



Guidance note on suitability assessments under the Non-bank Deposit Takers Act 2013

Prudential Supervision Department

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About this guidance

The Non-bank Deposit Takers Act 2013 ('the Act') gives the Reserve Bank of New Zealand ('the Bank') the power to license non-bank deposit takers ('NBDTs'). As part of the licensing process, the Bank must receive a suitability notice relating to each current or proposed director or senior officer of an NBDT indicating whether they raise a suitability concern. Where a suitability concern is raised the Bank may allow the person to act in the role by issuing a notice of non-objection, or object to the person acting in the role by declining to issue such a notice. Directors of licensed NBDTs must also notify the Bank if an actual or proposed director or senior officer raises suitability concerns after the NBDT has been licensed.

This guidance is intended to assist NBDTs, their shareholders, and their actual or proposed directors and senior officers, to understand how to provide a suitability notice to the Bank and the approach the Bank intends to take regarding suitability concerns and issuing notices of non-objection (both at the point of licensing and on an ongoing basis). It is divided into four parts:

- Part 1 provides an outline of the relevant legislative provisions;
- Part 2 sets out the general approach the Bank will take in considering whether or not to issue a notice of non-objection when an actual or proposed director or senior officer of an NBDT raises a suitability concern;
- Part 3 outlines some of the key matters that the Bank may consider in relation to specific suitability concerns;
- Part 4 explains how a suitability notice should be submitted to the Bank, and the information that it should contain.

Where relevant, references to NBDTs in this document include references to a person who is applying for an NBDT licence.

The material in this document is guidance only, and does not override the provisions of the Act or any regulations. It does not constitute legal advice. We encourage affected persons to obtain their own legal advice if they are in any doubt as to their obligations under the law.

Part 1: Suitability concerns and non-objection notices under the Non-bank Deposit Takers Act 2012

Assessing the suitability of directors and senior officers when an application is made to apply for a licence

1. Section 13(2) of the Act provides that an application for a person to be licensed as an NBDT must be accompanied by a suitability notice for each director and senior officer, or proposed director or senior officer, of the applicant.
2. A suitability notice is designed to indicate whether the director or senior officer, or proposed director or senior officer, raises any suitability concerns prescribed by regulations made under the Act. The Non-bank Deposit Takers (Debt Securities and Suitability Concerns) Regulations 2014 ('the Regulations') set out the suitability concerns that have been prescribed. These are set out in full in the appendix. In summary, they cover circumstances where the person:
 - Has been bankrupt or subject to insolvency related proceedings;
 - Has been a director or senior officer of, or otherwise exercised a significant influence over, an at-risk, deteriorating or dissolved entity;
 - Has a criminal record or is subject to an unresolved criminal prosecution for which a conviction may be entered;
 - Has been involved in professional or occupational malpractice;
 - Has been involved in regulatory non-compliance by a market participant;
 - Has a conflict of interest or potential conflict of interest.
3. The appendix should be referred to in order to fully understand the scope of the suitability concerns.
4. Section 15 of the Act sets out the required content of suitability notices. In particular:
 - A suitability notice must certify that a named director or senior officer, or proposed director or senior officer, of an NBDT does not raise any suitability concerns, or does raise 1 or more suitability concerns.
 - If a suitability notice states that the person named in it raises 1 or more suitability concerns, the notice must also identify the relevant suitability concern or concerns and include any other information required by the Bank to be included in such notices.
 - Every suitability notice must be signed:
 - if the person named is a director or proposed director of the NBDT, by the person himself or herself; and
 - if the person named is a senior officer or proposed senior officer of the NBDT, by 2 directors of the NBDT.
5. Template suitability notice form are available from the [NBDT licensing webpage](#).

