

RETAIL DEPOSIT GUARANTEE SCHEME – NOMINATION

Bare Trustees

Date: 6 May 2011

Background

It is a term of the Crown Deeds of Guarantee that any Person (a **Principal**) that is acting (directly or indirectly) as a nominee of, or trustee for, a Related Party of the Principal Debtor, a Financial Institution, or a person who is neither a New Zealand Citizen nor a New Zealand tax resident, is **not** a Creditor for the purposes of that Crown Deed of Guarantee.

However, it is a further term of the Crown Deeds of Guarantee that there is an exception to the exclusion described in the preceding paragraph whenever the Principal is a bare trustee for another Person and that other Person would be a Creditor if the Principal Debtor had a direct obligation to pay money to that other Person under a Debt Security (the **Bare Trustee Creditor Exception**).

For the purposes of each Crown Deed of Guarantee executed before or after the date of this Nomination, the Crown now wishes to clarify the application of the Bare Trustee Creditor Exception in the following circumstances—

- (a) Provided the relevant Principal falls within the terms of this Nomination, where there is a chain of two (or more) bare trusts between a Principal (as registered holder of a Debt Security) and a Beneficiary:
 - this Nomination designates that Principal to be a Nominated Beneficiary.
- (b) Provided the relevant Principal falls within the terms of this Nomination, where a Principal is the registered holder of one or more Debt Securities as bare trustee for more than one Beneficiary:
 - this Nomination designates that Principal to be a Nominated Beneficiary in respect of each separate Beneficiary. Consequently, the Principal will be a Nominated Beneficiary multiple times over (once for each Beneficiary), meaning that the Crown's Maximum Aggregate Liability to each such Nominated Beneficiary applies in relation to the amount(s) invested by each separate Beneficiary, rather than to the combined amount deposited by the Principal itself.

Examples of how this Nomination is intended to apply in practice are included in the schedule to this Nomination, below.

Definitions of Terms

For the purposes of this Nomination:

- (a) **Crown Deed of Guarantee** means any deed of guarantee given by or on behalf of the Minister of Finance under section 6 of the Crown Retail Deposit Guarantee Scheme Act 2009, whether executed before or after the date of this Nomination.

- (b) **Bare Trustee** means a Person:
- (i) to whom the Principal Debtor has an obligation to pay money (whether present or future) under one or more Debt Securities; and
 - (ii) who is acting:
 - (A) as a bare trustee for one or more Beneficiaries; and/or
 - (B) as a bare trustee for a Person who is an Intermediate Bare Trustee.
- (c) **Intermediate Bare Trustee** means a Person:
- (i) on whose behalf the Bare Trustee or another Person is acting; and
 - (ii) who is itself acting as bare trustee for:
 - (A) a Beneficiary; or
 - (B) a Person who is acting as bare trustee for a Beneficiary; or
 - (C) a Person who is acting as bare trustee for a Person described in paragraph (B) of this definition.
- (d) **Beneficiary** means a Person:
- (i) on whose behalf either a Bare Trustee or an Intermediate Bare Trustee is acting as bare trustee; and
 - (ii) who is not acting as bare trustee for any other person.
- (e) **Maximum Aggregate Liability** has the meaning set out in clause 2.6(b) of the relevant Crown Deed of Guarantee.

Other capitalised terms used in this Nomination but not defined herein take their meaning from the relevant Crown Deed of Guarantee.

Notice

1. Subject to the conditions of this Nomination, for the purposes of each Crown Deed of Guarantee the Crown gives notice that each Bare Trustee is a Nominated Beneficiary in respect of each separate Beneficiary (and, as a consequence, is a separate Creditor in respect of each separate Beneficiary for the purposes of the applicable Crown Deed of Guarantee)—

provided that:

- (i) the relevant Beneficiary would be a Creditor if the applicable Principal Debtor had a direct obligation to pay money (whether present or future) to that Beneficiary under a Debt Security; and

- (ii) either—
 - (a) the Bare Trustee is directly a bare trustee for that particular Beneficiary; or
 - (b) where the Bare Trustee is not directly a bare trustee for that particular Beneficiary, the relationship between the following Persons is a bare trust relationship:
 - (A) the Bare Trustee and the first Intermediate Bare Trustee; and
 - (B) each Intermediate Bare Trustee; and
 - (C) the final Intermediate Bare Trustee and that particular Beneficiary;
- and
- (iii) each Bare Trustee is only a Nominated Beneficiary **once** in respect of each separate Beneficiary.

