

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

## Receivers' Fifth Report

Pursuant to Section 24 of the Receiverships Act 1993

28 February 2013

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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 28 February 2013 in accordance with Section 24 of the Receivership Act 1993.

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

## 2. Receivership Matters

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

Perpetual Trust Limited is 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.

The company had applied to the Reserve Bank for dispensation but the Directors were of the view that would have taken months to process, with little likelihood of being successful. In the meantime the Companies Office was unwilling to approve the company's prospectus.

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 will continue 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 any funds might be clawed back for the benefit of the creditors.

The Receivers will continue with efforts to realise the remaining loans and endeavor to sell the two incomplete subdivision assets that have proved to be very difficult to move.

# 3. Finance and Leasing Loan Book

Since their appointment the Receivers have continued to manage 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 and asset acquisition or retention, and as at 28 February 2013 there were 28 active loans (79 loans at date of receivership).

The loan book comprises a small number of loans with material outstanding sums, and in several instances Finance and Leasing has a security position that ranks behind other secured creditors. Substantial client concentration exists with 98.5% of loan balances relating to the top three client exposures (when related individuals or parties are consolidated) covering 17 of the 28 loans.

Our work in evaluating the loans and realising securities continues to be complicated by a number of factors:

- Poor security position
- Weak financial position of borrowers
- Incomplete loan files
- Earthquake related delays in realising securities
- Lack of financial information on borrowings and valuation support at origination.

The Receivers have continued to actively encourage and approve settlement of loans where full realisation is available. Generally these settlements are for low value loans. Maximising recovery from the larger, more complicated exposures remains our primary focus. The biggest risk to returning depositor funds continues to be the exposure to a small number of large distressed loans.

The status of the loan receivables as at 28 February 2013 (inclusive of accrued interest) is summarised below:

LOAN RECEIVABLES – AS AT 28 FEBRUARY 2013 (\$000's)				
Loan Type	No	Gross Loan Receivable	Impairment Provision	Net Loan Receivable
Commercial	11	\$450	\$0	\$450
Consumer	3	\$41	\$0	\$41
Hotel Holdings	11	\$8,098	\$0	\$8,098
Land Holdings	1	\$1,375	\$0	\$1,375
Property Development	2	\$6,269	\$1,150	\$5,119
<b>Total</b>	<b>28</b>	<b>\$16,233</b>	<b>\$1,150</b>	<b>\$15,083</b>

The Receivers have not made any further impairment provision against the loans.

As noted in previous Receivers' Reports there has been a significant increase in the number of loans in the 'over 90 days' in arrears category since 18 January 2011. This increase is largely attributable to several large client exposures where capitalising interest loans have matured. Typically Finance and Leasing would renew or rollover these loans for a further period so they did not present as impaired. As a consequence of receivership, all maturing loans became due in full and are not being rolled over.

99% of the total loan book value has matured and is now due in full. Where possible, borrowers are repaying their loan or refinancing with another lender, however the ability of borrowers to refinance elsewhere is limited for many of the larger exposures.

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

### **Commercial Loans**

Finance and Leasing advanced loans to commercial clients, largely secured over motor vehicles and other equipment. These loans balances make up 3% of the total balance receivable. They have continued to perform adequately and the majority of the loan balances are less than \$50,000. There are however still a small number of advances which require significant servicing effort to keep the arrears position under control. Four loans have settled and repaid since the Receivers last report.

### **Consumer Loans**

There are a small number of consumer loans, largely secured over motor vehicles. In general these loans continue to perform adequately and one loan has settled and repaid since our last report. There are however several loans which the Receivers are continuing to manage closely due to a high risk of default.

The realisation strategies being adopted by the Receivers include consideration of the value and nature of the security. Where the security is weak and likely to be difficult to realise, every effort is made to rehabilitate the loan so that realisation proceeds are maximised. Where appropriate we continue to repossess assets and dispose of them accordingly.

### **Hotel and Land Holdings**

Finance and Leasing has a significant exposure to a borrower that operates hotels in Hamilton and Rotorua. This group is the largest exposure in the Finance and Leasing loan book at approximately \$9.5 million.