6. On receipt of a suitability notice the Bank may make whatever inquiries it thinks fit to assist in determining whether the person is unsuitable to act as a director or senior officer of the NBDT. This may include asking the person, or any other person, to supply information or respond to queries.
7. Where a suitability notice does raise one or more suitability concerns, or the Bank becomes aware through other means that a person may raise suitability concerns, the Bank must not issue a licence to the applicant unless or until it issues a notice of non-objection in respect of the person. The Bank may only issue a notice of non-objection in respect of the person if, after making inquiries, the Bank is satisfied that the person is not unsuitable to be a director or senior officer of the NBDT. Where the Bank is not satisfied of this, it will notify the applicant that a licence will not be granted to the applicant if the person named in the suitability notice becomes or remains a director or senior officer of the applicant.
8. However, where a suitability notice states that the person does not raise any suitability concerns, the Bank is entitled to rely upon the notice in determining whether the person is unsuitable to be a director or officer of the NBDT. In that event, the Bank may grant a licence to the applicant without needing to issue a notice of non-objection in respect of any actual or proposed director or senior officer of the applicant who does not raise suitability concerns.
9. If a person signs a suitability notice where they know, or ought to know, that it was false or misleading in a material respect, they commit an offence and are liable on conviction for a term of imprisonment of up to 12 months and/or a fine of up to \$100,000.

Assessing the suitability of proposed new directors and senior officers after a licence is granted

10. We anticipate that all NBDTs will be subject to a standard condition of licence requiring a suitability notice that complies with section 15 of the Act to be provided to the Bank before any new director or senior officer appointments are made, and that such appointments must not proceed unless no suitability concerns are raised, or the Bank issue a notice of non-objection.
11. Suitability notices provided after a licence has already been granted will be dealt with in broadly the same way as suitability notices provided to the Bank with an application for an NBDT licence. Specifically:
 - On the receipt of a suitability notice the Bank may make whatever inquiries it thinks fit to assist it to determine whether or not the person referred to in the suitability notice is unsuitable to be a director or senior officer of the relevant NBDT. This may include asking the person named in the suitability notice, or any other person, to supply information or respond to queries;

- After making inquiries, the Bank may then either issue a notice of non-objection in relation to the person, or must advise the licensed NBDT that it does not intend to issue a notice of non-objection in relation to the person. However, the Bank may only issue a non-objection notice in respect of the person if it is satisfied that the person is not unsuitable to be a director or senior officer of the relevant NBDT;
- The NBDT must not appoint a person as director or senior officer if they raise a suitability concern, unless a notice of non-objection has been issued under this condition; and
- A director or senior officer may be required to resign if they are appointed despite raising a suitability concern and no notice of non-objection has been issued in respect of them under this condition.

12. If this condition is breached, then the Bank may exercise its powers under sections 56(1)(b)(iii), 56(2)(d) and 60(1)(c) to issue a direction requiring an NBDT to address a failure to comply with the terms of this condition or to require a director or senior officer to resign in accordance with the terms of this condition. The Bank also has the power to cancel a licence in this situation under section 21(c) of the Act.

13. A failure to comply with a direction is an offence, which in the case of an individual may result in a term of imprisonment of up to 18 months and/or a fine not exceeding \$200,000, and in the case of a corporate may result in a fine not exceeding \$2,000,000.

Assessing the suitability of directors or senior officers who raise suitability concerns after their appointment

14. Section 42 of the Act requires a director of an NBDT to notify the Bank as soon as they become aware that a current director or senior officer of the NBDT raises, or may raise, a suitability concern. This type of notification is treated by the Bank as if it were a suitability notice.

15. The Bank may then make whatever inquiries it thinks fit to assist it to determine whether or not the person referred to in the notification is unsuitable to be a director or senior officer of the relevant NBDT. This may include asking the person named in the notification, or any other person, to supply information or respond to queries. After making inquiries, the Bank may then either issue a notice of non-objection in relation to the person, or must advise the licensed NBDT that it does not intend to issue a notice of non-objection in relation to the person. However, the Bank may only issue a non-objection notice in respect of the person if it is satisfied that the person is not unsuitable to be a director or senior officer of the relevant NBDT.

16. Where a notice of non-objection is not issued by the Bank in respect of a director who raises suitability concerns, and that person continues to act as a director, the Bank may take steps to remove the director under section 60(1)(c) of the Act.

17. We anticipate that NBDTs will be subject to a standard condition of licence which requires that they must ensure that no person acts a senior officer of the NBDT if they raise a suitability concern and a non-objection notice has not been issued in respect of the person. Where a notice of non-objection is not issued in respect of a senior officer who raises suitability concerns, and the senior officer continues in that role, the NBDT will have breached this standard condition of its licence. In these circumstances the Bank may issue a direction to the NBDT under sections 56(1)(b)(iii) and 56(2)(d) of the Act that the NBDT ensure that the senior officer ceases to take part in the management or conduct of the NBDT's business.