2. For the avoidance of doubt, the proviso in paragraph 1(iii) above applies:
 - (a) regardless of how many deposits a particular Beneficiary has made with the relevant Bare Trustee (or with the relevant Intermediate Bare Trustee); and
 - (b) regardless of how many separate Debt Securities the relevant Bare Trustee holds on behalf of a particular Beneficiary; and
 - (c) regardless of whether the relevant Bare Trustee holds the Debt Securities directly on behalf of a particular Beneficiary, indirectly through an Intermediate Bare Trustee, or through a mixture of both.
3. For the further avoidance of doubt, when a Bare Trustee is a Nominated Beneficiary pursuant to paragraph 1 of this Nomination, that Bare Trustee is a **separate** Creditor in respect of each separate Beneficiary even though the Bare Trustee is the registered holder of each Debt Security deposited in its name (and thus might have been considered a single Creditor in respect of all such Debt Securities had the Crown not made this Nomination).
4. When a Bare Trustee is a Nominated Beneficiary pursuant to paragraph 1 of this Nomination, that Bare Trustee is a Nominated Beneficiary in respect of the aggregate Debt Securities and/or deposits which that Bare Trustee holds or has received on behalf of the relevant Beneficiary (whether directly or through an Intermediate Bare Trustee).
5. If a Bare Trustee holds Debt Securities on behalf of a particular Beneficiary with more than one Principal Debtor, then, provided the requirements of paragraph 1 are satisfied in each case, this Nomination entitles the Bare Trustee to be a separate Nominated Beneficiary for that Beneficiary with respect to each such Principal Debtor (but only once in each case).


6. Nothing in this Nomination prevents a Beneficiary from holding Debt Securities that are issued by a single Principal Debtor either directly as an individual in his or her own name or indirectly through more than one Bare Trustee. In such cases, despite the fact that the first Bare Trustee may be a separate Nominated Beneficiary in respect of that Beneficiary, for the purpose of determining the Maximum Aggregate Liability, any Debt Securities that the Beneficiary holds directly as an individual in his or her own name or indirectly through a **separate** Bare Trustee are not counted as part of the aggregate Debt Securities in respect of which the first Bare Trustee is a Nominated Beneficiary.

7. For the avoidance of doubt, Nominated Beneficiaries shall be deemed to be Creditors to the extent provided in this Nomination from the time that the first Default Event occurred under the relevant Crown Deed of Guarantee, even if that Default Event occurred before the date of this Nomination.

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: *Grove Hommesley-Myers*
 Witness' occupation: *P.A*
 Witness' address: *84A Tiber St
 Island Bay.*

Schedule: Examples

The following examples are illustrative only and do not extend or limit the scope of this Nomination. If an example and the wording of this Nomination are inconsistent, the wording of the Nomination prevails over the example.

In each example, assume that—

- the relevant Principal Debtor is a party to a Crown Deed of Guarantee that has not been withdrawn; and

- the relevant Beneficiary would be a Creditor for the purposes of the applicable Crown Deed of Guarantee if they had invested directly in Debt Securities issued by the relevant Principal Debtor.

Example 1

Bare Trustees Limited has invested \$500,000 as bare trustee for A, and \$750,000 as bare trustee for B, in Debt Securities issued by Principal Debtor Corporation, for a

combined holding of \$1.25 million. Under this Nomination, Bare Trustees Limited is treated as a separate Creditor in respect of each of A and B. Accordingly, the Crown's liability to Bare Trustees Limited as a Creditor for A is capped at \$250,000, and the Crown's liability to Bare Trustees Limited as a Creditor for B is also capped at \$250,000. Therefore, in the event that Principal Debtor Corporation defaults, Bare Trustees Limited is entitled to a total of \$500,000 from the Crown, comprising \$250,000 in respect of A's investment and \$250,000 in respect of B's investment.