The nature of the security held for the loans being mortgages over ordinary shares in the borrowing companies has made realisation a complex and difficult process. The Receivers have commenced legal action to enforce the security held and discussions have been undertaken with the principal of the borrowing companies and guarantor of the loans to attempt to negotiate a satisfactory settlement of the loans. It has been difficult to make progress due to the weak security position and the borrowers and guarantors disputing certain aspects of the loan documentation.

### **Property Development Loans**

Finance and Leasing has interests in two significant property developments in Christchurch.

One advance was secured by a second ranking mortgage over two titles in Canterbury. The value of the securities was primarily derived from their potential use as a shingle quarry.

There is a dispute between Finance and Leasing and the first mortgagee regarding whether any funds are secured by the first mortgage. The first mortgagee refused to discharge its mortgage and the Receivers obtained an interim injunction compelling it to do so. This enabled the Receivers to negotiate with interested parties which led to a sale of the securities.

A substantive hearing was concluded in late February. The court ruled that advances by the first mortgagee were secured under the mortgage and ordered that approximately \$461,000 of the proceeds of sale be paid to the first mortgagee.

The amount the first mortgagee claimed was payable was \$495,000 (based on the likely date of sale had Finance and Leasing not disputed that funds were owed under the first mortgage), the difference of \$34,000 relates to an argument regarding the applicable interest rate in respect of which Finance and Leasing was successful.

Finance and Leasing is currently considering its options to appeal the ruling. In considering its options, the Receivers must have regard to the cost of appealing the judgement and the likelihood of having the High Court ruling overturned. On balance an appeal is unlikely.

The other property development interest has been managed by Finance and Leasing since the borrower company was placed in liquidation. The property comprises a subdivision in the east of Christchurch. The land report released by the Government on 23 June 2011 places this land in the Green Zone. It is close to two Orange Zoned blocks but the report indicates that the land may be built on.

Aspects of the subdivision are incomplete and prospective purchasers approached by the Receivers have been reluctant to accept the development risk associated with completing the works. The Receivers have commissioned works to remove some minor impediments but considerable development risk still exists. The property is currently on the market with tenders closing end of March 2013.

### **Specific Loan Details**

The Receivers believe releasing specific details of 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**

Finance and Leasing has the following assets held for sale. Typically, these represent assets acquired by the company when loans defaulted. With the exception of one bus, these assets were held by Finance and Leasing at the date of receivership.

- 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 previously been marketed for sale by the Receivers by way of Deadline Sale but did not attract any offers. Subsequently the Receivers worked with two parties who conducted due diligence on the subdivision but ultimately that interest did not result in a sale.

Finance and Leasing has obtained updated advice indicating that realisation of the property is likely to continue to be very difficult. The recommendation is that the sale process be continued by way of a public listing at a set price and Finance and Leasing is considering that recommendation.

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.

- At the date of receivership Finance and Leasing had repossessed three buses. The Receivers subsequently repossessed a further bus. Three buses have been sold and the Receivers continue to pursue buyer interest in the remaining bus.

As noted in our previous Receivers' Reports, at the date of receivership there were three sections at Lake Coleridge held by Finance and Leasing. The Receivers, as mortgagee, have now successfully concluded the sale of these sections.

### **3.1. Disposal of Property**

The Receivers have considered various options for the disposal of Finance and Leasing property. Where the options are in the best interests of the appointer, the Receivers have moved to realise these assets.

Settlement of 51 loans has been completed since 18 January 2011.

## **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. Therefore the funds were held by the Trustee until the situation with the prospectus could be resolved.

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

On 28 February 2013 a distribution of \$0.49 million or 3 cents in the dollar of principal outstanding has been approved for payment to secured debenture holders. This brings the total balance distributed to date to \$3.8 million or 23 cents in the dollar.

The remaining principal balance owing to secured debenture holders following the 28 February 2013 distribution is \$12.7 million or 77 cents in the dollar.

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 noted earlier in this report that the top three client exposures account for 98.5% of the total loan book. The return of funds to investors ultimately depends on the recovery of monies lent to these three clients.