Appeals from decisions on suitability

18. Former, current, or proposed directors or senior officers of an NBDT have a right of appeal to the High Court in respect of a decision by the Bank on their suitability to act as a director or senior officer of an NBDT. This appeal is by way of rehearing. With the leave of the High Court there is also a further right of appeal to the Court of Appeal on questions of law.

Part 2: General approach to assessing whether or not to grant a notice of non-objection

Process followed by the Bank

19. The underlying objective for the suitability concerns regime is to ensure that unsuitable people are not involved in the NBDT sector as directors and senior officers. In particular, the suitability concerns are designed to identify matters that may reflect adversely on a person's honesty, integrity, sense of responsibility, or capability.

20. When an actual or proposed director or senior officer raises suitability concerns, there is a requirement to notify the Bank that the person raises suitability concerns. Where the circumstances giving rise to the suitability concern are serious, or where a person raises multiple suitability concerns or triggers a specific suitability concern on multiple occasions, the Bank may treat this as creating a presumption that the person is not suitable to act as a director or senior officer of the relevant NBDT. As a result, when notifying the Bank that a suitability concern is raised, directors should also ensure that they bring any mitigating factors to the Bank's attention.

21. As noted above, the Act also provides that where the Bank becomes aware that an actual or proposed director or senior officer raises suitability concerns, the Bank may make any inquiries it thinks fit to assist in determining whether the person is unsuitable to act as a director or senior officer of the NBDT. For example, the Bank may want to check the veracity or reliability of other statements made by the person if questions have been raised about the person's honesty, and the Bank may want to make further inquiries into a person's credit history if questions have been raised about the person's ability to pay their debts.

22. The Bank will make its assessment (as to whether or not to issue a notice of non-objection) based on all the information it holds. It will carefully consider the weight that should be given to different pieces of information, taking into account the seriousness and relevance of the information. A pattern of behaviour and / or a cavalier attitude to compliance with the law may also be relevant.
23. In making its decision, the Bank will be guided by the principles of consistency, transparency and natural justice. In particular, the Bank will:
- provide actual or proposed directors or senior officers who raise, or who may raise, suitability concerns with an opportunity to present mitigating factors relevant to their suitability, either orally and/or in writing, when there is a significant likelihood that a notice of non-objection will not be issued;
 - be clear in its reasoning when notifying an NBDT of its decision not to issue a notice of non-objection (including noting the key information on which it is relying); and
 - actively consider previous decisions taken as to whether or not to issue a notice of non-objection in similar situations so as to promote consistency in decision making.
24. The Bank does not have the power to require that information be provided by persons other than an NBDT, an associated person, or the trustee of an NBDT. In addition, certain types of inquiry may require the person's consent. Where information cannot be obtained because a person declines to provide information or provide consent to certain forms of independent checking or reporting, this will not automatically prejudice a decision on whether or not to issue a notice of non-objection. However, the Bank reserves the right to take this refusal into account when considering its decision. In particular, where information is not forthcoming, the Bank may have insufficient information to satisfy itself that the person is not unsuitable to carry out the role.

Level of scrutiny expected of directors when certifying that a person does or does not raise suitability concerns

25. As mentioned above, directors are required to certify in a suitability notice that an actual or proposed senior officer does, or does not, raise suitability concerns. It is an offence to make this certification where the director knows, or ought to know, that the suitability notice is false or misleading in a material respect. Directors are also required to notify the Bank when they become aware that a current director or senior officer of a licensed NBDT raises, or may raise, suitability concerns. In these cases, it is an offence for a director to fail to notify the Bank that a director or senior officer may raise suitability concerns when they became aware, or ought to have become aware, of this.
26. The Bank expects directors to take reasonable steps to verify whether a person raises, or may raise, suitability concerns. What constitutes reasonable steps will depend upon the specific situation. However, the Bank would expect that before a director provides a certification in a suitability notice in respect of another person, the director would ensure that, at a minimum, a full criminal record check was conducted in respect of that other person. The Bank would also expect that, as a matter of best practice, directors and senior

officers would be required to self-certify to the NBDT on an annual basis whether they raised any suitability concerns. In respect of more significant or recent matters that may trigger a suitability concern, directors will also be expected to have considered any relevant information that is publicly available or widely known in the industry.

