

IN-CONFIDENCE

RETAIL DEPOSIT GUARANTEE SCHEME – NOMINATION

Trustees of family trusts

Date: ^{3 June}~~May~~ 2011

Background

The average family trust holds its property for the benefit of a wide pool of potential beneficiaries. However, in practice, a family trust is mainly operated for the benefit of the couple who initiated the trust and their children.

Clause 1.3(b)(i)(E) of the Crown Deed of Guarantee excludes from the definition of “Creditor” any person who is acting as trustee for a beneficiary when that beneficiary is not eligible in their own right. Consequently, whenever one beneficiary of a family trust is ineligible (for example, by virtue of being neither a New Zealand citizen, nor a New Zealand tax resident), in principle the trustees are not a “Creditor”, meaning their claim must be declined.

Provided they fall within the terms of this Nomination, the Crown now wishes to designate the trustees of a family trust that has certain ineligible beneficiaries to be 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

IN-CONFIDENCE

- (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 organisation or a trust whose income is exempt under section CW 41 or CW 42 of the Income Tax Act 2007.

Spouse includes de facto relationships, as well as by marriage or civil union.

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 the Trustees of that Family Trust are a Nominated Beneficiary and thus a "Creditor"—

provided that:

- (a) no Trustee of the Family Trust is—
 - (i) a Related Party of the Principal Debtor; or
 - (ii) controlled by a Related Party of the Principal Debtor; or
 - (iii) a Financial Institution; or
 - (iv) neither a New Zealand Citizen nor a New Zealand Resident;

and

- (b) no Initiator of the Family Trust is—
 - (i) a Related Party of the Principal Debtor; or
 - (ii) controlled by a Related Party of the Principal Debtor; or
 - (iii) a Financial Institution; or
 - (iv) neither a New Zealand Citizen nor a New Zealand Resident;

and

- (c) no Spouse or child of the Initiator (including any adopted children) is—
 - (i) a Related Party of the Principal Debtor; or
 - (ii) controlled by a Related Party of the Principal Debtor; or
 - (iii) a Financial Institution; or
 - (iv) neither a New Zealand Citizen nor a New Zealand Resident.

IN-CONFIDENCE

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.

For the further avoidance of doubt, the Trustees shall be a Nominated Beneficiary even if one or more beneficiaries of that Family Trust are not eligible in their own right, provided the terms of this Nomination are otherwise satisfied.

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

