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SUBMISSION ON PROPOSED CRITERIA FOR FIT AND PROPER PERSON CERTIFICATION

1 Introduction

- 1.1 This is Anthony Harper's submission on the Commerce Commission Consultation Document relating to the Criteria for Certification as Fit and Proper under the Credit Contracts and Consumer Finance Act 2003.
- 1.2 Anthony Harper is one of the top legal practices in New Zealand. Over recent years we have been New Zealand's fastest growing law firm, and we are one of its largest. We have a team of over 30 partners and more than 130 people operating out of our offices in Auckland and Christchurch. Anthony Harper has recognised expertise in a large number of practice areas, including banking and financial services law.

2 Submission

- 2.1 We generally agree with the proposed certification criteria. There are only a few aspect that we would like to submit further on.
- 2.2 We support the approach taken by the Commission in preparing the draft criteria. The proposed fit and proper criteria encompass similar considerations to those that the Financial Markets Authority and the Reserve Bank of New Zealand consider in licensing applications in their respective areas. This consistency is highly desirable.
- 2.3 Some criteria have been softened slightly in comparison to comparable FMA and RBNZ assessments (for example, the proposed criteria only asks about bankruptcy within the last 10 years while the FMA requires disclosure from the last 15 years). We think these differences are appropriate having regard to the purpose of certification, the relative size of entities to be certified, and the potential for customer detriment caused by certificate holders when compared to the generally more substantial and systemically significant entities licensed by the FMA or RBNZ.
- 2.4 We do however think certain criteria should be strengthened to better achieve alignment between the regimes, and the overall purpose of certification.

(a) Criteria nine

We submit that criteria nine should require applicants to tell the Commission about failures to comply with conditions imposed by other New Zealand and overseas regulators and not just the Commission. We believe that breaches of licence conditions imposed by *any* regulator impacts a director's or senior manager's fitness for certification. This change would also bring this criteria more in line with criteria five and 11 and makes criteria 9 a more relevant consideration for the Commission when assessing whether someone meets the necessary standard.



Additional criteria – conflicts of interests

- (b) We believe that an additional criteria requiring directors and senior managers to declare conflicts of interests should be added to table two of the proposed criteria. This criteria should be similar to "suitability concern six" of the RBNZ's suitability assessments for licensed non-bank deposit takers. Consideration of conflicts of interests is relevant to an applicant's competency and capability as it demonstrates a potential lack of objectivity in decision making (one of the matters noted in paragraph 15.2 of the consultation document).
- (c) We submit that the Commission should require applicants to disclose any conflicts of interest that are relevant to the proper performance of the duties associated with their position. This criteria would allow the Commission to identify risks associated with conflicts and, if necessary, impose conditions that help mitigate the risk. Without a conflict disclosure criteria the Commission may be unaware of a potential serious risk to customers and unable to effectively monitor that risk.
- (d) The criteria we propose is not substantially the same as criteria 16 as this criteria relates to an individual's involvement in the business, for example, their day-to day involvement in decision making or financial oversight. This suggested criteria is wider and would capture, by way of example, personal interests in competitors of the entity or a party the entity transacts with. Arguably this information would need to be disclosed under criteria 22, but we think a separate express criteria is more appropriate and avoids any doubt as to expectations.

2.5 We believe that these changes will strengthen the regime without creating a significant additional burden on applicants or the Commission in preparing and considering applications for certification.

3 Further information

3.1 I would be pleased to discuss any aspect of this submission. I can be contacted on 09 984 4234 or at nick.summerfield@ah.co.nz.

3.2 Thank you for the opportunity to submit.

Yours faithfully

ANTHONY HARPER



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