Level of information sought

27. The Act and Regulations require that any matter coming within the scope of a suitability concern will be disclosed irrespective of when and where it occurred. This means that a matter should be included even if it took place a significant time ago and/or in another jurisdiction. The Bank notes that the Regulations expressly state that suitability concerns include matters that occurred wholly or partly outside New Zealand or that are governed wholly or partly by the law of another jurisdiction.

28. If there is uncertainty about whether or not a particular matter comes within the scope of a suitability concern and should be disclosed, then the Bank would expect people to err on the side of including such matters.

29. The Bank does not anticipate that this will result in the need to disclose a large volume of information in the initial suitability notice, or in the notification to the Bank in other cases where a person raises, or may raise, suitability concerns. In both cases, the Bank expects to receive the following information (where applicable):

- a description of the matter(s) that triggered the suitability concern;
- when, why and how the matter arose and the nature of the individual's involvement;
- any punishment incurred and rehabilitation undertaken;
- any mitigating factors that the director or senior officer believes should be taken into account;
- details of other relevant government, regulatory or professional bodies involved; and
- the likely impact of the matter on the individual's suitability, and any steps that mitigate this impact.

30. The Bank may then seek further information as part of its inquiries into the person's suitability.

Verification of information in suitability notices

31. The Bank reserves the right to verify disclosures made in suitability notices to confirm their accuracy. However, responsibility for ensuring the accuracy of suitability concerns disclosures ultimately rests with the directors of the NBDT. As noted above, a person commits an offence if they sign a suitability notice where they know, or ought to know, that it was misleading in a material respect.

Protection of disclosed information

32. Section 54 of the Act provides that, subject to specified exceptions, information gathered by the Bank for the purposes of, or in connection with, the exercise of powers under the Act must be kept confidential. These rules extend to any information gathered for the purposes of deciding whether or not to issue a notice of non-objection. Section 55 of the Act also expressly excludes the application of the Official Information Act 1982 to information gathered for the purposes of, or in connection with, the exercise of powers under the Act.
33. In its treatment of information it collects relating to the suitability of directors and senior officers, the Bank will also be mindful of its obligations under the Privacy Act 1993, Criminal Records (Clean Slate) Act 2004, New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993.

Part 3: The Bank's approach to assessing specific suitability concerns

34. This part sets out some of the matters that the Bank may look at when making its decision on whether a person is unsuitable to act as director or senior officer of the NBDT. However, the Bank reserves the right to consider any other matters that it thinks are relevant.
35. Directors and senior officers may find it useful to refer to the following points when considering what (if any) mitigating factors should be brought to the Bank's attention when a suitability concern is raised.

Where the person has been bankrupt or subject to insolvency related proceedings (suitability concern number 1)

36. In addition to a judgment debt and bankruptcy, this suitability concern includes being the subject of any creditors' composition, proposal to creditors, order or arrangement to pay debts, no assets procedure or other personal insolvency arrangement or procedure.
37. Notwithstanding the fact that bankruptcies are removed from the public register after 3 years from the discharge from bankruptcy, the Bank notes that any previous bankruptcy triggers this suitability concern. The Bank also notes that the inclusion of judgment debts within this suitability concern expands its scope beyond just personal insolvency proceedings.
38. Factors that the Bank is likely to consider in respect of this suitability concern include:
- the amount owed by the person on the event of the judgment debt, bankruptcy or insolvency procedure;
 - the length of time since the person was subject to the judgment debt, bankruptcy or insolvency procedure; and
 - the circumstances leading to the judgment debt, bankruptcy or insolvency procedure.

39. The Bank may also seek to inquire further into a person's credit history when this suitability concern is raised.

Where the person has been a director or senior officer of, or otherwise exercised a significant influence over, an at-risk, deteriorating or dissolved entity (see suitability concern number 2)

40. This suitability concern deals with some situations where the previous activities of the person may have raised an issue around whether they are a suitable person to act as a director or senior officer, but there has been no direct finding of wrongdoing against the person.

