

# The Treasury

## Business Finance Guarantee Scheme Information Release

January 2021

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TE TAI ŌHANGA  
THE TREASURY

## Treasury Report: BFGS June Settings Review: Final Decisions to Implement Agreed Changes

<b>Date:</b>	5 August 2020	<b>Report No:</b>	T2020/2208
		<b>File Number:</b>	SH-1-6-1-3-5-2-1-1 (Final Treasury Reports and Cabinet Papers)

### Action sought

	Action sought	Deadline
<b>Minister of Finance</b> (Hon Grant Robertson)	<b>Agree</b> to changes incorporated in the Amended and Restated Deed of Indemnity in respect of the Business Finance Guarantee Scheme (BFGS). <b>Agree</b> to delegate authority in relation to the BFGS to the Secretary to the Treasury on the terms set out in this report. <b>Sign, date and have witnessed</b> , the delegation letter attached as Annex 2.	Monday 10 August 2020
<b>Associate Minister of Finance</b> (Hon David Parker)	<b>Note</b> the contents of this report.	
<b>Associate Minister of Finance</b> (Hon Shane Jones)	<b>Note</b> the contents of this report.	
<b>Associate Minister of Finance</b> (Hon James Shaw)	<b>Note</b> the contents of this report.	

### Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Chrisana Archer	Acting Manager, Business Finance Guarantee	[39]	[35] ✓
Nick Graham	Commercial Advisor, Business Finance Guarantee		

### Minister's Office actions (if required)

**Return** the signed report to the Treasury.  
**Return** the signed and witnessed delegation letter to the Treasury.

Note any feedback on the quality of the report

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**Enclosure: Yes (attached)**

# Treasury Report: BFGS June Settings Review: Final Decisions to Implement Agreed Changes

## Executive Summary

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You previously agreed in principle to a range of changes to the Business Finance Guarantee Scheme (BFGS), subject to discussions with participating banks [T2020/1811 and T2020/2073 refers].

The Treasury has completed discussions with banks and finalised an amended and restated Crown Deed of Indemnity (the Amended and Restated Crown Deed of Indemnity) for you to consider, and if thought fit, to approve (attached as Annex 3).

The proposed changes reflect your previous decisions. However, changes that have been refined after discussions with banks include:

- relaxing the Supported Loan Policies, Practices and Procedures (SLPPP) requirements so that banks have more discretion to act outside their SLPPPs “at the bank’s commercial discretion”, and banks do not have to provide the Treasury with updates of SLPPPs (but must retain them)
- limiting Crown rights of investigation to loan criteria that can be objectively assessed (e.g. purpose, amount and term) and for which banks can place significant reliance on borrower self-certification. The Crown will not have the right to conduct an investigation during the availability period and will only be able to investigate each bank once per year. You agreed to the latter change in April 2020 (T2020/1239 refers), and
- redefining the watchlist criteria to have two different periods – one for retail customers (as at 31 January 2020), who are typically smaller, and one for non-retail customers (as at 30 September 2019), who are typically larger. These changes allow banks more scope to support both types of customers, however, banks have relatively more scope to support non-retail customers (for the reasons discussed in the body of this report).

There are three issues that the banks have recently raised, in relation to how the BFGS may operate post the end of the availability period that we did not have time to address including whether:

- the current mechanism in the Deed for transferring individual BFGS facilities between banks could impede competition
- transferring a portfolio of loans between banks might be not allowed if a bank has used up all its cap, and
- switching the type of BFGS product a customer is on would be allowed (e.g. switching from an overdraft facility to a term loan facility).

Rather than hold up the process, banks are comfortable with proceeding on the basis that you remain open to considering further changes that would improve the operation of the BFGS.

In the last day, one of the banks requested that the term for the loan start from when the loan is first advanced (provided this is within the availability period), as opposed to when it is agreed. We already had all the banks' confirmation to proceed, so to make this change would require reconfirming with all the banks again and further delay. We indicated to the Bank it was too late to consider this now but we would be willing to consider this change later with the three other matters.

This report seeks:

- your agreement to changes incorporated in the Amended and Restated Deed of indemnity in respect of the BFGS as reflected in the Amended and Restated Crown Deed of Indemnity (for which approval is also sought), and
- a delegation from you of your powers under section 65ZD to the Secretary to the Treasury so the Secretary to the Treasury may execute the deeds of indemnity in favour of registered banks, in or in substantially the form of the attached Amended and Restated Crown Deed of Indemnity, if thought necessary or expedient in the public interest to do so.

If you agree to the recommendations in this report, we will provide the banks with the amended and restated deeds for their execution. We estimate this will happen within two weeks of you agreeing to this report.

We recommend against any announcement taking place prior to all the deeds being signed and the banks being ready to operationalise the BFGS changes. Therefore, we will continue to work with your office to ensure you are aware when these milestones are met, prior to any announcement taking place.

The current BFGS remains in place and can be used while banks sign up to the amended and restated deeds.

Alongside the Amended and Restated Crown Deed of Indemnity, there is also a new 'Deed of Amendment and Restatement', which records that the amended deed replaces the original deed, while preserving the rights of the parties under the original deed (attached as Annex 4).

### ***Financial implications***

The amended BFGS presents a greater risk to the Crown's balance sheet, as it will allow banks more scope to support more marginally viable firms (largely via relaxing the watchlist requirements and allowing more refinancing of existing facilities). It is likely that expected credit losses will increase disproportionately to BFGS uptake (i.e. BFGS uptake will increase but expected credit losses will increase more).

We will re-estimate expected credit losses based on the changes that you agree to as a result of this report. We expect drawn lending to increase to the end of the new availability period, 31 December 2020, and expected credit losses to increase significantly from current BFGS estimates of \$32 million (with the strong possibility that losses could exceed \$150 million). However, it is unlikely that the expected credit losses will exceed our initial April 2020 estimate of \$525 million.

### ***Related policies – RBNZ's Term Lending Facility (TLF)***

The RBNZ has worked with the Treasury, and has consulted with banks, on potential changes to the RBNZ's Term Lending Facility (TLF) to align with proposed revisions to the BFGS. RBNZ will work with Treasury on coordination of BFGS and TLF announcements.

## Recommended Action

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We recommend that you:

- a **note** that, under section 65ZD of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give an indemnity if it appears to the Minister to be necessary or expedient in the public interest to do so (the **public interest test**) and then on such terms and conditions as the Minister thinks fit.
- b **note** the changes to the BFGS that you previously agreed that officials should discuss with banks [T2020/1811 and T2020/2073 refers] have resulted in:
- officials and banks finalising an Amended and Restated Crown Deed of Indemnity (attached as Annex 3) the key features of which are set out in Table 1, and
  - the preparation of a new Deed of Amendment and Restatement (attached as Annex 4).
- c **agree** to the amendments to the Deeds as summarised in Table 1 (inclusive of the refinements referenced above).

