

# Finance and Leasing Limited (In Receivership & In Liquidation)

## Receivers' Eleventh Report

Pursuant to Section 24 of the Receiverships Act 1993

29 February 2016

# Contents

Important Notice	1
1. Introduction	1
2. Receivership Matters	2
3. Finance and Leasing Loan Book	4
4. Amounts Owed by Finance and Leasing	6
5. State of Affairs	8
6. Receipts and Payments	10
7. Receivers' Contact Details	11

# Important Notice

The information required to complete this report was obtained from company records. Values are based on book values from the financial statements and accounting records of the company.

We have relied on the information provided by the company and on company records in preparing this report. We have not completed any form of audit or verification procedures on the financial information and we do not express any form of audit opinion on the financial information.

We take no responsibility for any incorrect information contained in this report that has been supplied by the company, its officers or other persons. This is a report prepared by the Receivers in terms of Section 24 of the Receiverships Act 1993. This report is not to be reproduced or used for any other purpose without our prior written consent in each case. We do not accept any liability whatsoever to any party from any use of, or reliance on, this report.

Any realisation projections, time taken to complete realisations and related costs were all subject to uncertainty at the time that these projections were prepared. We express no opinion on the likelihood of any projections being achieved. Financial projections are based on assumptions and estimates of future events which cannot be estimated with any certainty. Actual results are likely to be different from projections and the variations could be material since anticipated events frequently do not occur as expected.

In accordance with standard practice neither Deloitte, the Receivers, nor any member or employee of Deloitte, undertakes responsibility arising in any way whatsoever to any person in respect of realisation projections, the related commentary on options available to the receivership, any estimate of outcome for creditors, or any report content based on information supplied by the company, including any errors or omissions herein arising through negligence or otherwise however caused.

## 1. Introduction

Brett Chambers and Paul Munro were appointed Receivers and Managers (“Receivers”) of all the assets, property and undertakings of Finance and Leasing Limited (“Finance and Leasing” or the “company”) on 18 January 2011 by Perpetual Trust Limited (“the Trustee”) pursuant to a Trust Deed dated 20 October 1986 (as amended) (the “Trust Deed”). The appointment was made under the powers contained in the Trust Deed.

We set out below our report on the state of the company affairs as at 29 February 2016 in accordance with Section 24 of the Receivership Act 1993. This is the eleventh report provided by the Receivers.

This report should be read in conjunction with the Receivers’ previous reports. A statement of receipts and payments for the period is attached in Section 6.

## 2. Receivership Matters

### 2.1. Events Leading Up to the Appointment of Receivers

Perpetual Trust Limited was the Trustee for the secured debenture stock (and deposits) issued by Finance and Leasing. On 18 January 2011, the Directors requested the Trustee place the company in receivership.

At the date of receivership, the assets of Finance and Leasing included gross loan receivables of \$15.9 million less the Directors' impairment provision for specific loans of \$1.15 million. There was a significant exposure in that loan receivables were concentrated in hotel and property development asset classes.

Based on the accounting records of the company, the loan book as at 31 December 2010 comprised the following:

LOAN RECEIVABLES – AS AT 31 DECEMBER 2010 (\$000's)				
Loan Type	No	Gross Loan Receivable	Impairment Provision	Net Loan Receivable
Commercial	45	\$1,196	\$0	\$1,196
Consumer	16	\$302	\$0	\$302
Hotel Holdings	13	\$7,078	\$0	\$7,078
Land Holdings	1	\$1,450	\$0	\$1,450
Property Development	4	\$5,842	\$1,150	\$4,692
<b>Total</b>	<b>79</b>	<b>\$15,868</b>	<b>\$1,150</b>	<b>\$14,718</b>

### 2.2. Liquidator

On 27 November 2012 the Official Assignee was appointed as the Liquidator of Finance and Leasing Limited (In Receivership and Liquidation).