41. Factors that the Bank is likely to consider in respect of this suitability concern include:

- the nature of the business that the entity was involved in;
- the person's role in the entity and the importance of that role (note that this is not simply a question of whether the person filled a formally important role such as director or CEO, but whether they were in a position to substantially influence the affairs of the entity);
- the events leading up to the debt/equity conversion, moratorium, receivership, liquidation, voluntary administration, or judicial or statutory management;
- the person's role in those events (in particular, the degree of influence that they exercised and the specific actions that they did, or did not, take in the circumstances);
- The person's conduct during the moratorium, receivership, liquidation, voluntary administration, or judicial or statutory management; and
- In the case of a moratorium, voluntary administration, or judicial or statutory management, how that process was resolved.

42. When this suitability concern is raised, the Bank may wish to make further inquiries with other persons who were involved in the failed entity, and/or any regulatory agency that may have had an interest in the events surrounding the failure of the entity.

Where the person has a criminal record or is subject to an unresolved criminal prosecution for which a conviction may be entered (see suitability concern number 3)

43. This suitability concern includes any form of criminal conviction, irrespective of how closely related the offending is to the role of director or senior officer. We note that certain types of serious criminal offending (such as committing serious criminal offences under the Securities Act 1978 or the Companies Act 1993) are likely to automatically result in a person not being suitable to act as a director or senior officer. However, other less serious or less relevant offending may still be material where it indicates a casual or indifferent attitude to compliance with the law (either in itself or as part of a broader pattern of behaviour). It should also be noted that this suitability concern covers situations where the person is currently subject to an unresolved prosecution for a criminal offence for which a conviction may be entered.

44. Factors that the Bank is likely to consider in respect of this suitability concern include:

- the relevance of the offence to the role of director or senior officer (for example, crimes involving dishonesty or relating to behaviour in financial markets will be more relevant than some other crimes);
- the seriousness of the offence – both in terms of its magnitude (for example, a conviction for fraud will be more significant than a conviction for a failure to file an annual return), and the nature of the sentence handed down (for example, in some cases a non-custodial sentence may indicate less culpability on the part of the person); and
- how long ago the offence was committed.

45. Where this suitability concern is raised, the Bank may also seek authorisation to conduct its own criminal record check.

46. We note that the Criminal Records (Clean Slate) Act 2004 provides that a person who has previously been convicted of a criminal offence may be deemed as having no criminal record, should they meet certain conditions (most importantly, having never been subject to a custodial sentence, and having paid in full any fine or reparation ordered as a result of the conviction).¹ Persons who have the benefit of the clean slate scheme will not be required to disclose any criminal record.² In all other cases, the Bank will expect the disclosure of any offences that a person has been convicted of at any time, and in any country.

Where the person may be, or has been, involved in professional or occupational malpractice (see suitability concern number 4)

47. This suitability concern covers situations where a person is, or has been, the subject of any investigation or adverse admissions or findings made, or disciplinary or regulatory action taken:

- in respect of the person's engagement in a profession or an occupation; and
- by or to an authority with disciplinary or regulatory functions in respect of persons engaging in that profession or occupation.

48. This could cover a broad range of matters, including adverse findings about a person as a result of an investigation, through to private or public censure, financial penalty, or the temporary or permanent withdrawal of the right to practise in a particular profession.

49. Factors that the Bank is likely to consider in respect of this suitability concern include:

- the relevance of the profession the person is (or was) a member of to the role of director or senior officer;

¹ See sections 7 and 14 of the Criminal Records (Clean Slate) Act 2004

² See Regulation 5(3) of the Non-bank Deposit Takers (Debt Securities and Suitability Concerns) Regulations 2014

- the circumstances that led to the investigation, adverse admission or findings, or disciplinary or regulatory action;
- the nature of the process followed by the professional or regulatory body leading to their initiating an investigation, making an adverse finding, or taking disciplinary or regulatory action;
- the seriousness of the steps taken by any relevant public agencies and professional bodies as a result of the adverse admission or finding, or as part of the disciplinary or regulatory action; and
- how long ago the events triggering the suitability concern occurred.

50. Where this suitability concern is raised, the Bank may wish to make further inquiries with relevant professional and/or regulatory bodies about the nature of the investigation, adverse admissions or findings made, or disciplinary or regulatory action taken. In particular, the Bank may want to verify that the person has made full and accurate disclosure about the matter giving rise to the suitability concern.