*Agree/disagree*

- d **approve** the form of the Amended and Restated Crown Deed of Indemnity as attached (subject to any minor drafting revisions, which Treasury is authorised to make) if you are satisfied that the giving of indemnities to registered banks on these terms and conditions would be consistent with the public interest test.

*Agree/disagree*

- e **agree** to delegate authority in relation to the BFGS to the Secretary to the Treasury on the terms set out in this report.

*Agree/disagree*

- f **sign, date and have witnessed**, the delegation letter attached as Annex 2.

- g **note** in signing this delegation, the previous two delegations you have issued in relation to the BFGS will be revoked.

- h **agree** that a public announcement on these changes will be made after all the banks have signed up to the new Deed and the banks are ready to operationalise the BFGS changes.

*Agree/disagree*

- i **agree** to proactively release the Amended and Restated Crown Deed of Indemnity alongside any public announcements.

*Agree/disagree*

j **note** that as the contingent liability of the indemnity with each bank is over \$10 million, section 65ZD(3) of the Public Finance Act 1989 requires you to present as soon as practicable a statement to the House of Representatives that the indemnity has been granted, and that under the delegation described above.

k **agree** to the form of statement to the House of Representatives (attached as Annex 5) which Treasury will arrange to be presented to the House once approved by you.

*Agree/disagree*

l **note** that banks have identified three issues related to how the BFGS might operate post the availability period, that they would like you to consider before the end of the BFGS availability period.

m **direct** officials to report back on any further changes required by the end of the available period that would improve the functioning of the BFGS in its wind down phase.

*Agree/disagree*

n **note** the changes that the RBNZ is making to its Term Lending Facility to support the changes to the BFGS.

o **note** we will re-engage with the entities in the Non-Bank Deposit Taker (NBDT) sector who were previously interested in participating in the BFGS to assess whether they wish to apply to join the amended BFGS.

Chrisana Archer  
**Acting Manager, Business Finance Guarantee**

Hon Grant Robertson  
**Minister of Finance**

Hon David Parker  
**Associate Minister of Finance**

Hon Shane Jones  
**Associate Minister of Finance**

Hon James Shaw  
**Associate Minister of Finance**

# Treasury Report: BFGS June Settings Review: Final Decisions to Implement Agreed Changes

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## Purpose of Report

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1. This report asks you to:
  - approve the Amended and Restated Crown Deed of Indemnity in respect of the changes to be made to the Business Finance Guarantee Scheme (BFGS) if you are satisfied that the giving of indemnities to registered banks on these terms and conditions would be consistent with section 65ZD's public interest test (see Annex 1 for further advice on the public interest test), and
  - provide the Secretary to the Treasury with delegated authority to execute the amended and restated deeds with registered banks (including registered branches of overseas-incorporated banks).

## Analysis

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### Discussions with banks following the BFGS June setting review

2. You previously agreed in principle to a range of changes to the BFGS, to further enhance the incentives on banks to lend to marginally viable firms and remove obvious unnecessary barriers to banks using the BFGS, subject to discussions with banks [T2020/1811 and T2020/2073 refers].
3. The Treasury has completed discussions with banks and finalised an amendment and restatement of the current Deed of Indemnity for you to approve (attached as Annex 3). Key changes are summarised in Table 1 below:

**Table 1: Key changes included in the Amended and Restated Deed of Indemnity**

Parameter	Current setting	Proposed change
Purpose	To facilitate the provision of short-term credit to cushion the impact on solvent firms with viable business models that may arise from a temporary delay or decline in receipts arising directly or indirectly from the COVID-19 virus.	To provide funding to eligible businesses facing hardship as a consequence of COVID-19 to enable the businesses to: <ul style="list-style-type: none"><li>• respond to the impacts of COVID-19</li><li>• position themselves for recovery from the impacts of COVID-19, and</li><li>• recover from the impacts of COVID-19.</li></ul>
Availability period	Ending 30 September 2020.	Ending 31 December 2020.
Maximum borrower annual revenue	\$80m	\$200m
Loan limit	\$0.5m	\$5m
Loan term	Maximum 3 years.	Maximum 5 years.

Parameter	Current setting	Proposed change
Restriction on using funds for capital investments	Up to 5% of facility amount.	Remove restriction.
Refinancing	Bank can't refinance borrower's existing debt advanced before 16 March 2020.	Permits banks to refinance up to 20% of borrower's total existing facility limits, with exclusions for where they would have been able to use supported loans to refinance greater than 20% anyway (e.g. upon loan maturities).
Personal guarantees	Not required and not restricted.	Addition of "for the avoidance of doubt clause" that the Crown will pay a claim even if personal guarantees were either not taken or not enforced.
Enforcement flexibility	Bank can claim: <ul style="list-style-type: none"> <li>where they reach a settlement or compromise on supported loan and non-supported loans, and</li> <li>without enforcing non-supported loans.</li> </ul>	Clarify the loan default and enforcement provisions so that this operates as intended.
Reliance on borrower certification	Bank can rely on unless "...had actual knowledge or, based on the information available to the Bank at that time, ought reasonably to have had knowledge to the contrary".	Remove "...ought reasonably to have had knowledge to the contrary".
Supported Loans Policies, Practices and Processes (SLPPPs)	<ul style="list-style-type: none"> <li>Commercially determined by bank.</li> <li>Crown can't approve, assess adequacy or require amendments.</li> <li>Claims can't be declined if not followed.</li> <li>Only consequence is if breach likely to materially increased Crown's liability.</li> </ul>	<p>Provide banks with more discretion to act outside its SLPPPs - "...determined commercially by the bank and applied to a particular Supported Loan in such a manner and to the extent as the bank in its discretion determine".</p> <p>Not require banks to provide SLPPP updates to the Treasury, but banks must still retain them.</p>
Watchlist criteria	<p><b>Date</b></p> <p>Borrowers who were on the bank's watchlist as at 31 January 2020 are excluded.</p> <p><b>Definitions</b></p> <ul style="list-style-type: none"> <li>Retail customers greater than 30 days in arrears are excluded, and</li> <li>Other customers that are managed by the Bank's distressed management business units or which the Bank has determined in accordance with its watchlist procedures are at heightened risk of default, are also excluded.</li> </ul>	<p><b>Dates</b></p> <p>BS2B banks (ANZ, ASB, BNZ and Westpac):</p> <ul style="list-style-type: none"> <li>Retail Customer, as at 31 January 2020.</li> <li>Not a Retail Customer, as at 30 September 2019.</li> </ul> <p>BS2A banks (all other participating banks):</p> <ul style="list-style-type: none"> <li>Non-Relationship Customer (equivalent to a retail customer), as at 31 January 2020.</li> <li>Relationship Customer (equivalent to a non-retail customer), as at 30 September 2019.</li> </ul> <p><b>Definitions</b></p> <p>Retail customers greater than 60 days in arrears are excluded.</p> <p>Non-retail customers with risk grades approximately equivalent to Standard and Poor's rating of B- or below are excluded.</p>



Parameter	Current setting	Proposed change
Crown rights of investigation	<p>Crown's rights do not extend to:</p> <ul style="list-style-type: none"> <li>challenging bank's SLPPPs</li> <li>second-guessing bank's credit decisions</li> <li>use for other regulatory investigations.</li> </ul>	<p>The Crown's rights of investigation will be largely limited to loan criteria that can be objectively assessed (e.g. purpose, amount and term) and for which banks can place significant reliance on borrower self-certification.</p> <p>The Crown will not have the right to conduct an investigation during the availability period and will only be able to investigate each bank once per year. You agreed to these changes in May.</p>
Notice of claims	Written templates for each claim with significant detail that may not be relevant for verification purposes.	Electronic templates to allow monthly batches of claims with senior bank management attestation to information accuracy.

