

Friday, 6 May 2011

CROWN DECISION

Crown Retail Deposit Guarantee Scheme – Deed of guarantee with Equitable Mortgages Limited – Crown discretion – Clause 2.3

Background

The Crown entered into a deed of guarantee with Equitable Mortgages Limited ('Equitable'), dated 19 March 2010 ('Crown Guarantee'). Capitalised terms that are not defined in this decision have the meaning they are given in the Crown Guarantee.

Clause 2.3 of the Crown Guarantee states that (emphasis added):

The Crown shall not be obliged to make a payment to a Creditor under clause 2.2 unless and until the Crown:

- (a) receives a Notice of Claim from the Creditor in respect of the relevant Indebtedness **within 180 days** following the date on which that Indebtedness becomes due and payable (or such longer period as the Crown may agree to in its sole and unfettered discretion); and
- (b) has satisfied itself as to the amount of that Indebtedness and as to such other matters as the Crown reasonably considers appropriate in order to ascertain the extent of its liability under the Crown Guarantee in respect of that indebtedness.

Despite clause 2.3(a), the Crown may (in its sole and unfettered discretion) waive in writing (generally or in any specific case) the requirement for it to receive a Notice of Claim.

Equitable triggered the Crown Guarantee on 26 November 2010 and is now in receivership. In principle, therefore, all depositors who wish to do so must submit a Notice of Claim by 25 May 2011.

However, the Crown only sent the claim forms to all the depositors who are eligible to submit a Notice of Claim on 1 April 2011. That gave depositors only about 7 weeks to submit their claim before the deadline imposed by clause 2.3.

The delay in sending the claim forms was caused by (i) the fact the first receivers that were appointed had to resign in mid-December 2010; (ii) the Christmas & New Year break; and (iii) the need for the new receivers to validate Equitable's security register. Thus, the delay cannot be attributed to depositors.

Decision

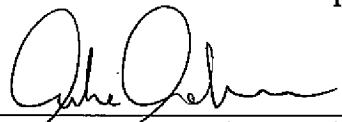
Exercising the discretion reserved to the Crown in clause 2.3 of the Crown Guarantee, the Crown hereby extends the period in which Equitable's Creditors must submit their Notice of Claim by a further 180 days.

Therefore, for the purposes of claims under the Crown Guarantee with Equitable, the Crown must receive a Notice of Claim from the Creditor in respect of the relevant Indebtedness within 360 days following the date on which that Indebtedness became due and payable.

Notwithstanding the exercise of its discretion above, the Crown reserves the right to exercise its discretion again, should it wish to do so.

Her Majesty the Queen in right of)
New Zealand acting by and through)
Philip Combes, Deputy Secretary –)
Financial Operations acting under)
delegation from the Secretary to the)
Treasury for and on behalf of the)
Minister of Finance in the presence of:)


Philip Combes, Deputy Secretary


Witness' name: Andre Anderson

Witness' occupation: Solicitor

Witness' address: Wellington