Where the person is a market participant who may be, or has been, involved in regulatory non-compliance (see suitability concern number 5)

51. This is a broad suitability concern, in that it covers circumstances where the person is, or has been, the subject of any investigation, or adverse admissions or findings made, or disciplinary or regulatory action taken, in respect of their participation in a market.

52. It also covers circumstances where the person has been a director or senior officer of, or otherwise exercised significant influence over, an entity that has been the subject of any investigation, adverse admissions or findings made, or disciplinary or regulatory action taken, in respect of its participation in a market.

53. This includes an adverse finding in a report or investigation (irrespective of whether the adverse finding is public), a censure, the imposition of administrative penalties, the seeking of court orders,³ or other civil proceedings. It may include action taken by a tribunal (e.g. the New Zealand Markets Disciplinary Tribunal), a regulatory authority or public agency (e.g. the Financial Markets Authority, Commerce Commission, or former Securities Commission), a market operator (e.g. NZX), or a relevant overseas regulator or market operator.

54. For the purposes of this suitability concern the Bank takes a broad interpretation of the meaning of “participating in a market” and “an authority with regulatory functions in respect of persons participating in that market”. Specifically, the Bank will:

- treat the phrase “participating in a market” as including participation in any market for goods or services; and
- treat the phrase “an authority with regulatory functions in respect of persons participating in that market” as including a regulator with the power to enforce generic rules in relation

³ For example, an order seeking to freeze the assets of a director of a failed entity.

to behaviour in the relevant market (for example, the Commerce Commission when it carries out Fair Trading Act investigations) as well as a regulator with the power to enforce rules specific to a given sector (e.g. the Financial Markets Authority).

55. Factors that that Bank is likely to consider in respect of this suitability concern include:

- the circumstances that led to the investigation, adverse admission or findings, or disciplinary or regulatory action;
- the nature of the process followed by the regulatory authority, public agency, or market operator leading to their initiating an investigation, making an adverse finding, or taking disciplinary or regulatory action;
- the seriousness of the steps taken by the regulatory authority, public agency, or market operator as a result of the adverse admission or finding, or as part of the disciplinary or regulatory action; and
- how long ago the events triggering the suitability concern occurred.

56. Where this suitability concern is raised, the Bank may wish to make further inquiries with the relevant regulatory authority, market operator, or government agency about the nature of the investigation, adverse admissions or findings made, or disciplinary or regulatory action taken. In particular, the Bank may want to verify that the person has made full and accurate disclosure about the matter giving rise to the suitability concern.

Has a conflict of interest or potential conflict of interest (see suitability concern number 6)

57. Conflicts of interest that may raise suitability concerns are likely to be very specific to the circumstances of the particular NBDT and director or senior officer. For example, a potential conflict of interest could arise where:

- an actual or proposed director or senior officer of an NBDT borrows a significant amount from the NBDT;
- an actual or proposed director of an NBDT has a personal interest in an entity that competes for business with the NBDT; or
- an actual or proposed director of an NBDT has a personal interest in an entity the NBDT is entering into transactions with.

58. Factors that that Bank is likely to consider in respect of this suitability concern include:

- the specific nature of the business of the NBDT;
- whether the person has a conflict of interest that may impact on their ability to carry out the role or director or senior officer;
- the nature of that conflict;
- whether the conflict is of a one-off or ongoing nature; and
- the extent to which the conflict can be managed by the NBDT.

59. Where this suitability concern is raised, the Bank may wish to make further inquiries with other parties who may have knowledge relevant to the actual or potential conflict of interest in order to determine the nature and magnitude of the conflict. The Bank may also require the NBDT to provide a copy of its conflicts of interest policy (or equivalent documentation).

Part 4: How to submit a suitability notice to the Bank

60. This section provides additional practical information about completing suitability notices for current or proposed directors and senior officers of NBDTs.