4. These proposed changes reflect our advice and your previous decisions [T2020/1811 and T2020/2073 refers]. However, changes to refinancing, borrower certification, Supported Loans Policies, Practices and Processes (SLPPPs), watchlist exclusions and the Crown's rights of investigation have been refined after discussions with banks and are discussed in more detail below.

### **Supported Loans Policies, Practices and Processes (SLPPPs) and Crown rights of investigation**

5. We previously advised that we would explore with banks whether credit assessment, lending, and administration requirements could be removed from SLPPPs, and whether there should be a further limits on the Crown's rights of investigation.
6. After discussions with banks, we propose relaxing the SLPPP requirements so that banks have more discretion to act outside their SLPPPs "at the bank's commercial discretion" and banks do not have to provide us with updates of SLPPP (but must retain them).
7. We also propose that rather than removing the requirement for SLPPPs to include credit assessment, lending, and administration requirements, we instead limit the Crown's rights of investigation so that they can only cover loan purpose, refinancing amount, loan amount, loan term, interest rate, loan documentation and the Deed's loan enforcement provisions.
8. Except for the interest rate and loan enforcement provisions, these criteria can be objectively assessed, and banks can place significant reliance on borrower self-certification. The interest rate and loan enforcement provisions are permissive, and we are comfortable that the banks will act in accordance with the intent of the BFGS in their application of these criteria.

#### *Investigation rights are now clearer and more focused*

9. Importantly the more limited rights of investigation provide additional clarity that the banks' loan approval processes cannot be investigated and what the banks ought to have known is no longer relevant. The banks now have even greater clarity that the Crown's rights of investigation will only be used for the purpose for which they are intended, that is, to ensure that banks are applying the supported loan criteria correctly and that resulting claims have validly arisen.

10. The changes to the SLPPPs and Crown's rights of investigation are intended to remove any unnecessary barriers to bank lending under the BFGS and better serve its expanded response and recovery objectives. The banks bear 20% of supported loan credit risk providing significant financial incentive to ensure that appropriate practices are followed.

### **Watchlist criteria**

11. The watchlist criteria are included in the deeds to provide the banks with an objective means of helping to determine which customers were 'otherwise viable' at the outset of the COVID situation, by limiting the inclusion of customers the bank had already determined were not credit-worthy pre-COVID. Feedback from the banks indicated that a more nuanced approach was required than simply setting a specific watchlist date. No specific date is going to be a perfect indicator of 'otherwise viable' businesses, and any specific date will mean that some 'otherwise viable' businesses will be deemed ineligible. We have therefore moved to an approach that will enable banks to assess the viability of businesses under their credit policies and apply their commercial discretion.

#### *Watchlist criteria have been relaxed and made more targeted*

12. The watchlist criteria has been redefined to have two different periods – one for retail customers (as at 31 January 2020), who are typically smaller, and one for non-retail customers (as at 30 September 2019), who are typically larger.
13. The different watchlist reflects the fact that non-retail customers, as a class, generally have greater financial resilience than retail customers. On this basis the amended BFGS allows banks greater scope to support their non-retail customers, through the earlier watchlist date than for retail customers.
14. Relative to the current settings the amended BFGS also allows banks greater scope to support their retail customers as the relevant definition has been relaxed from those customers that are less than 30 days in arrears to those customers that are less than 60 days in arrears.

#### *Mapping to Standard and Poor's credit rating of B-*

15. The relevant watchlist definition for non-retail customers has been relaxed to those that have a bank credit rating that is broadly approximate to Standard and Poor's credit rating of B- (paraphrased below), in line with your previous agreement in principle and the objective of supporting more marginally viable firms.
16. A credit rating of B- indicates that the borrower currently has the capacity to meet its financial commitments but adverse business, financial, or economic conditions (like those related to COVID-19) will likely impair the borrower's capacity or willingness to meet its financial commitments.
17. As each bank's internal risk ratings maps to the B- credit rating differently we have had to apply discretion and have been permissive when doing so.

18. The below table compares the key B- credit rating metric (the probability of default percentage (PD%)) across the internal risk grades we have selected for the four major banks. The excluded risk grades are highlighted and the table has been annotated as the relevant banks have between 22 to 27 grades on their internal scales (the PD% presented for banks 1 and 3 is the midpoint of the relevant range)  
[25]

## Other matters

19. Some other minor drafting changes were made to clarify the intent of the BFGS and to facilitate its operation. These include:
- broadening the range of senior bank executives who can sign management certificates relating to the banks' monthly reporting and claims notices, and
  - moving to electronic templates for claim notices, including changing some of the information required to be provided to align with the amended Deed requirements.
20. The legal documentation to implement the BFGS changes includes two deeds:
- an Amended and Restated Crown Deed of Indemnity (Annex 3 refer), which effectively is the original Deed amended for the changes that have been agreed, and
  - a Deed of Amendment and Restatement (Annex 4 refers), which sets out that the amended deed replaces the original deed, while preserving the rights of the parties under the original Deed.

## Potential Issues Raised by Banks to consider later

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21. The banks raised three issues, at the later part of our discussions, that would require further analysis before we would recommend incorporation into the Deed.
22. The issues all relate to how the BFGS would run after the availability period closes (i.e. the "wind-down" phase"), in relation to whether:
- the current mechanism in the Deed for transferring individual BFG facilities between banks could impede competition,
  - transferring a portfolio of loans between banks might be not allowed if a Bank has used up all its cap, and
  - switching the type of BFGS product a customer is on would be allowed (e.g. switching from an overdraft facility to a term loan facility).

23. While we agree that these are all valid issues to investigate, there are not obvious, simple, technical changes to the Deed that would address them, without effectively fundamentally changing the BFGS by allowing BFGS loans to be issued through the 5 year period and not just during the availability period.
24. These changes are outside the scope of your initial approval in principle, and for us to do the required analyses to provide you with further advice would delay getting the amended Deed finalised.
25. However, banks are willing to proceed with the current changes on the basis that we identify these issues to you and that you are open to considering further changes to the Deed in future.
26. We intend to provide you with further advice nearer to the end of the availability period on these, and any other matters, that we consider could make the BFGS work better in the “wind down” phase of the BFGS.

