

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

### Receivers' Eighth Report

Pursuant to Section 24 of the Receiverships Act 1993

18 September 2014

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# 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 of Deloitte 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 18 September 2014 in accordance with Section 24 of the Receivership Act 1993. This is the eighth 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.

New Reserve Bank regulations for finance companies came into force on 1 December 2010 with respect to capital ratio requirements. Finance and Leasing was unable to meet the required covenants on a consistent basis within the required timeframe.

Without a registered prospectus, the company was unable to trade as a finance company and therefore the Directors requested the Trustee to place the company in receivership.

As 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.

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. Appointment of 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 appointment of the Liquidators will allow the Liquidators to exercise powers under the Companies Act 1993 that are broader than those available to the Receivers. For example the Receivers have handed over the files in respect of certain transactions authorised by the Directors of Finance and Leasing prior to the receivership. The Liquidators are carrying out their investigations into these transactions to determine whether there have been breaches of company law and whether it is in the interests of creditors and the wider public to pursue these. The Liquidators enquires are continuing.

The Receivers will continue to assist the Liquidators with their enquiries.

### 2.3. Meeting of Regulatory Bodies

In our sixth Receivers Report, we advised investors that the Receiver expected to resign before the end of 2013 and allow the Liquidator to realise the remaining assets.

In subsequent discussions with the Liquidators, 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.

The continuation of the Receivers remains the preferred mechanism for maximising returns to the investors. As events develop in respect of the remaining realisable assets the value of having the Receivers remains in place is re-evaluated. The Trustee is consulted to ensure this decision remains in investors best interests.

### 2.4. Retirement of Trustee

On 19 December 2013 Perpetual Trust Limited sought and obtained a court order allowing them to retire as the Trustee of Finance and Leasing and Corporate Trust Limited be appointed as the new Trustee.

Corporate Trust has been acting as Trustee under a management agreement since Perpetual Trust decided not to seek renewal of its corporate trust license.

The matter of costs relating to the change of Trustee has now been judicially determined and the Receivers will meet Finance and Leasing's share of their costs from receivership funds.

# 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 contains loans for business activities including property development. As at 31 August 2014 there were 24 loans (79 loans at date of receivership) with balances outstanding. Only 5 loans are expected to provide any further 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 parties are consolidated).

As has been signalled previously, the overall effectiveness of the receivership as measured by the return to secured parties is therefore highly dependent on the successful realisation of these loans.

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 operates hotels in Auckland, Hamilton and Rotorua. This group is 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 believe there are strong grounds for pursuing the guarantors in relation to the shortfall debt notwithstanding the arguments raised by the borrower. The Receivers are prepared to take this matter to litigation believing that to be in the best interests of the investors.

In recent months, the Receivers have further sought to negotiate with the borrower in respect of a potential realisation. If these negotiations prove to be unsatisfactory, the Receivers will re-commence action the covenantors and guarantors.

## **Property Development Loans**

Finance and Leasing held interests in two significant property developments in Christchurch, but these have now been disposed of 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.

- Finance and Leasing owns 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. This was the second unsuccessful marketing campaign undertaken. There has been a small amount of interest in the property but that interest is yet to result in a credible offer of purchase. The Receivers continue to work with a local land agent to ascertain the best option for liquidation of this asset. The agent's current advice has been to land-bank the property and consider a sale when the economic environment on the West Coast improves. Notwithstanding the challenges in the local economy, the Receivers will continue to seek a buyer for the property.

Pre-receivership, the property was on the books of Finance and Leasing at \$3.1 million and was provisioned for a loss of \$0.3 million. Recent valuation advice suggests that the realisable market value of the property is considerably lower than provisioned for.

- Finance and Leasing has security over a small forestry block on the West Coast. The Receivers are currently taking advice on the value of the property and the best disposal method taking into account the implications of the Emissions Trading Scheme.

# 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.

Prior to the receivership, the funds of 22 investors were held in trust due to Finance and Leasing not having a registered prospectus. As a consequence, any new deposit or deposits that matured during the period could not be reinvested.