Who needs to provide a suitability notice

61. As explained above, an NBDT must provide a suitability notice to the Bank for each director and senior officer, or proposed director and senior officer when applying for a licence to be an NBDT, or where an existing director or senior officer raises a suitability concern that the Bank has not previously been notified of. The terms ‘director’ and ‘senior officer’ are defined in section 4 of the Act, as follows:

director means—

(a) a person occupying a position of director by whatever name called; or

(b) in the case of an entity that does not have directors as such, any trustee, manager, or other person who acts in relation to that entity in the same or a similar fashion as a director would act were that entity a company incorporated in New Zealand under the Companies Act 1993

senior officer, in relation to an NBDT,—

(a) means a person occupying a position that allows the person to exercise significant influence over the management or administration of the NBDT (for example, a chief executive or a chief financial officer); and

(b) includes any class or classes of persons declared by regulations to be senior officers for the purposes of this Act; but

(c) does not include any class or classes of persons declared by regulations not to be senior officers for the purposes of this Act

62. There are currently no class or classes of persons declared by regulation to be, or not to be, senior officers for the purposes of the Act. The Bank expects that the number of senior officers will vary by firm. For example, most small firms are likely to have only one or two senior officers (e.g. Chief Executive Officer, Chief Financial Officer). However, larger firms may have more persons occupying a position that allows the person to exercise significant influence of the management or administration of the NBDT (e.g. a Chief Operating Officer or Chief Risk Officer). NBDTs are expected to exercise their own judgement, and have in

place an appropriate rationale that looks to the substance of the position and not simply job titles, when determining which individuals are senior officers. The Bank may decide to review the rationale where an NBDT determines that a person who appears to exercise significant influence is not classified as a senior officer.

Information that needs to be provided in a suitability notice

63. Section 15 of the Act explains what information a suitability notice must contain. The Act requires the suitability notice to contain certification that the director or senior officer either does not raise a suitability concern or does raise 1 or more suitability concerns. The Bank has produced suitability notice templates (see [NBDT licensing webpage](#)) that directors and senior officers may use to meet the suitability notice requirements of the Act.
64. Where a notice states that the person raises a suitability concern, the notice must also identify the relevant suitability concern or concerns and include any other information required by the Bank to be included in such notices. Paragraph 29, above, explains what additional information the Bank requires where a suitability concern(s) exists. The additional information can be provided in the signed suitability notice (the Bank template provides an appendix for this information) or in a separate document. Where additional documents are used these must clearly state the name of the individual and the suitability concern(s) to which the document refers.
65. Suitability notices must be signed by:
- a. the director / proposed director, if the notice relates to that director or proposed director; or
 - b. by two directors of the NBDT, if the notice relates to a senior officer or proposed senior officer of the NBDT.

Other information that the Bank requests

66. The Bank may take measures to verify some of the information provided in suitability notices. In order for the Bank to take these measures we request that each suitability notice is accompanied by the following:
- A signed and dated authorisation permitting the Bank to make enquiries about the individual's credit and criminal history (this is included in the templates produced by the Bank).
 - An up-to-date copy of the individual's criminal record (subject to the provisions of the Criminal Records (Clean Slate) Act 2004), **or** verification that no criminal record exists, as issued by the New Zealand Ministry of Justice. This can be obtained from the Ministry of Justice (<http://www.justice.govt.nz/services/criminal-records/get-a-copy-of-your-criminal-record>). If the individual would prefer the Bank to obtain a criminal record check on their behalf directly from the Ministry of Justice they should

contact the Bank at an early stage in the licence application process, using the contact details below.

- If the individual has been resident overseas in the past 10 years, but has not been subject to a foreign supervisory or regulatory authority's suitability (or similar) assessment, copies of up-to-date criminal record reports for those jurisdictions in which the individual has been resident during that time. Note that the Bank may also make its own enquiries directly with relevant overseas authorities.
- Where the individual has been subject to a foreign supervisory or regulatory authority's suitability assessment, details of the purpose, nature and outcome of the assessment, and the name of the body that undertook the assessment.

Submitting a suitability notice to the Bank

67. Completed suitability notices and accompanying documentation should be sent to the Bank together with all of the other licence application material. For further information, see the [Guidelines for Non-bank Deposit Taker Licence applicants](#) (PDF 116KB) document, available on the [NBDT licensing webpage](#).

