

IN-CONFIDENCE

RETAIL DEPOSIT GUARANTEE SCHEME – NOMINATION

Paid trustees of family trusts

Date: 20 June 2011

Background

Many family trusts have an independent trustee, who is often a solicitor, accountant or other professional adviser, or may be a company acting on behalf of such an adviser. In some cases, these independent trustees are paid for acting as trustee.

Clause 1.3(b)(i)(C) of the Crown Deed of Guarantee effectively excludes from the definition of “Creditor” any family trust whose trustees include a “financial institution”, as that term is defined in the Crown guarantee. Because that definition includes any person who is “carrying on the business of providing financial services”, and because it is arguable that the trustees of a family trust do provide “financial services”, it is possible that the independent trustee of a family trust who is paid for acting as trustee may cause the trust to be ineligible under the terms of the Crown guarantee.

Provided they fall within the terms of this Nomination, the Crown now wishes to designate any trustee of a family trust who is paid to act as trustee as a Nominated Beneficiary and thus a “Creditor” for the purposes of each Crown Deed of Guarantee executed before or after the date of this Nomination.

Definition of Terms

For the purposes of this Nomination—

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.

Initiator means a natural person who is both a trustee and beneficiary of a trust established primarily to benefit that person and the immediate members of his or her family, whether or not that person is also a settlor of the trust. Note that, in most (but not all) cases, there will be two Initiators who are either married to each other or in a relationship similar to marriage.

Family Trust means a trust that is established primarily to benefit the immediate members of a single family and their descendants, where:

- (a) the Initiator is a Trustee; and
- (b) subject to the last paragraph of this definition, all the beneficiaries of the trust are natural persons (or will be natural persons once they are born) who are either—
 - (i) the Initiator; or
 - (ii) the Initiator’s parents; or
 - (iii) specifically identified by name; or

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(iv) descended from the Initiator or the Initiator's parents (including by adoption or other legal process); or

(v) related by marriage or civil union to one of the persons described above;

and which trust may also be for the benefit of an incorporated or unincorporated entity (whether charitable or not), provided the primary purpose of the trust is to benefit the natural persons described in paragraph (b).

Paid Trustee means a Trustee who is paid to act as trustee or otherwise receives any form of compensation for their role as trustee.

Trustee means a trustee of the relevant Family Trust, who is acting in that capacity as the legal holder of one or more Debt Securities issued by the Principal Debtor.

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

Notice

With respect to any one Family Trust whose Trustees hold a Debt Security issued by a Principal Debtor, for the purposes of each Crown Deed of Guarantee the Crown gives notice that any Paid Trustee of that Family Trust is a Nominated Beneficiary and thus a "Creditor"—

provided that:

(a) the Paid Trustee is not—

(i) a Related Party of the Principal Debtor; or

(ii) controlled by a Related Party of the Principal Debtor; or

(iii) neither a New Zealand Citizen nor a New Zealand Resident; or

(iv) acting (directly or indirectly) as a nominee of or trustee for a Person who would not be a Creditor if the Principal Debtor had a direct obligation to pay money (whether present or future) to that Person individually under that Debt Security;

and

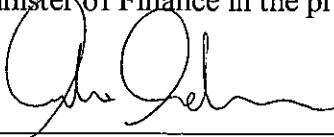
(b) each of the other Trustees of that Family Trust (if any) would be a Creditor if the Principal Debtor had a direct obligation to pay money (whether present or future) to that Trustee individually under that Debt Security.

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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, occupation and address:

Andre Anderson
Solicitor
Wellington