These funds have subsequently been returned to the investors by the Trustee since they were unable to be accepted by Finance and Leasing.

To date \$3.8 million or 26 cents in the dollar has been distributed to secured debenture holders with the last distribution being on 18 October 2013.

No further distribution has been made in the current reporting period and no firm dates are proposed for any future distribution. Further distributions will be dependent on the success of on-going realisation efforts and the successful pursuit of funds through the courts.

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 18 January 2011.

## 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 received confirmations from unsecured creditors for approximately \$205,000. 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 depends on the recovery of monies lent to these three clients.

The security positions are not strong and there has been a significant decline in the value of security held. The trading performance of these companies has been poor and a number have been placed in liquidation.

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

The Receivers are conscious that this represents a significant difference to estimates given early in the receivership process. However the significant concentration of loans to a small number of parties meant that the final outcome was always highly dependent on successful realisation of the securities held in respect of these loans. This continues to be very challenging.

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 interest will be paid 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 principally comprise its loan book assets, cash, land, and other assets including office equipment and computers used to carry on business activities.

According to the company records, the primary assets of Finance and Leasing relate to loan receivables. As at 31 August 2014 the loan receivables are as follows:

Loan Receivables	Book Value ('000s)
Gross Loan Receivables	18,724
Less: Impaired Loans	(1,150) <sup>1</sup>
<b>Loan Receivables Net of Impairments</b>	<b>17,574</b>
Less: Other Accruals	(0)
<b>Total Book Value of Loan Receivables</b>	<b>17,574</b>

Notes:

<sup>1</sup> This represents impairment provisions made by the Directors' prior to the receivership. The Receivers have not attempted to update this impairment assessment.

The only other assets of the company available as of 31 August 2014 are:

Other Assets	Book Value ('000s)
Bank	180
Accruals and Other Receivables	21
Office Equipment / Computers	0
Land and Other Assets Held For Sale	2,800
Deferred Tax	343
<b>Total Other Assets</b>	<b>3,344</b>

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.

As identified earlier in Section 3 Land Held for Sale and Other Assets, the development property at South Beach is not expected to realise anything like the \$2.8 million book value recorded in the financial statements of the company.

Total assets are recorded at a book value of \$20.9 million as of 31 August 2014 or \$20.6 million after the deferred tax asset is excluded.

## 5.2. Summary of Debts and Liabilities

Particulars of debts and liabilities as of 31 August 2014:

Debts and Liabilities	Book Value ('000s)
<b>Secured Creditors</b>	
Perpetual Trust (for Debenture Holders)	12,190
Preferential Creditors	-
<b>Unsecured Creditors</b>	
Unsecured Debenture and Deposit Holders	-
Creditors <sup>1</sup>	258
Redeemable Preference Shares	600
<b>Total</b>	<b>13,048</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 dated 31 August 2014 and Crown Asset Management Limited (CAML) hold a registered interest.

CAML hold this interest as a result of the transfer of the South Canterbury Finance Limited assets to the Crown. Following legal validation that interest was settled in August 2013. The Receivers have requested CAML to discharge their registered interest.

## 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 March 2014 to 31 August 2014</b>
<b>Receipts</b>	<b>\$</b>
Loan Receipts	6,888
Interest Received	2,260
GST Refunds	5,804
<b>Total Receipts in the Period</b>	<b>14,952</b>
<b>Payments</b>	
Distribution to Secured Debenture Holders*	5,587
Interest and Bank Fees	224
IT Software and Support	433
Rates on Finance and Leasing Assets	2,092
Legal Fees	269
Receivers Fees	18,543
Other Professional Fees	3,145
Telephone and Communications	(66)
Trustee Fees	9,304
<b>Total Payments in the Period</b>	<b>39,531</b>
<b>NET RECEIPTS IN THE PERIOD (INCLUDING GST)</b>	<b>(24,579)</b>

\* Representing cheques cashed during the period from the 18 October 2013 distribution to investors.

# 7. Receivers' Contact Details

The Receivers can be contacted at the address below.

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