Contact for further information

Website

[http://www.rbnz.govt.nz/regulation and supervision/non-bank deposit takers/](http://www.rbnz.govt.nz/regulation%20and%20supervision/non-bank%20deposit%20takers/)

Email

nbdt@rbnz.govt.nz

Telephone

+64 4 472 2029

Mail

Reserve Bank of New Zealand
Prudential Supervision – NBDT Licensing
PO Box 2498
Wellington 6140

Appendix – Suitability concerns set out on the Schedule to the Non-bank Deposit Takers (Debt Securities and Suitability Concerns) Regulations 2014

1 Bankruptcy or related proceedings

(1) The person is, or has been, a debtor, defendant, or respondent in any of the following:

- (a) a bankruptcy proceeding; or
- (b) a proceeding for a judgment debt (which, in this paragraph, means an amount for which judgment is entered or for which an order of a court is made in any civil proceedings); or
- (c) any creditors' composition, proposal to creditors, order or arrangement to pay debts, no asset procedure, or other bankruptcy or personal insolvency arrangement or procedure.

(2) Subclause (1) applies even if—

- (a) the person has not, or has not yet, been adjudged bankrupt or held liable for the judgment debt;
- (b) the proceeding, arrangement, or procedure is not finally determined, concluded, or implemented.

(3) Subclause (1)(c) applies, without limitation, to all arrangements or procedures under Part 5 of the Insolvency Act 2006.

2 Influence over at-risk, deteriorating, or dissolved entity

(1) The person has been a director or senior officer of an entity, or has otherwise exercised significant influence over the management or administration of an entity, at a time within 7 years before—

- (a) the entity made an offer to holders of debt securities issued by the entity to replace those securities, wholly or in part, with equity securities transferred by the entity to those holders; or
- (b) the entity entered into any moratorium proposal, voluntary administration, receivership, judicial management, statutory management, or liquidation; or
- (c) the entity was otherwise wound up or dissolved.

(2) **Moratorium proposal**, in subclause (1)(b), means an offer of any debt security that is, in substance, a variation of the terms or conditions of an existing debt security, and that does 1 or both of the following:

- (a) extends the time for payment of the principal amount or any other returns under that existing debt security;
- (b) reduces or cancels the principal amount, or any other returns that are due, or to become due, under that existing debt security.

3 Criminal record or prosecution

The person has at any time been convicted of a criminal offence, or (by being charged with the offence or otherwise) made subject to a criminal prosecution—

- (a) for a criminal offence of a kind that could result in a conviction and criminal record;
- and

- (b) that was not, or has not yet been, withdrawn, dismissed, or stayed, before being finally determined; and
- (c) that did not result, or has not yet resulted, in the person being acquitted or discharged without a conviction.

4 Professional or occupational malpractice

- (1) The person is, or has been, the subject of any investigation or adverse admissions or findings made, or disciplinary or regulatory action taken,—
 - (a) in respect of the person's engagement in a profession or an occupation; and
 - (b) by or to an authority with disciplinary or regulatory functions in respect of persons engaging in that profession or occupation.
- (2) The authority may (without limiting the generality of subclause (1)(b)) be a professional or an occupational body, or a governmental or independent public entity or officer.
- (3) The investigation or admissions or findings may be made by or to, or the action taken by,—
 - (a) the authority, or its employees, officers, or agents, directly; or
 - (b) the authority indirectly via a court, tribunal, or person acting judicially.

5 Market participant regulatory non-compliance

- (1) This clause applies to a person—
 - (a) who is or has been participating in a market; or
 - (b) who is or has been a director or senior officer, or who is otherwise exercising or has otherwise exercised significant influence over the management or administration, of an entity that is or has been participating in a market.
- (2) The person or, as the case may be, the entity is or has been the subject of any investigation or adverse admissions or findings made, or disciplinary or regulatory action taken,—
 - (a) in respect of the person's participation in that market or, as the case may be, in respect of the entity's participation in that market at a time or times when the person was a director or senior officer, or otherwise exercised significant influence over the management or administration, of the entity; and
 - (b) by or to an authority with regulatory functions in respect of persons participating in that market.
- (3) The authority may (without limiting the generality of subclause (2)(b)) be a regulator or market operator, or a governmental or independent public entity or officer.
- (4) The investigation or admissions or findings may be made by or to, or the action taken by,—
 - (a) the authority, or its employees, officers, or agents, directly; or
 - (b) the authority indirectly via a court, tribunal, or person acting judicially.

6 Conflict of interest or potential conflict of interest

The person has a conflict of interest, or a potential conflict of interest, that affects, or is likely to affect, the person's proper performance of his or her duties as a director or senior officer, or as a proposed director or senior officer, of the NBDT or the proposed NBDT.