## Financial implications

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27. We initially estimated the cost of the BFGS at \$583m in April 2020. This cost was made up of three components:
  - expected credit losses, \$525 million (this was subsequently re-estimated based on level of uptake to \$32m)
  - expected administration costs, \$13 million, and
  - expected return on capital, \$45 million.
28. The hardest of these to assess was the expected credit losses. The original estimate assumed that the BFGS would be fully taken up (\$5 billion for the Crown), COVID-19 would lead to high loan default rates, repayment of the supported loans over the 3 year term would be slow and when supported loans defaulted recoveries to the Crown would be low (because it is last in line for repayment).

### *Re-estimate expected credit losses*

29. We will re-estimate expected credit losses based on the changes that you agree to as a result of this report. We expect drawn lending to increase to the end of the new availability period, 31 December 2020, and expected credit losses to increase significantly from \$32 million (with the strong possibility that losses could exceed \$150 million).
30. The amended BFGS presents greater risk to the Crown’s balance sheet, as it will allow banks more scope to support marginally viable firms. It is likely that expected credit losses will increase disproportionately to BFGS uptake (i.e. BFGS uptake will increase but expected credit losses will increase more). It is unlikely that the expected credit losses will exceed our initial April 2020 estimate of \$525 million.
31. While we expect the BFGS uptake to increase, as the demand for credit is likely to remain subdued, any such increase is expected to be modest.

32. As with any agency arrangement that relies on delivery through private sector actors, with incentives not fully aligned to those of the Crown, there is a risk of unintended consequences irrespective of how robust the accountability mechanisms are. The key risks in the amended BFGS are in respect of the watchlist relaxation and the exclusions to the 20% refinancing limit. Banks could seek to actively shift existing riskier credit to the Crown using these provisions. However, as these provisions are some of the key enablers in allowing banks more scope to support more marginally viable customers, this risk is acceptable.

### **Liability cap**

33. We previously advised [T2020/1811 refers] that there was no need to increase the \$5b liability cap at this stage. Instead, you could consider increasing the cap later, depending on the government's other priorities, if the liability cap appeared to be heading toward being fully utilised toward the end of the availability period.
34. The cap was allocated among the banks according to their relative market shares. The initial allocations held some money aside to ensure there would be enough to enable further banks to join as the BFGS evolved. To date, \$4.83 billion has been allocated to banks, leaving a buffer of \$170 million still unallocated.
35. Some of the amendments (for example, extending the availability period, allowing funds to be used more for capital expenditure, or increasing the maximum revenue) might encourage further banks ([26] ) to join the BFGS. If this occurs there could be a case for revisiting the methodology for allocating the liability cap amongst the banks, or for increasing the liability cap as a whole.

[36,1]

36. [36,1]

37. We note that the Treasury offers targeted exporter support via the Export Credit Office, who apply commercially risk-weighted premiums and have procedures and reporting in place to comply with our international obligations.

### **Related policies – RBNZ's Term Lending Facility (TLF)**

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38. The RBNZ has worked with us, and has consulted with banks, on potential changes to the RBNZ's Term Lending Facility (TLF) to support the proposed revisions to the BFGS.

39. This has primarily meant extending the TLF tenor from three to five years, extending the availability of new TLF lending from October 2020 to January 2021, confirming the Official Cash Rate (OCR) will continue to be the rate at which the TLF is provided to banks, along with transactional arrangements associated with the collateralised nature of the lending.
40. The banks were supportive of the direction subject to final confirmation of related aspects of the BFGS. RBNZ will work with Treasury on coordination of BFGS and TLF announcements.
41. The risks highlighted in the previous Treasury report [T2020/1811] remain, with the extension potentially having significant implications on the RBNZ's reported earnings given the TLF provides below-market interest rates on funding to commercial banks (fixed at the OCR).
42. The RBNZ will be required to hold additional capital for higher duration risk and this may impact future dividends. This risk will become clearer as the end of the TLF lending window approaches and the extent of TLF activity is confirmed. As at 31 July the RBNZ has only lent \$27 million under the TLF.

## Delegation to the Secretary of the Treasury

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43. As was the case with the original Deed [T2020/833 refers], and the Scheme Notice [T2020/1432 refers] we propose that you grant delegated authority in relation to the Amended and Restated Deed of Indemnity to the Secretary to the Treasury. We propose that the Secretary to the Treasury be authorised to:
  - execute each deed (in or substantially in the form of the Amended and Restated Deed of Indemnity annexed to this report, or as otherwise agreed by you in writing) if thought necessary or expedient in the public interest to do so
  - take any action required to give effect to each Deed
  - make any payments required under each Deed and pay any related expenses, and
  - sign off minor technical changes to each Deed to address operational issues provided that those changes are operational in nature and do not affect the key parameters of the BFGS.
44. The previous delegations dated 11 April 2020 and 25 May 2020 will be revoked from the date the new delegation comes into effect. A delegation letter from you to the Secretary to the Treasury is attached as Annex 2.

## Recent changes to Australia's SME Guarantee Scheme

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45. The Australian Government recently announced an extension to its Coronavirus SME Guarantee Scheme, which is similar to the New Zealand BFGS (T2020/2525 refers).

46. The changes to their Scheme compared to the planned BFGS changes include:

<b>Australian Guarantee Scheme changes</b>	<b>New Zealand BFGS planned changes</b>
<ul style="list-style-type: none"> <li>Extending the purpose of loans to be provided beyond working capital, such that a wider range of investment can be funded.</li> </ul>	<ul style="list-style-type: none"> <li>Removing restriction on using funds for capital investment.</li> </ul>
<ul style="list-style-type: none"> <li>Permitting secured lending (excluding commercial or residential property).</li> </ul>	<ul style="list-style-type: none"> <li>Commercial and residential property investment remain excluded.</li> </ul>
<ul style="list-style-type: none"> <li>Increasing the maximum loan size to \$1 million (from \$250,000) per borrower.</li> </ul>	<ul style="list-style-type: none"> <li>Increasing maximum loan size to \$5 million (from \$500,000).</li> </ul>
<ul style="list-style-type: none"> <li>Increasing the maximum loan term to five years (from three years).</li> </ul>	<ul style="list-style-type: none"> <li>Increasing the maximum loan term to five years (from three years).</li> </ul>
<ul style="list-style-type: none"> <li>Extending the availability of the Scheme to 30 June 2021.</li> </ul>	<ul style="list-style-type: none"> <li>Availability period extending to 31 December 2020.</li> </ul>
<ul style="list-style-type: none"> <li>Allowing lenders the discretion to offer a repayment holiday period.</li> </ul>	
<ul style="list-style-type: none"> <li>Changes take effect from 1 October 2020.</li> </ul>	