Of the 17 loans that make up the three client groupings, all of these loans are currently in arrears. Accordingly these loans continue to be the main focus for the Receivers. In some cases, the security positions are not strong and in others there has been a significant decline in the value of security held. Those exposures secured by development property are unlikely to be resolved quickly particularly in the current climate.

The Receivers have remodelled estimates of realisation having regard to deteriorating market conditions, actual realisations to date and the financial position of borrowers and determined that an updated return in the range 30 cents to 33 cents in the dollar is more realistic. The downgrading from previous return estimates reflects the weaker prospects from the small number of disproportionately large exposures. As previously signalled the impact of weakening realisation prospects for these assets has a material effect on the return to secured investors. Some aspects of the return estimate remain subject to legal proceedings so there is considerable uncertainty associated with any projection of return to investors.

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 have distributed 23 cents in the dollar to secured debenture holders, this includes latest distribution of 3 cents in the dollar approved on 28 February 2013. The timeframe for any further distributions remains uncertain.

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 28 February 2013 the loan receivables are as follows:

Loan Receivables	Book Value ('000s)
Gross Loan Receivables	16,233
Less: Impaired Loans	(1,150) <sup>1</sup>
<b>Loan Receivables Net of Impairments</b>	<b>15,083</b>
Less: Other Accruals	(470)
<b>Total Book Value of Loan Receivables</b>	<b>14,613</b>

The only other assets recorded in the latest financial position of the company available as of 28 February 2013 are:

Other Assets	Book Value ('000s)
Bank	761 <sup>2</sup>
Accruals and Other Receivables	21
Office Equipment / Computers	0
Land and Other Assets Held For Sale	2,939
Deferred Tax	343
<b>Total Other Assets</b>	<b>4,064</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.

Total assets are therefore recorded at a book value of \$18.7 million as of 28 February 2013 or \$18.3 million after the deferred tax asset is excluded.

<sup>1</sup> This represents impairment provisions made by the Directors' prior to the receivership

<sup>2</sup> The bank balance is immediately prior to the \$0.49 million distribution approved on 28 February 2013.

## 5.2. Summary of Debts and Liabilities

Particulars of debts and liabilities as of 28 February 2013:

Debts and Liabilities	Book Value ('000s)
<b>Secured Creditors</b>	
Perpetual Trust (for Debenture Holders) <sup>1</sup>	13,178
Preferential Creditors	-
<b>Unsecured Creditors</b>	
Unsecured Debenture and Deposit Holders	-
Creditors <sup>2</sup>	205
Redeemable Preference Shares	600
<b>Total</b>	<b>14,024</b>

Notes:

1. The 'Secured Creditors' amount shown above is the balance immediately prior to the \$0.49 million distribution declared on 28 February 2013. The balance also excludes accrued interest.
2. All creditors (both secured and unsecured) were notified of the receivership at appointment and were provided Confirmation of Debt forms to complete. In addition to the book value of creditors, there is a significant potential liability which the Receivers are disputing. The amount of that liability is dependant on the outcome of litigation.

## 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 05 March 2013 revealed that the Trustee 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. This interest is currently subject to legal validation.

## 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)</b> <b>Receipts and Payments</b>	<b>1 September 2012 to</b> <b>28 February 2013</b>
<b>Receipts</b>	<b>\$</b>
Loan Receipts	67,538
Interest Received	10,199
<b>Total Receipts in the Period</b>	<b>77,737</b>
<b>Payments</b>	
Distribution to Secured Debenture Holders	1,003
<i>Capitalised Loan Costs:</i>	
Rates and other expenses	9,629
Interest and Bank Fees	244
IT Software and Support	1,026
Legal Fees Receivership Related	21,854
Rates on Finance and Leasing Assets	1,333
Receivers Fees	51,668
Telephone and Communications	345
Travel expenses	0
Trustee Fees	34,836
Vehicle Costs	2,062
<b>Total Payments in the Period</b>	<b>124,001</b>
<b>NET RECEIPTS IN THE PERIOD (EXCLUDING GST)</b>	<b>(46,264)</b>
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# 7. Receivers' Contact Details

The Receivers can be contacted at the address below.

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