The on-going day to day administration of the company, including the collection of loan receivables and payments of proceeds to investors continues to be managed by the Receivers. The Liquidator has carried out investigations into certain transactions identified by the Receivers. The Liquidator considered three classes of possible claims:

- Voidable transactions
- Claims against the Directors
- Claims against the Auditors

The matters at issue are not straightforward and on the balance of these considerations, the Liquidator has advised the Receivers that it does not intend to pursue these matters at this time.

### 2.3. Status of Receivership

In our previous Receivers Reports, we advised investors that the Receiver expected to resign and allow the Liquidator to realise the remaining assets.

In subsequent discussions with the Liquidator, the Companies Office and the Financial Markets Authority, it was agreed that the Receivers would remain in place in order to:

- conclude realisation of residual company assets (the most material being a 48 ha bare land property in Greymouth with subdivision potential),
- pursue guarantees given in respect of the debt of the largest borrower group, and
- assist the Liquidator and regulatory authorities with potential litigation proceedings.

In respect of these matters, the Receivers report as follows:

- Conclude realisation of residual company assets

In November 2015, the Receivers entered into a contract for the sale of the 48ha property known as Tasman Views. The property had failed to attract any bids in three previous sale campaigns. The property represented the last significant asset of Finance and Leasing Limited to be realized.

- Pursue guarantees in respect of the largest borrower group

Following many months of attempting to enforce the guarantees given in respect of borrowings of the largest borrower group, the Receivers were successful in obtaining summary judgment against certain guarantors. Each guarantor contended that no assets were available to settle the judgment. The Receivers initiated bankruptcy proceedings against two parties and made application to the High Court in respect of a guarantee given by another party – a trustee of a family trust. That trustee alleged that liability was limited to the assets of the trust which were now nil.

A resolution has now been reached between the guarantors and the Receivers which will see further funds available for distribution to investors. That resolution was reached in full and final settlement of the matters currently before the courts.

- Assist the Liquidator with potential litigation proceedings

As noted earlier, the Liquidator has advised the Receiver that it currently does not intend to pursue possible claims. The Receiver remains available to assist with proceedings should circumstances change.

Having substantially addressed the outstanding matters from the previous report, the Receivers have advised the Trustee of their intention to resign as it no longer remains economic to remain in place for the small value of loans outstanding.

The Receivers expect to close-out the Receivership within the next two months.

# 3. Finance and Leasing Loan Book

Since their appointment, the Receivers have managed the loan book of Finance and Leasing to ensure loan repayments are being made and appropriate actions are initiated for loans in arrears or default.

The loan book contained loans for business activities including property development. As at 29 February 2016, only 3 small loans are expected to provide any further regular cash flow.

At the date of receivership the loan book comprised a small number of loans with material outstanding sums. Substantial client concentration existed with the top three client exposures representing more than 90% of the loan balances (when related individuals or borrowing parties are consolidated).

The following observations can be made in relation to each class of loan:

## **Commercial Loans**

Finance and Leasing advanced loans to commercial clients, secured over motor vehicles and other equipment. These loans balances made up 3% of the total balance receivable. The majority of the loan balances were less than \$50,000.

## **Consumer Loans**

There were a small number of consumer loans, largely secured over motor vehicles. In general these loans performed adequately.

## **Hotel and Land Holdings**

Finance and Leasing had a significant exposure to a borrowing group that operated hotels in Auckland, Hamilton and Rotorua. This group was the largest exposure in the Finance and Leasing loan book at approximately \$8.6 million.

The loans were secured by mortgages over ordinary shares in the borrowing companies and this has made realisation a complex and difficult process, not assisted by the poor trading performance and or liquidation of companies within the borrowing group. Consequently there are unlikely to be funds from the company available to repay Finance and Leasing.

Following discussions with the Finance and Leasing Liquidator and forensic specialists from the Companies Office, the Receivers believed there were strong grounds for pursuing the guarantors in relation to the shortfall debt notwithstanding unsubstantiated agreements with the Directors of Finance and Leasing Limited alleged by the borrower.