## Next Steps and Communications

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47. If you agree to the recommendations in this report, the Secretary to the Treasury will be able to execute the deeds under delegation, once banks have provided the Treasury with signed copies. We estimate this will happen within two weeks of you agreeing to this report.
48. We propose to proactively release a copy of the Deed and to proactively release the related Treasury reports (this report and T2020/1811 and T2020/2073) at the time of announcing the changes. We will send you a report in due course to give you an opportunity to comment on this proposed proactive release.
49. We recommend against any announcement prior to all the deeds being signed and banks being ready to operationalise the BFGS changes. Therefore, we will continue to work with your office to ensure you are aware when these milestones are met, prior to any announcement taking place. We will also coordinate with the RBNZ to ensure announcements on the TLF are made at the same time.
50. We are considering the best approach for the announcement of these changes. The update and an announcement provides an opportunity both to re-set the BFGS narrative and to provide more clarity for business, and for banks and Government to agree a shared message set to assist new consistency in communication.
51. An announcement could be made by you, by us, or passively by updating the website. If an announcement is to be made, consideration could be given to involving banks – from ensuring their support and alignment with, to making a joint/collaborative statement.

52. We have reconfigured the information architecture of Business Finance Guarantee to house the primary content on the Treasury website, at the request of business.govt.nz. The business.govt.nz channel and website does not provide the long-form business focused content we believe is required to assist business to understand the BFGS. We have amended content on other sites to provide more consistency and to push traffic/interested viewers to the Treasury site, including from the COVID-19 and unitefortherecovery websites.
53. A further consideration in announcement strategy is whether and how far we would work with banks to agree new BFGS content and messaging. Options range from co-creation of content to agreeing messaging or producing one core set of documents.
54. We can assist with announcement preparation where necessary with your office and with banks.
55. The current BFGS remains in place, and can be used while banks sign up to the Amended and Restated Deed.
56. We will re-engage with the entities in the NBDT sector who had previously expressed an interest in joining the BFGS (particularly the Nelson and <sup>[25]</sup> Building Societies) to assess whether the amended BFGS is now more appropriate to their customers' needs.



## Annex 1: Public Interest Test

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### ***Your power under Section 65ZD of the Public Finance Act 1989 to give an indemnity on behalf of the Crown***

Each amended and restated deed is intended to be legally binding and, will constitute a commitment by the Crown to indemnify the relevant bank as described in its terms.

The amendments contemplated in the Amended and Restated Deed will apply with effect from the date the original deed of indemnity was given.

Officials consider that given the range of changes being proposed and the change in the risk profile it is prudent to treat the indemnity in its amended and restated form to be a new indemnity, requiring reassessment of the public interest test under section 65ZD of the Public Finance Act 1989.

Section 65ZD of the Public Finance Act 1989 empowers you, as Minister of Finance, to give an indemnity on behalf of the Crown to a person, organisation or government if it appears to you to be 'necessary or expedient in the public interest' to do so (the **public interest test**), and then on terms and conditions that you think fit.

### ***Officials' assessment that providing an indemnity is 'necessary or expedient in the public interest'***

It is a matter for you to decide the terms and conditions on which an indemnity given under section 65ZD are given, and in doing so you must assess whether the terms and conditions on which such indemnity is given is consistent with section 65ZD's public interest test.

The following paragraphs set out factors we consider are relevant to that assessment. You may decide to ignore these factors, or to take into account other factors you consider relevant, and you may give such weight to the factors referred to below as you deem fit. You should make an independent decision and are not bound to accept the assessment below.

In brief, we consider that in the circumstances, giving the new indemnity on the terms set out in the Amended and Restated Deed satisfies the "public interest test" in section 65ZD of the Act.

In our view, the new indemnity given under the Amended and Restated Deed does not provide any reason to call into question your original decisions to give an indemnity under section 65ZD of the Act on the terms that originally applied [T2020/833 and T2020/1432 refers].

### ***Public interest***

The Act does not define 'the public interest'. However, it is generally accepted that the public interest is broadly equivalent to the concept of the public good and can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. In the context of the Public Finance Act 1989, the public interest should be viewed in a New Zealand context, that is, in the interest of the New Zealand public.

The COVID-19 pandemic has had a significant impact on people and the economy, worldwide. The BFGS is intended to allow banks to look through the current economic cycle, and to take account of the current uncertainty, when making decisions about supporting their customers. It allows participating banks to provide funding to eligible businesses facing hardship as a consequence of COVID-19 to enable the businesses to:

- respond to the impacts of COVID-19

- position themselves for recovery from the impacts of COVID-19, and
- recover from the impacts of COVID-19.

A Crown indemnity given to each participating bank is an integral part of the BFGS. The Amended and Restated Deed implements changes the form of that indemnity intended to remove certain barriers to banks' use of the BFGS. The amendments to the Deed that are intended to achieve this are:

- expanding the purpose
- extending the availability period
- extending the maximum borrower annual revenue
- extending the maximum amount and loan term
- permitting banks to refinance up to 20% of a borrower's total existing facility limits
- removing the restriction on using funds for capital investment
- clarifying that banks can claim under the BFGS even if personal guarantees were either not taken or not enforced
- relaxing the SLPPPs, and
- relaxing the watchlist criteria.

### ***Necessary or expedient***

Under section 65ZD of the Act, a guarantee or indemnity must also be 'necessary or expedient'. In the circumstances, we consider that the more appropriate threshold under section 65ZD would be the 'expedient' threshold rather than the 'necessary' threshold. In this context, expedient means:

- something useful or advantageous in a given situation
- suitable for achieving a particular end in a given circumstance, or
- something done or used to achieve a particular end usually quickly or temporarily.

You have previously turned your mind to the question of whether an indemnity is expedient to achieve the objectives of the BFGS:

- with the reasons outlined in the paper you discussed on 23 March 2020 with the group of Ministers with power to act on COVID-19 matters
- in agreeing to the original form of the Deed of Indemnity that established the BFGS [T2020/833], and
- in agreeing to the amendments set out in the Scheme Notice [T2020/1432].

We concur with the reasons set out at that time, and we consider that they have not changed substantially since. In particular, extending the BFGS as contemplated in Table 1 has the potential of extending the BFGS to a wider range of bank customers, allowing them to better respond to the impacts of COVID-19 and position themselves for recovery from the impacts of COVID-19.

We consider that it is expedient to extend the indemnity because:

- The additional bank customers whose loans would be supported represent a previously excluded but important component of the commercial economy.
- Otherwise declining to assist banks under the expanded indemnity may lead to many otherwise successful businesses failing, directly because of the pandemic, or retrenching to the extent that the recovery of the economy is slowed,
- A significant amount of financing could be supported by the extended BFGS, but it would be diversified across many individual businesses, of which (it is thought) only a small proportion would ultimately fail and lead to a call on the indemnity.
- The size of the indemnity is contained by the limits set on the amount that can be borrowed by each bank customer, and by the total amount for which the bank can seek recourse from the Crown under the indemnity.

