
Crown Wholesale Funding Guarantee

Her Majesty the Queen in right of New Zealand

in respect of

Kiwibank Limited

THIS DEED OF GUARANTEE is made on *24th March* 2009

BY

Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance (*Crown*)

IN FAVOUR OF

Each person who is a Beneficiary (as defined below)

BACKGROUND

- A In the interests of maintaining the stability of the New Zealand financial system, the Minister of Finance announced on 1 November 2008 a wholesale funding guarantee facility (*Guarantee Scheme*). A guarantee under the Guarantee Scheme is available to eligible financial institutions for debt securities in respect of which a Guarantee Eligibility Certificate (as defined below) has been issued by the Crown.
- B Kiwibank Limited (*Principal Debtor*) has requested a Crown guarantee under the Guarantee Scheme.
- C It appears to the Minister of Finance that it is necessary or expedient in the public interest that the Crown guarantee the Guaranteed Liabilities (as defined below) under this Deed.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Beneficiary means each Person to whom a Guaranteed Liability is from time to time owed but excluding any Related Party of the Principal Debtor.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland and Wellington and, in relation to any date for payment of:

- (a) a currency other than New Zealand dollars or euro, a day on which commercial banks and foreign exchange markets in the principal financial

centre of the country of that currency are open for settlement of payments in that currency; or

- (b) euro, a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer System (TARGET) (or any successor thereto) is open for the settlement of payments in euro.

Due Date means, in respect of a Guaranteed Liability, the scheduled due date for payment of that Guaranteed Liability (and, for the avoidance of doubt, does not include a date on which payment becomes due on an accelerated basis whether as the result of a default, mandatory or optional redemption or otherwise).

Expiry Date means, in respect of any Guaranteed Liability, the date falling 30 days after the earlier to occur of:

- (a) the Maturity Date in respect of that Guaranteed Liability; and
- (b) the date falling five years after the Issue Date in respect of that Guaranteed Liability.

Guarantee Eligibility Certificate means a certificate substantially in the form set out in Schedule 1 (or in such other form as the Crown may from time to time determine and publish on the Guarantee Scheme Website) issued by the Crown confirming that a liability is a Guaranteed Liability for the purposes of this Deed.

Guarantee Scheme Website means the website at www.treasury.govt.nz/economy/guarantee/wholesale or such other website as may be maintained by the Crown from time to time in order to publish certain information relating to the Guarantee Scheme.

Guaranteed Liability means any liability of the Principal Debtor to pay any amount of any principal or any amount of interest (excluding any penalty interest or other amount only payable following a default) in respect of which the Crown has issued a Guarantee Eligibility Certificate.

Issue Date means, in respect of any Guaranteed Liability, the date of issue of the debt security under which that Guaranteed Liability arises.

Maturity Date means, in respect of any Guaranteed Liability, the scheduled maturity date for the debt security under which that Guaranteed Liability arises.

Paying Agent means, in respect of a Guaranteed Liability, the Person specified as such in the Guarantee Eligibility Certificate for that Guaranteed Liability.

Person includes an individual, a body corporate, any association of persons (whether corporate or not), a trust (including the trustees of a trust acting in that capacity), and a state and any agency of a state (in each case whether or not having separate legal personality).

Related Party means, in respect of the Principal Debtor:

- (a) a "related party" as that term is defined in section 157B of the Reserve Bank Act, as if:
 - (i) the Principal Debtor was a "deposit taker"; and
 - (ii) "related party" included a Person who is a subsidiary of, or who is (or whose business or affairs are substantially) controlled by, any Person of whom the Principal Debtor is a subsidiary or by whom the Principal Debtor is (or its business or affairs are substantially) controlled (and for this purpose "control" means real or effective control, whether direct or indirect, and whether pursuant to a contract, an arrangement, an understanding or otherwise); and
- (b) any Person acting (directly or indirectly) as a nominee of or trustee for a Person referred to in (a).

Reserve Bank Act means the Reserve Bank of New Zealand Act 1989.

Trustee means, in respect of a Guaranteed Liability, the Person (if any) specified as such in the Guarantee Eligibility Certificate for that Guaranteed Liability.