The Receivers have continued to work with the guarantors in respect of some of these loans and summary judgments were obtained which have greatly assisted in reaching a settlement proposal.

## **Property Development Loans**

Finance and Leasing held interests in two significant property developments in Christchurch, but these have now been realised as detailed in previous Receiver's reports.

## **Specific Loan Details**

The Receivers believe releasing specific details of other loans and collections to date or other commercially sensitive information would materially prejudice the exercise of their functions and

possibly the outcome for secured debenture holders. Accordingly, under Section 24 (3) of the Receiverships Act 1993 the Receivers have omitted specific details in this section.

#### **Land Held for Sale and Other Assets**

As at the date of receivership, Finance and Leasing had a number of company assets held for sale. Typically, these represented assets acquired by the company when loans defaulted.

##### ***Tasman Views, Greymouth***

Finance and Leasing owned a development property in South Beach, Greymouth which was purchased from a Finance and Leasing borrower in November 2008. The property has been marketed for sale by the Receivers by way of Deadline Sale but did not attract any acceptable offers.

In November 2015, the Receivers successfully concluded negotiations with one party for the sale of this property at a value reflective of market conditions.

# 4. Amounts Owed by Finance and Leasing

## 4.1. Amounts Owing to Appointer (On Behalf of Secured Debenture Holders)

Finance and Leasing had 227 investors and \$17.2 million in depositor funds at receivership date (including funds held by the Trustee), with an average deposit of \$76,000. All debenture stock is secured under the Trust Deed.

Approximately \$16.5 million is invested in secured debentures (“debenture stock”) and approximately \$0.7 million was held in trust by the Trustee. Funds held by the Trustee prior to receivership were returned to those investors.

The Receivers have distributed \$4.4 million or 27 cents in the dollar to secured debenture holders. The most recent distribution was declared on 28 February 2015.

Subject to clearing any residual receivership matters, the Receivers expect to make one further distribution to investors prior to closing out the Receivership.

Interest continues to accrue to secured debenture holders until date of full repayment, although it is not anticipated that there will be sufficient funds to pay interest to secured debenture holders.

## 4.2. Amounts Owing to Other Preferential Creditors

Finance and Leasing’s preferential creditors are its employees and the Inland Revenue Department (“IRD”).

At the date of appointment the Receivers adopted approximately \$14,000 of employee preferential creditor payments and \$97,166 of IRD’s preferential claims.

The full value of employee and IRD preferential creditors has been established and claims settled.

## 4.3. Amounts Owing to Unsecured Depositors

Finance and Leasing had no unsecured deposits as at 29 February 2016.

## 4.4. Amounts Owing to Unsecured Creditors

Unsecured creditors were notified of the receivership subsequent to our appointment. As at the date of this report the Receivers have confirmations from unsecured creditors for approximately \$45,000. We expect we are unlikely to receive any further confirmations of debt from unsecured creditors.

## 4.5. Amounts Owing to Redeemable Preference Shareholders

The company has 600,000 Perpetual Cumulative Redeemable Preference Shares (RPS). These shares have a fixed value of \$1.00 each. The RPS rank behind all secured and unsecured creditors of the company and all payments having priority at law, but rank ahead of the ordinary shares of the company.

#### **4.6. Amounts Owing to Ordinary Shareholders**

At the date of receivership Finance and Leasing had share capital with a book value of \$3.0 million comprising of ordinary shares. These shares have no par value and rank equally with regard to the company's residual assets.

#### **4.7. Amounts Likely to be Available to Secured and Other Creditors**

The Receivers have previously advised that the top three client exposures account for more than 90% of the total loan book. The return of funds to investors ultimately reflects the quality of these loans.

The security positions were not strong and there has been a significant decline in the value of security held. Poor trading performance of these entities exacerbated the weak security positions.

