

NBDT licensing update – November 2014

This newsletter sets out the general conditions that will be imposed on Non-bank Deposit Taker (NBDT) licences. It also includes an update on the licensing process and important information about the disclosure of suitability concerns.

As at 5 November 2014, the Reserve Bank has received 33 licence applications and the associated suitability notices from more than 250 directors or senior officers of NBDTs. The Reserve Bank's assessment process is ongoing and we have started granting licences.

Conditions of licence

Section 18(2) of the Non-bank Deposit Takers Act 2013 ('the Act') enables the Reserve Bank to impose conditions on a licence at the time it is granted. The Reserve Bank has identified general conditions of licence that will apply to all licensed NBDTs. Additional licence conditions may be imposed on specific entities if appropriate.

The general conditions address some matters relating to suitability notices. The general conditions are set out below:

- A new director or senior officer must not be appointed to the NBDT without the NBDT first submitting a suitability notice to the Reserve Bank in respect of that person. The suitability notice must comply with section 15 of the Act. The appointment may not proceed unless:
 - i. the suitability notice does not raise a suitability concern; or
 - ii. if the suitability notice states that the person named in it does raise one or more suitability concerns, the Reserve Bank issues a notice of non-objection in respect of that person.
- The NBDT must ensure that no person continues to occupy a senior officer position with the NBDT if:
 - i. the person raises a suitability concern after appointment as a senior officer of the NBDT, and
 - ii. the Reserve Bank has informed the NBDT that it does not intend to give a notice of non-objection in respect of that person.

Suitability concerns

The Reserve Bank has identified a number of cases where suitability concerns were not disclosed in suitability notices. The instances of non-disclosure primarily relate to Suitability Concern 2 ("Influence over at-risk, deteriorating, or dissolved entity") of the [Non-bank Deposit Takers \(Debt Securities and Suitability Concerns\) Regulations 2014](#). Under Suitability Concern 2, an individual raises a suitability concern if, amongst other things, he or

she was a director or senior officer of an entity at a time within 7 years before that entity entered into receivership or liquidation (regardless of the circumstances surrounding that event).

The main reasons for non-disclosure of suitability concerns appear to be that either (i) the director or senior officer was not aware of the event as it had occurred after their departure from the company/board, or (ii) because the director or senior officer did not consider that the matter reflected a “concern” about their suitability (e.g. because the event occurred a long time ago or because all creditors were repaid).

The Act and general conditions require suitability concerns to be disclosed on an ongoing basis. It is, therefore, important that the industry understands the nature and scope of the suitability regime and the importance of full disclosure in suitability notices.

The suitability concern regime requires the disclosure of potential matters of concern (the “suitability concerns” defined in the regulations) by directors and senior officers of NBDTs and then an assessment by the Reserve Bank to determine whether these matters make a person unsuitable to be a director or senior officer of the NBDT.

Factors that could impact on a person’s suitability are quite extensive, and hence the suitability concerns are purposely cast quite broadly. As a result, it is important to note that the existence of one or more suitability concern does not necessarily reflect negatively on a person’s suitability or mean that a person is unsuitable. Disclosure of a suitability concern merely alerts the Reserve Bank to an issue that **may** be a concern and provides the Reserve Bank with information to help determine this.

All matters falling into the suitability concerns set out in regulations should be reported to the Reserve Bank where required. Unless specifically mentioned in the regulations, factors such as the time since the event occurred and the person’s view about the impact on their suitability do not impact upon whether or not a suitability concern needs to be disclosed. Directors or senior officers may wish to check publically available information sources (e.g. the Companies Office register) when considering whether they raise a suitability concern.