We believe that these types of change represent expedient improvements to the matters of public interest outlined above.

### ***Risks and mitigations***

We have reported to you previously on the risks inherent in the BFGS, necessitated by the objectives of a timely, simple to implement, and proportionate response (T2020/791 and T2020/648 refer). In particular, a 'high trust' approach guided the design of the BFGS, which means that:

- Significant discretion is left to the banks in their lending decisions. They decide which of their customers' loans will be supported under the BFGS, the lending terms and interest rates, and the credit management and enforcement practices.
- Rather than reporting to us on the detail of each supported loan, banks just report aggregated information on the status and performance of their portfolio of supported loans. Treasury relies on some of this information for reporting the liability arising under the BFGS in monthly and annual Crown financial statements. We have previously reported that this gives rise to BFGS management risk and Crown financial reporting risk, and that there are adequate mitigants for these risks (T2020/833).

BFGS management risk is the risk that the BFGS is not administered by the banks in accordance with the Deed. Mitigants against this risk are that:

- The Crown is liable for 80% of the value at risk on each supported loan, with the bank bearing the remaining 20%. The banks therefore have financial incentive to ensure that appropriate practices are followed.
- The regular reporting does include some classified reporting (by industry, geography, riskiness, loan type, etc.), but not down to the individual loan level.
- Bank senior management is required to certify regularly that appropriate systems are in place and working.
- When a bank makes a claim against the Crown, it is required to provide identification and some other details of each supported loan being claimed, along with certification from senior bank management that all the supported loans being claimed are legitimate and have been managed appropriately.

- The Crown has some rights of investigation of compliance with the BFGS including in respect of individual supported loans.
- The banks are regulated by the RBNZ and, in some cases, by the Australian Prudential Regulation Authority. This provides some additional assurance that the banks are behaving appropriately.

Crown financial reporting risk is the risk that insufficient assurance can be obtained as to the reliability of the information provided by banks for the purpose of the Crown's financial reporting. Mitigants against this risk are that:

- The schedule of required aggregate information to be submitted by each bank on a monthly basis has been agreed with banks. This procedure has been in place and working successfully since the BFGS was established.
- Bank senior management is required to certify with each submission that appropriate systems are in place and working, and that the information submitted is complete and accurate.
- There is provision for each bank's independent auditor to carry out additional "agreed-upon procedures", reporting the findings to Treasury and the Crown's auditors. It has been agreed with the Crown's auditors that adequate assurance on the information provided for Crown financial reporting will be able to be obtained for this year, without requiring an "agreed-upon procedures" engagement to be carried out.

The changes included in the Amended and Restated Deed relax some of the banks' obligations in respect of reliance on borrower certification, and in respect of their Supported Loan Policies, Practices and Processes. In addition, limits have been placed on the Crown's rights of investigation (for instance the Crown has agreed not to initiate investigations during the period in which BFGS loans can be established). These changes are described in more detail above.

Although we assess that the amendments marginally increase BFGS management risk and Crown financial reporting risk, we continue to believe that the residual risk is acceptable, given the objectives and constraints in implementing the BFGS.

### ***Benefits***

We believe that the amended and restated Deed continues to be consistent with the objective of the BFGS, which is to support banks to lend to viable New Zealand based businesses affected by COVID-19 by the Crown agreeing to partially underwrite an agreed share of the resulting credit risk. The changes to the BFGS reflected in the amended and restated Deed remove certain barriers to banks' use of the BFGS.

### ***Giving an indemnity is better than the alternative policy options***

Giving a Crown indemnity to participating banks is integral to the design and functioning of the BFGS. The new indemnity in the Amended and Restated Deed enables the Crown to leverage the participating banks' scale, systems and relationships with customers to operationalise lending to a large number of businesses in the required short timeframe.

The BFGS is a key element of the framework of government initiatives to support businesses as they respond to the COVID-19 pandemic. As previously discussed [T2020/1432 refers], the only potential alternative to providing the new indemnity to banks would be for the Crown to lend directly to eligible businesses. However, we concur with the reason set out at that time and that the alternative involves significantly more risk to the Crown than the indemnity arrangement proposed.

### ***Assessment of risks and benefits against the public interest threshold***

In light of the above, officials consider that:

- There is a public interest in giving the new indemnity to registered banks approved by Treasury on the terms set out in the Amended and Restated Deed.
- The benefits of the proposed new form of indemnity (as attached to this report) appear to outweigh the residual risks when mitigations are taken into account.
- Giving an indemnity is better than the alternative policy options when it comes to achieving the objectives of the BFGS.

Annex 2: Delegation Letter

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Annex 3: Amended and Restated Crown Deed of Indemnity

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Annex 4: Deed of Amendment and Restatement

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Annex 5: Draft Statement to the House of Representatives

## **DELEGATION BY THE MINISTER OF FINANCE – BUSINESS FINANCING GUARANTEE SCHEME**

**Date:** 2020

**From:** Minister of Finance

**To:** Secretary to the Treasury

### **BUSINESS FINANCING GUARANTEE SCHEME**

#### **1. Background**

By instruments dated 25 May 2020 and 11 April 2020, I, the Honourable Grant Robertson, **MINISTER OF FINANCE**, pursuant to section 28 of the State Sector Act 1988 and section 65ZD of the Public Finance Act, delegated to the **SECRETARY TO THE TREASURY** the power to (inter alia) give in writing indemnities as part of the management and administration of the Crown's Business Financing Guarantee Scheme, such indemnities to be in or substantially in the form approved by me on or about the date of those delegations (the **Previous Delegations**).

I, the Honourable Grant Robertson, **MINISTER OF FINANCE**, have decided to amend the form of indemnity that may be given in relation to the Crown's Business Financing Guarantee Scheme to take effect from the date the indemnity was first given. Accordingly, a new delegation is required.

