may impose conditions on the use of such information.
32. Information passed from the Reserve Bank to MED or the Commission must remain confidential and may only be disclosed if authorised by the Reserve Bank or if necessary or desirable in connection with any function or power conferred on MED or the Commission by a statute.
33. The Bank may impose conditions on the use of confidential information that it has disclosed to MED or the Commission.
34. The Official Information Act 1982 does not apply to information covered by section 105 of the Reserve Bank Act, including information disclosed to and held by MED or the Commission.

### **Securities Commission**

35. Information obtained by the Commission pursuant to an inspection under section 67 or 67A of the Securities Act 1978 can be disclosed to a person for the purposes of the Securities Act, Securities Markets Act, Takeovers Act, and the Acts listed in Schedule 1 of the Securities Act. Information obtained from an inspection can also be disclosed for the purpose of detecting and prosecuting possible offences against other Acts, but the information is generally not admissible in criminal proceedings (section 68B, Securities Act).
36. Information obtained under summons may be subject to restrictions depending on the purpose for which the information is obtained.
37. Information held by the Commission is held subject to the Official Information Act (except information held for the purpose of any function under which the Commission acts as a tribunal), the Privacy Act, and any applicable confidentiality order of the Commission.

38. The Securities Commission has a general power to comment on matters relating to securities or securities markets to appropriate bodies, subject to any applicable obligation to observe natural justice.
39. The Securities Commission reserves the right to impose conditions of use on information supplied to any agency.

### **MED**

40. MED has various powers under the legislation it administers to inspect documents and require production of information, generally for the purpose of ascertaining whether there is compliance with a particular Act, whether any rights or powers under an Act should be exercised, or in order to detect offences. For example, MED has powers of inspection under the following sections:
  - Section 365 Companies Act 1993
  - Section 26 Insurance Companies (Ratings and Inspections) Act 1994
  - Sections 68 and 68A Insolvency Act 1967 and sections 165 and 171 Insolvency Act 2006
  - Section 67 and 67A Securities Act 1978
  - Section 19 Corporations (Investigation and Management) Act 1989
  - Section 173(f) Personal Property Securities Act 1999
  - Section 122A Building Societies Act 1965
  - Section 8 Friendly Societies and Credit Unions Act 1982
  - Section 24 Superannuation Schemes Act 1989
  - Section 189 Kiwisaver Act 2006
41. However, information gathered by the MED in connection with the above powers of inspection is generally subject to limits on disclosure. In some cases unauthorised disclosure is an offence.
42. In most cases MED may disclose the information to any person it is satisfied has a proper interest in receiving such information, and may impose conditions on the use of such information.
43. Information passed from the MED to the Reserve Bank or the Commission must remain confidential and may only be disclosed if authorised by MED or if necessary or desirable in connection with any function or power conferred on the Reserve Bank or the Commission by a statute.
44. MED may impose conditions on information gathered under its powers of inspection and that it has disclosed to the Reserve Bank or the Commission.
45. In some cases there may be limits on the application of the Official Information Act 1982 to information collected by MED under its powers of inspection, for example:
  - Section 367 Companies Act 1993
  - Section 28 Insurance Companies (Ratings and Inspections) Act 1994

- Section 23(7) Corporations (Investigation and Management) Act 1989
- Section 122B Building Societies Act 1965

### **Sharing of information between agencies**

46. When any agency exercises its discretion as to the proper interests of other agencies in receiving information, the agency with the information will have regard to the contribution that disclosure of the information will make to the ability of the other agencies to perform their public duty.
47. Each agency commits to the timely dissemination of information that it has decided may be shared with other agencies in accordance with this Schedule.

### **Confidentiality of shared information**

48. Subject to para 49, each agency commits to protect and keep confidential any information that is shared in connection with this Schedule.
49. Agencies will only further disclose such information following consultation with the agency from which the information originated, and where:
  - (a) disclosure would comply with the conditions (if any) under which the information was initially received; and
  - (b) disclosure would comply with any applicable statutory requirement; or
  - (c) disclosure is required by law.

### **Agencies to keep MOU under review**

50. The Schedule will continue to have effect despite any changes to legislative provisions referred to within the Schedule. The Schedule will apply to those changes to the extent reasonably practicable.
51. Each agency shall advise the other agencies where, with respect to the Schedule:
  - (a) Legislative provisions referred to are amended in a way that materially alters their description.
  - (b) The agency's functions or objectives materially change.
  - (c) The agency's need for information changes.

### **Liaison persons**

52. Each agency will nominate from time to time liaison persons for the purpose of identifying possible information exchange situations and agreeing on information exchange arrangements pursuant to this Schedule. The initial liaison persons for each agency are specified below:

**Reserve Bank**

Geof Mortlock  
Manager, Issues  
Financial Stability Department  
DDI: 04 471 3949  
Email: [geof.mortlock@rbnz.govt.nz](mailto:geof.mortlock@rbnz.govt.nz)

Peter Brady  
Manager, Financial System Oversight  
Financial Stability Department  
DDI: 04 471 3814  
Email: [peter.brady@rbnz.govt.nz](mailto:peter.brady@rbnz.govt.nz)

**MED**

Liz Thomson  
Manager, Legal Services  
Business Services Branch  
DDI: (04) 470 2504  
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Robert Rendle  
Senior Solicitor  
Business Services Branch  
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**Securities Commission**

Norman Miller  
Director of Enforcement  
DDI (04) 471 7653  
Email: [norman.miller@sec-com.govt.nz](mailto:norman.miller@sec-com.govt.nz)

Kathryn Rogers  
Director, Primary Markets  
DDI (04) 471 7665  
Email: [kathryn.rogers@sec-com.govt.nz](mailto:kathryn.rogers@sec-com.govt.nz)

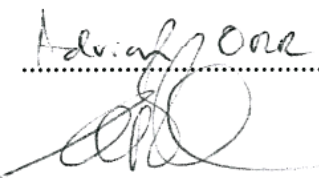
**This Schedule is confirmed and brought into effect:**

**Ministry of Economic Development**

By:   
NEVILLE HARRIS

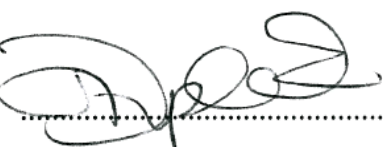
Dated: 22.12.06

**Reserve Bank of New Zealand**

By: 

Dated: 14/12/06

**Securities Commission**

By:   
JANE DIPLOCK

Dated: 15/12/06