1.2 **Construction**

In this Deed, unless the context requires otherwise:

- (a) *Headings*: headings are for convenience only, and do not affect interpretation;
- (b) *Sections, Clauses and Schedules*: a reference to a Section or a clause or Schedule is a reference to a Section or clause in, or Schedule to, this Deed;
- (c) *Singular and plural*: the singular includes the plural and the converse;
- (d) *Particular party or person*: a reference to a particular party or person includes that party's or person's executors, administrators, successors, substitutes and assigns;

- (e) *Deed or document*: a reference to a deed or a document is to the deed or document as amended, novated, supplemented or replaced from time to time; and
- (f) *Legislation*: a reference to legislation or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a statutory regulation, rule, order or instrument made under or issued pursuant to it.

2 **GUARANTEE**

2.1 **Guarantee**

Subject to clauses 2.5 and 2.6, the Crown irrevocably:

- (a) guarantees to each Beneficiary the payment by the Principal Debtor of the Guaranteed Liabilities owed to that Beneficiary; and
- (b) undertakes to each Beneficiary that, if the Principal Debtor does not pay any Guaranteed Liability owed to that Beneficiary on its Due Date, the Crown shall, within 5 Business Days of demand being made in accordance with clause 2.2 and following the expiry of any applicable grace period, pay that Guaranteed Liability.

2.2 **Demand**

The Crown shall not be obliged to make a payment under clause 2.1 unless and until the Crown receives a written demand for that payment that is:

- (a) delivered to the Crown in accordance with clause 5.1 or in such other manner as the Crown may from time to time agree;
- (b) in the form set out in Schedule 2; and
- (c) signed by that Beneficiary or, if there is a Trustee in respect of the relevant Guaranteed Liability, by that Trustee (or, as the case may be, a duly authorised agent of that Beneficiary or Trustee).

2.3 **Payment**

The Crown shall make payment of a Guaranteed Liability, in respect of a valid demand by or on behalf of a Beneficiary under this Deed, to the Paying Agent for that Guaranteed Liability. The Crown shall be entitled to treat the Person named as Paying Agent in a Guarantee Eligibility Certificate (the *original Paying Agent*) as the Paying Agent for the relevant Guaranteed Liability until such time as it receives actual written notice from the original Paying Agent (or such other Person satisfactory to the Crown) of the appointment of a replacement Paying Agent.

2.4 **Discharge upon payment**

Any payment to a Paying Agent under clause 2.3 will, notwithstanding any contrary provision in any document under or by reference to which the relevant Guaranteed Liability is issued, created or constituted, for the purposes of this Deed:

- (a) be deemed to be payment to the Beneficiary; and
- (b) constitute a complete discharge of the Crown in respect of its liability under this Deed in respect of the relevant demand by or on behalf of that Beneficiary.

2.5 **Special conditions**

The Crown's obligations under this Deed in respect of any Guaranteed Liability are subject to any special conditions specified in the Guarantee Eligibility Certificate for that Guaranteed Liability.

2.6 **No liability for variations**

The Crown shall not be liable under clause 2.1 in respect of any Guaranteed Liability which has been varied, amended, waived, released, novated, supplemented, extended or restated in any respect without the prior written consent of the Crown.

2.7 **Tax Gross-up**

- (a) Subject as provided below, if any withholding or deduction for or on account of non-resident withholding tax imposed or levied by New Zealand (*a Tax Deduction*) is required by law to be made by the Crown from a payment under this Deed, the amount of the payment due from the Crown shall be increased by an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required. No increased payment will be required under this clause in respect of a payment of a Guaranteed Liability if, had that Guaranteed Liability been paid by the principal debtor, no increased payment would have been payable by the principal debtor in respect of any deduction or withholding for or on account of New Zealand non-resident withholding tax.
- (b) No increased payment will be made in respect of any withholding or deduction for or on account of any other tax (including New Zealand resident withholding tax) required by law to be made by the Crown from a payment under this Deed.

3 **EXPIRY**

The guarantee under this Deed in respect of each Guaranteed Liability shall terminate at midnight on the Expiry Date in respect of that Guaranteed Liability but without prejudice to any valid demand made under this Deed in respect of that Guaranteed Liability prior to that Expiry Date.