#### **2. Delegation**

Pursuant to section 28 of the State Sector Act 1988 and section 65ZD of the Public Finance Act 1989, I, the Honourable Grant Robertson, **MINISTER OF FINANCE**, delegate to the **SECRETARY TO THE TREASURY** (and any person acting in such role from time to time), the authority to:

- (a) as part of the management and administration of the Crown's Business Financing Guarantee Scheme:
  - i. execute on my behalf deeds called "Deed of Amendment and Restatement" in T2020/2208 that effect amendment to the terms of the indemnities;

- ii. give indemnities in writing pursuant to s 65ZD of the Public Finance Act 1989 as part of the management and administration of the Crown's Business Financing Guarantee Scheme; and
- (b) manage and administer indemnities (including those already given by, or on behalf of, me pursuant to the Previous Delegations),  
  
provided that such indemnities are in or substantially in the form approved by me on or about the date of this delegation, or as agreed by me in writing (together, the **Indemnities**),
- (c) take any action required to give effect to the Indemnities;
- (d) make any payments required under such Indemnities and pay any related expenses;
- (e) make changes to an Indemnity, provided that those changes are operational in nature (including but not limited to, changes to better align reporting information from a bank with the Crown's needs, or to improve the information required for the claims process) and do not affect the key parameters of the Crown's Business Finance Guarantee Scheme; and
- (f) forward to the Office of Clerk (Bills Office), a statement of details of each Indemnity given under this delegation under which the Crown's contingent liability exceeds \$10 million, as required under section 65ZD(3) of the Public Finance Act 1989 for presentation to the House of Representatives on my behalf, except where a statement has already been provided in relation to a particular Indemnity.

## **2. Term of delegation**

This delegation shall come into effect on the date of its execution and shall continue in force until it is revoked.

## **3. Consent to sub-delegation**

I, the Honourable Grant Robertson, **MINISTER OF FINANCE**, consent to the sub-delegation by the **SECRETARY TO THE TREASURY** pursuant to section 41 of the State Sector Act 1988 of all or any of the authority and powers delegated by me in this instrument, jointly or severally to:

- (a) Treasury Deputy Secretaries;
- (b) Treasury Directors; and
- (c) Treasury Managers and other staff with appropriate expertise and acumen.

## **4. Revocation**

I, the Honourable Grant Robertson, **MINISTER OF FINANCE**, hereby revoke, on and from the date of the execution of this delegation, the Previous Delegations.

**5. Secretary to Provide details of Indemnities**

The Secretary to the Treasury shall provide me with details of all indemnities entered into in accordance with this delegation.

**SIGNED** by the **MINISTER OF FINANCE**  
the Honourable Grant Robertson

\_\_\_\_\_  
Signature

In the presence of:

\_\_\_\_\_  
Signature of witness

Name of witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_



# Amended and Restated Crown Deed of Indemnity

in relation to the Business Finance Guarantee Scheme

—

The Sovereign in right of New Zealand acting by and through the Minister of  
Finance (the **Crown**)  
[Bank] (the **Bank**)

—

# Crown Deed of Indemnity

## Business Finance Guarantee Scheme

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# Details

## Date

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## Parties

Name	<b>The Sovereign in right of New Zealand acting by and through the Minister of Finance</b>
Short form name	The <b>Crown</b>
Notice details	Address: The Treasury, 1 The Terrace, Wellington Email: legal@treasury.govt.nz Attention: Treasury Solicitor

Name	<b>[Bank]</b>
Short form name	The <b>Bank</b>
Notice details	Address: Email: Attention:

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## Background

- A The Minister of Finance considers it necessary or expedient in the public interest to establish the Business Finance Guarantee Scheme to help Approved Banks to support New Zealand businesses facing hardship as a consequence of COVID-19 to do one or more of the following:
- (i) to respond to the impacts of COVID-19;
  - (ii) to position themselves for recovery from the impacts of COVID-19; or
  - (iii) to recover from the impacts of COVID-19.
- B This document sets out the terms on which the Minister of Finance, on behalf of the Crown, grants an indemnity pursuant to section 65ZD of the *Public Finance Act 1989* to the Bank to give effect to the Business Finance Guarantee Scheme.



# Agreed terms

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this document:

**Agreed Upon Procedure Engagement** has the meaning set out in clause 7.2(a)(i).

**ANZSIC** means Australian and New Zealand Standard Industrial Classification 2006 or such other classification of credit exposures used by the Bank for regulatory capital purposes and provided to the Crown on or before the Commencement Date.

**Approved Bank** means each registered bank which has been approved by the Crown as a participant in the Business Finance Guarantee Scheme, and **Approved Banks** means all of them.

**Availability Period** means the period from (and including) the Commencement Date to (and including) 31 December 2020 (or such later date as notified by the Crown under a Scheme Notice).

**BFGS Claim Report Data Specifications** means the data specifications document relating to the BFGS Claim Report Template provided by the Crown to the Bank on or about the Effective Date, as amended from time to time by the Crown pursuant to clause 9.5.

**BFGS Claim Report Template** means the claims template consisting of two tabs with the titles "Claim Detail" and "Claim Commentary" within an Excel workbook, as provided by the Crown to the Bank on or about the Effective Date, as amended from time to time by the Crown pursuant to clause 9.5.

**BFGS Crown Deed of Indemnity** means a Crown Deed of Indemnity in relation to the Business Finance Guarantee Scheme between the Crown and another Approved Bank.

**BFGS Data Specifications** means the data specifications document provided by the Crown to the Bank on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(c).

**BFGS Reporting Template** means [the BS2B reporting template consisting of two tabs with the titles "Expected Credit Loss" and "Lending Summary" within an Excel workbook, as provided by the Crown to the Bank on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(c).] **OR** [the BS2A reporting template consisting of two tabs with the titles "Expected Credit Loss" and "Lending Summary" within an Excel workbook, as provided by the Crown to the Bank on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(c).] [~~delete whichever does not apply.~~]

**Borrower** means a person:

- (a) that, at the time the Supported Loan is entered into, carries on a business which:
  - (i) is a New Zealand Based Business;
  - (ii) had in its most recently completed financial year (or, if the business has been operating for less than one full financial year, expects to have in its first full financial year), revenue of up to \$200,000,000 (determined on a consolidated basis if the Borrower is a member of a Guaranteeing Group); and
  - (iii) does not involve any Excluded Activity;
- (b) that is not, at the time the Supported Loan is entered into, a "Borrower" under a "Supported Loan" entered into with another Approved Bank under a BFGS Crown Deed of Indemnity;
- (c) that is not, at the time the Supported Loan is entered into, classified by the Bank for regulatory capital purposes under any of the following ANZSIC classifications (or an equivalent description):
  - (i) residential property investor or developer; and
  - (ii) commercial property investor or developer;

- (d) **OPTION FOR BS2B BANKS** [that:
- (i) if a Retail Customer, was not, as at 31 January 2020, on the Bank's Watchlist; or
  - (ii) if not a Retail Customer, was not, as at 30 September 2019, on the Bank's Watchlist; and]

**OPTION FOR BS2A BANKS** [that:

- (iii) if not a Relationship Customer, was not, as at 31 January 2020, on the Bank's Watchlist; or
- (iv) if a Relationship Customer, was not, as at 30 September 2019, on the Bank's Watchlist; and

**DELETE WHICHEVER OPTION DOES NOT APPLY.**

- (e) that is not a local authority, a council-controlled organisation or a council organisation for the purposes of the *Local Government Act 2002*,

unless otherwise agreed in writing by the Crown and the Bank.