A prudent estimate of the final return to investors remains at 28 to 30 cents in the dollar.

This estimate is by no means a guarantee that the actual return will be in this range. Actual results may vary from the assumptions applied and this could have a material impact on the final recovery. The Receivers will continue to review these assumptions and update the estimate of realisation as the receivership progresses.

The Receivers continue to accrue interest on deposits held but it is unlikely that any funds will be available to pay interest to debenture holders.

The Receivers do not expect any funds will be available to repay redeemable preference shareholders, unsecured creditors or ordinary shareholders.

# 5. State of Affairs

## 5.1. Assets

The assets of Finance and Leasing comprise its loan book assets and cash.

According to the company records, the principal assets of Finance and Leasing relate to loan receivables. As at 29 February 2016 the loan receivables are as follows:

Loan Receivables	Book Value ('000s)
Gross Loan Receivables	13,489
Less: Other Accruals	(0)
<b>Total Book Value of Loan Receivables</b>	<b>13,489</b>

The only other assets of the company available as at 29 February 2016 are:

Other Assets	Book Value ('000s)
Bank	451 <sup>1</sup>
Accruals and Other Receivables	21
Office Equipment / Computers	0
Land and Other Assets Held For Sale	0
Deferred Tax	343
<b>Total Other Assets</b>	<b>815</b>

Notes:

<sup>1</sup> The current bank balance includes \$860 of funds held in trust for investors from previous distributions.

The Receivers have examined the deferred tax asset that existed at the date of receivership. No value is expected to be realised from the deferred tax asset.

## 5.2. Summary of Debts and Liabilities

Particulars of debts and liabilities at of 29 February 2016:

Debts and Liabilities	Book Value ('000s)
<b>Secured Creditors</b>	
Perpetual Trust (for Debenture Holders)	12,025
Preferential Creditors	-
<b>Unsecured Creditors</b>	
Unsecured Debenture and Deposit Holders	-
Creditors <sup>1</sup>	97
Redeemable Preference Shares	600
<b>Total</b>	<b>12,722</b>

Notes:

1. All creditors (both secured and unsecured) were notified of the receivership at appointment and were provided Confirmation of Debt forms to complete

## 5.3. Encumbrances Over the Property in Receivership

Particulars of encumbrances over the property in receivership are registered on the PPSR. A search of the PPSR shows there are no longer any registered interests on receivership property as at 29 February 2016.

## 5.4. Any Default by the Grantor in Making Information Available

There has been no default by the Grantor in making information available.

# 6. Receipts and Payments

<b>Finance &amp; Leasing Limited (In Receivership &amp; Liquidation) Receipts and Payments</b>	<b>1 September 2015 to 29 February 2016</b>
<b>Receipts</b>	
Loan Receipts	\$17,240
Proceeds from Sale of Assets	\$440,000
Interest Received	\$2,471
GST Refunds	\$11,241
<b>Total Receipts in the Period</b>	<b>\$470,952</b>
<b>Payments</b>	
Distribution to Secured Debenture Holders*	\$1,411
Capitalised Loan Costs	\$41,196
Interest and Bank Fees	\$283
Other Professional Fees	\$44,016
Rates on Finance and Leasing Assets	\$1,091
Receivers Fees	\$38,665
Trustee Fees	\$9,304
<b>Total Payments in the Period</b>	<b>\$135,965</b>
<b>NET RECEIPTS IN THE PERIOD (INCLUDING GST)</b>	<b>\$334,987</b>

\* Representing cheques cashed during the period from prior distributions to investors.

# 7. Receivers' Contact Details

The Receivers can be contacted at the address below.

Finance and Leasing Limited (In Receivership)

C / - Deloitte

P O Box 248

Christchurch 8140

+64 3 379 7010



Paul Munro  
**Receiver and Manager**



Brett Chambers  
**Receiver and Manager**