4 **PRESERVATION OF RIGHTS**

4.1 **Continuing guarantee**

The guarantee in this Deed is a continuing guarantee and shall extend to the ultimate balance payable by the Principal Debtor in respect of each Guaranteed Liability until the Expiry Date for that Guaranteed Liability.

4.2 **Liability not prejudiced**

The obligations of the Crown under this Deed shall not be discharged, impaired or otherwise affected by the insolvency, receivership, winding-up, liquidation, dissolution, administration, statutory management of the Principal Debtor or any analogous proceedings under any jurisdiction.

5 **NOTICES**

5.1 **Notices to the Crown**

Any demand under clause 2.2 or notice to the Crown in connection with this Deed shall be in writing and made by delivery by hand to:

Minister of Finance
Parliament Buildings
Wellington
NEW ZEALAND

or to the New Zealand High Commissioner in London at the address of the New Zealand High Commission in London for the time being or the New Zealand Consul and Trade Commissioner at the address of the New Zealand Consulate-General in New York for the time being, in each case with a copy (made by delivery by hand or facsimile) to:

The Treasurer
The New Zealand Debt Management Office
No. 1 The Terrace
Wellington
NEW ZEALAND
Facsimile: +64 4472 3512

5.2 Notices to Beneficiaries

Any communication or notice under or in connection with this Deed to be made to a Beneficiary shall be made by public notice or in such other manner as the Crown, in its discretion, decides is the most appropriate manner in the circumstances at the time.

5.3 Notices to the Principal Debtor

Any notice or communication to the Principal Debtor in connection with this Deed shall be in writing and may be made by post, delivery by hand or facsimile to:

Address: Kiwibank Limited
 Level 6
 Radio New Zealand House
 155 The Terrace
 Wellington
 Facsimile: 04 462 7996
 E-mail: richard.schofield@kiwibank.co.nz
 Attention: Richard Schofield, Treasurer

With a copy (made by facsimile or e-mail) to:

Facsimile: 04 462 7996
 E-mail: tim.bennett@kiwibank.co.nz
 Attention: Tim Bennett, Senior Legal Counsel

5.4 Public Notice

A certificate from the Crown (i) to the effect that it is satisfied that it has given public notice for the purposes of this Deed and (ii) as to the date on which that public notice was given shall, in the absence of manifest error, be conclusive evidence of that public notice and that date.

6 GENERAL

6.1 Contracts (Privity) Act 1982

The promises and obligations of the Crown under this Deed are intended to confer a benefit on, and accordingly are enforceable against the Crown under the Contracts (Privity) Act 1982 by, each Beneficiary.

6.2 Amendments

The Crown may, by deed, amend any term of this Deed at any time without the consent of the Principal Debtor, any Beneficiary or any other Person provided that no such amendment will apply to a Guaranteed Liability subsisting prior to the amendment to the extent that the amendment is prejudicial to the interests of the Beneficiary of that Guaranteed Liability. A copy of any amendment made to

this Deed will be given to the Principal Debtor and published on the Guarantee Scheme Website.

6.3 Discretions

The Crown may act in its absolute and sole discretion when giving (or withholding) any consent, forming any opinion, making any determination, exercising (or not exercising) any right, taking (or not taking) any action or dealing with any other matter under or in relation to this Deed, and (to the maximum extent permitted by law) shall not be required to act reasonably or to provide any reasons or explanation for any decision it makes in relation to any of the foregoing.

7 GOVERNING LAW AND JURISDICTION

7.1 Governing Law

This Deed is governed by and is to be construed in accordance with New Zealand law.

7.2 New Zealand Courts

The courts of New Zealand have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed).

7.3 Waiver of immunity

The Crown has entered into this Deed as part of its trading and commercial activities. Accordingly, a claim of sovereign immunity is not available to the Crown in respect of any legal proceeding arising out of or in connection with this Deed or in respect of the enforcement of this Deed. However, nothing in this clause shall have the effect of waiving any immunity from enforcement against, or execution against or attachment of, any property of New Zealand which, under the Vienna Convention on Diplomatic Relations of 1961 would be considered "inviolable" property of New Zealand.