Example 2

Bare Trustees Limited has invested \$150,000 as bare trustee for C in Debt Securities issued by Principal Debtor Corporation. C subsequently directs Bare Trustees Limited to invest another \$150,000 on her behalf in Principal Debtor Corporation. Under this Nomination, the Crown's liability to Bare Trustees Limited as a Creditor for C is capped at \$250,000. (This reflects the default position under the Crown Deed of Guarantee, rather than the result of this Nomination.)

Example 3

Bare Trustees Limited holds \$200,000 of Debt Securities issued by Principal Debtor Corporation as bare trustee for D Limited. In turn, D Limited holds its beneficial interest in those Debt Securities as bare trustee for E. Under this Nomination, Bare Trustees Limited is a Creditor on behalf of E for the purposes of the relevant Crown Deed of Guarantee. Therefore, if Principal Debtor Corporation defaults, when claiming as a Creditor on behalf of E, Bare Trustees Limited is entitled to receive \$200,000 from the Crown.

Example 4

Bare Trustees Limited acts as a bare trustee for several fund providers, including F Limited and G Limited. H has invested \$100,000 in a fund managed by F Limited, under which F Limited may only make investments for H under H's express directions (a bare trustee relationship). At H's direction, F Limited has invested in Debt Securities issued by Principal Debtor Corporation by using Bare Trustees Limited to make the investment on its behalf. Therefore, Bare Trustees Limited indirectly holds those debt securities as bare trustee for H.

H has invested a further \$200,000 through a separate fund managed by G Limited, under which G Limited may only make investments for H under H's express directions (also a bare trustee relationship). G Limited has also invested those funds in Debt Securities issued by Principal Debtor Corporation by using Bare Trustees Limited to make the investment on its behalf. Therefore, those Debt Securities are also held by Bare Trustees Limited as an indirect bare trustee for H.

Consequently, H has invested a combined total of \$300,000 in Debt Securities issued by Principal Debtor Corporation, via two separate funds. However, under this Nomination, despite having invested through two different funds managed by two separate companies, because each fund invested through Bare Trustees Limited, the Crown's liability to Bare Trustees Limited as a Creditor for H is capped at \$250,000. Therefore, if Principal Debtor Corporation defaults, when claiming as a Creditor on behalf of H, Bare Trustees Limited is only entitled to \$250,000 from the Crown.

Example 5

Bare Trustees Limited has invested \$300,000 as bare trustee for J in Debt Securities issued by Principal Debtor Corporation. As bare trustee for J, K Limited has also invested \$300,000 in Debt Securities issued by Principal Debtor Corporation. Under this Nomination, the Crown's liability to Bare Trustees Limited as bare trustee for J is capped at \$250,000; and the Crown's liability to D Limited as bare trustee for J is also capped at \$250,000. Therefore, if Principal Debtor Corporation defaults, J is entitled to receive a total of \$500,000 from the Crown, half via Bare Trustees Limited and half via K Limited.

Example 6

Bare Trustees Limited has invested \$400,000 as bare trustee for L in Debt Securities issued by Principal Debtor Corporation. L subsequently directs Bare Trustees Limited to invest another \$400,000 on her behalf, this time in Another Principal Debtor Limited, which is unrelated to Principal Debtor Corporation. Under this Nomination, the Crown's liability to Bare Trustees Limited as a Creditor for L in respect of the Debt Securities issued by Principal Debtor Corporation is capped at \$250,000. The Crown's liability to Bare Trustees Limited as a Creditor for L in respect of the Debt Securities issued by Another Principal Debtor Limited is also capped at \$250,000. Therefore, if both Principal Debtor Corporation and Another Principal Debtor Limited default, L is entitled to receive a combined total of \$500,000.

Example 7

M, N and O each deposit \$100,000 with Bare Trustees Limited, who invests the \$300,000 as bare trustee in Debt Securities issued by Principal Debtor Corporation. M, N and O subsequently deposit a further \$200,000 each with Bare Trustees Limited, who also invests that \$600,000 as bare trustee in Debt Securities issued by Principal Debtor Corporation (meaning that each investor has deposited a combined total of \$300,000). Under this Nomination, the Crown's liability to Bare Trustees Limited as a Creditor for each of M, N and O is capped at \$250,000 respectively. Therefore, in the event that Principal Debtor Corporation defaults, Bare Trustees Limited is entitled to a total of \$750,000 from the Crown, comprising \$250,000 for each of M, N and O.