EXECUTED AND DELIVERED as a deed by

Her Majesty the Queen in right of)
New Zealand acting by and through John)
Whitehead for and on behalf of the Minister)
of Finance in the presence of:)

John Whitehead

John Whitehead

O. J. M'Quade

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)
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)

Witness' name: *Olivia M'Quade*
Witness' occupation: *Exec. Assistant*
Witness' address: *Wellington*

SCHEDULE 1: GUARANTEE ELIGIBILITY CERTIFICATE

GUARANTEE ELIGIBILITY CERTIFICATE

Certificate Number:

Date:

Her Majesty the Queen in right of New Zealand (*Crown*) hereby certifies that the payment obligations of [*name of Principal Debtor*] in respect of principal and interest (excluding penalty interest) under the debt securities, which are expressed to have the benefit of a guarantee from the Crown and details of which are specified in the schedule to this Certificate, are upon their issue, and provided they have been issued after the date of this certificate and on or before [*specify date*] and have a tenor of 5 years or less, Guaranteed Liabilities for the purposes of the Crown Wholesale Funding Guarantee (*Guarantee*) dated [*date*] and executed by the Crown.

The obligations of the Crown under the Guarantee in respect of such Guaranteed Liabilities are subject to any Special Conditions specified below.

Special Conditions: [*complete as applicable*]

Her Majesty the Queen in right of)
New Zealand acting by and through)
[*name*] for and on behalf of the Minister of) _____
Finance in the presence of:) []
))
))
))
_____)
))

Witness' name:

Witness' occupation:

Witness' address:

SCHEDULE
(Details of Debt Securities)

Type:

Issuer:

Guarantor(s):

Security:

Programme:

Priority Ranking:

Principal amount:

Currency/ies:

Single/Multiple Issue

[Tenor:]*

Payment Dates:

Trustee:

Paying Agent:

Proposed Issue

[Date/Period]:

[ISIN]:

* Include if the certificate is for a single issue.

SCHEDULE 2: FORM OF DEMAND

NOTICE OF DEMAND

Date:

To: Minister of Finance
Parliament Buildings
Wellington
NEW ZEALAND

Cc: Secretary to the Treasury
Level 5
No. 1 The Terrace
Wellington
NEW ZEALAND

[NAME OF PRINCIPAL DEBTOR] – [TITLE [AND ISIN] OF GUARANTEED LIABILITY]

- 1 [Specify name of holder or trustee for the holders of the Guaranteed Liability] (*Claimant*) is the [the holder of/trustee for the holders of] [amount] of the above-mentioned Guaranteed Liability.
- 2 Reference is made to the Crown Wholesale Funding Guarantee (*Guarantee*) dated [date] and executed on behalf of Her Majesty the Queen in right of New Zealand (*Crown*). Terms defined in the Guarantee have the same meaning when used in this notice.
- 3 The Claimant hereby demands payment, in accordance with the Guarantee, of the sum of [amount] (particulars of which are set out in the annexure to this notice) due and payable, but unpaid, to the Claimant under or in respect of the Guaranteed Liability (the *Claimed Sum*).
- 4 The Claimant hereby certifies to the Crown that:
 - (a) the Claimant is entitled to make demand of the Claimed Sum;
 - (b) payment of the Claimed Sum was validly demanded from [name of Principal Debtor] (the *Principal Debtor*) and the Principal Debtor has failed to pay the Claimed Sum; and
 - (c) the scheduled due date for payment of the Claimed Sum has passed and any applicable grace period for payment has expired,

and documentary evidence in support of this certification is attached.

- 5 [The Claimant hereby represents to the Crown that it [is/is not] a resident of New Zealand for income tax purposes. [Attached is a copy of our [New Zealand resident withholding tax exemption certificate/tax file number and payment rate elections]]¹

OR

[Attached is a schedule specifying in respect of each of the holders of the above-mentioned Guaranteed Liability whether that holder is a resident or non-resident of New Zealand for income tax purposes and attaching for each holder who is a New Zealand tax resident a copy of the holder's New Zealand resident withholding tax exemption certificate or tax file number and payment rate elections (as applicable)]².

Signed by:

Authorised Signatory

Name:

¹ Include the applicable option in square brackets if the Claimant is a New Zealand tax resident.

² Include the second option if the demand is being made by a trustee.