**Business Finance Guarantee Scheme** means the scheme established by the Crown to help Approved Banks to support New Zealand businesses facing hardship as a consequence of COVID-19 to do one or more of the following:

- (a) to respond to the impacts of COVID-19;
- (b) to position themselves for recovery from the impacts of COVID-19; or
- (c) to recover from the impacts of COVID-19.

**Certificate** has the meaning set out in clause 7.1(a)(ii).

**Claim Report** has the meaning set out in clause 9.1(a).

**Commencement Date** means [*to insert the date that each Bank's Original Deed of Indemnity took effect*].

**Creditor Process** means, in respect of a Supported Loan, a settlement, compromise or other arrangement under which all or any part of the amount owing by the Borrower (or any guarantor) under or in connection with the Supported Loan is written off, cancelled or not recovered.

**Defaulted Supported Loan** means a Supported Loan under which an event of default, termination event or similar event (however described or defined) has occurred and the Bank has declared all outstanding moneys due and payable or taken any other action to recover amounts owing.

**Effective Date** means the date of the deed of amendment and restatement to which this document is attached as a schedule.

**Event of Review** means an event or circumstance specified in clause 8.5(b).

**Excluded Activity** means any of the following:

- (a) the manufacture of cluster munitions;
- (b) the manufacture or testing of nuclear explosive devices;
- (c) the manufacture of anti-personnel mines;
- (d) the manufacture of tobacco;
- (e) the processing of whale meat;
- (f) the manufacture or distribution of recreational cannabis;
- (g) the manufacture of civilian automatic and semi-automatic firearms, magazines or parts; and
- (h) any activity which is illegal in New Zealand.

**Facility Limit** means the maximum aggregate principal amount that may be drawn under a loan agreement in accordance with its terms (excluding, for the avoidance of doubt, any interest that may be capitalised to form part of the loan balance).

**Guaranteeing Group** means the Borrower and each person (if any) which has guaranteed the Borrower's obligations to the Bank (excluding, for the avoidance of doubt, the Crown in respect of its obligations under this document).

**Information Deficiency** has the meaning set out in clause 7.1(c).

**Insolvency Event** means:

- (a) the Bank is declared or becomes bankrupt or insolvent or is otherwise unable to pay its debts when they fall due;
- (b) the Bank enters into dealings with or for the benefit of any of its creditors with a view to avoiding, or in expectation of, insolvency;
- (c) the Bank takes any corporate action or any other procedure or step is taken to make a general assignment or an arrangement, compromise or composition with or for the benefit of any of its creditors;
- (d) the Bank stops or threatens to stop payments generally;
- (e) a security interest is enforced in respect of, or a receiver is appointed to, any material part of the assets of the Bank;
- (f) an order is made, or a resolution is passed, for the appointment of a liquidator to the Bank;
- (g) a statutory manager is appointed or a step taken with a view to any such appointment in respect of the Bank under the *Reserve Bank of New Zealand Act 1989*; or
- (h) any analogous or equivalent event to any listed above (in any jurisdiction).

**New Zealand Based Business** means a business in respect of which, if carried on by:

- (a) an individual or a company, the individual or the company is resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
- (b) a company or partnership (including a limited partnership) or trustees of a trust (in each case whether or not formed or incorporated in New Zealand), the relevant entity or body of persons:
  - (i) is or are resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
  - (ii) carry or carries on business in New Zealand through a fixed or permanent place of business in New Zealand and will file a New Zealand income tax return in respect of that business.

**Portfolio Information** has the meaning set out in clause 7.1(a)(i).

**Relationship Customer** means a person whose relationship with the Bank is monitored, and, if applicable, would be managed, by the Bank on an individual/relationship basis with reference to a risk grade in accordance with the Bank's usual credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes. **[NOTE – DEFINITION ONLY RELEVANT FOR BS2A BANKS.]**

**Relevant Officer** means the Chief Financial Officer, the Chief Risk Officer or any equivalent, or any executive who reports directly to the Chief Executive Officer of the Bank.

**Report** has the meaning set out in clause 7.1(a).

**Reserve Bank** means the Reserve Bank of New Zealand.

**Retail Customer** means a person classified by the Bank as a retail exposure for regulatory capital purposes. **[NOTE – DEFINITION ONLY RELEVANT FOR BS2B BANKS.]**

**Scheme Notice** has the meaning set out in clause 21.1.

**Shortfall** means, in respect of a Defaulted Supported Loan, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan after the Bank:

- (a) has:
  - (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and

- (ii) determined that it does not reasonably expect to make any further recoveries; and
- (b) has applied all recoveries available to be retained by it in accordance with the following order of application:
  - (i) first, to pay reasonable costs and expenses incurred by the Bank in applying its arrears management and enforcement policies and processes;
  - (ii) secondly, to reduce all indebtedness of the Borrower (as principal or surety) to the Bank which is not owed under the Defaulted Supported Loan and which is, at the time any such recoveries are applied, due and payable by the Borrower; and
  - (iii) thirdly, to reduce all indebtedness under the Defaulted Supported Loan owed by the Borrower to the Bank,
 (the **Shortfall Waterfall**).

For the purpose of this definition, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan will include, if applicable, without double counting:

- (a) any such amount that has been cancelled, written off or not recovered as a result of a Creditor Process; and/or
- (b) any such amount that either has not been recovered by the Bank as a result of the Defaulted Supported Loan being set aside (in whole or part) or which the Bank has been required to pay to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws.

**Shortfall Waterfall** has the meaning set out in the definition of the term Shortfall.

**Supported Loan** has the meaning given in clause 3.1.

**Supported Loan Policies, Practices and Processes** means the Bank's credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes applicable to Supported Loans from time to time, such policies, practices and processes to be:

- (a) determined commercially by the Bank; and
- (b) applied to a particular Supported Loan in such manner and to the extent as the Bank in its discretion determines.

**Supported Loans Cap** has the meaning set out in clause 4(a).

**[OPTION FOR BS2A BANKS] [Watchlist** means, unless otherwise agreed in writing by the Crown, the list of the Bank's:

- (a) Relationship Customers that are rated grade [#] or below by the Bank in accordance with its internal risk framework; and
- (b) other customers that are 60 days or more in arrears.] **OR**

**[OPTION FOR BS2B BANKS] [Watchlist** means, unless otherwise agreed in writing by the Crown, the list of the Bank's:

- (a) Retail Customers that are 60 days or more in arrears; and
- (b) other customers that are rated grade [#] or below by the Bank in accordance with its internal risk framework.]

**Within Limits Indebtedness** means, in respect of a Borrower, the Borrower's aggregate indebtedness to the Bank, as calculated at the date on which a Supported Loan is first made to the Borrower, but not including indebtedness in excess of the Borrower's aggregate agreed limits with the Bank.

**Working Day** means a week day on which registered banks are (or would be but for any COVID-19 alert level restrictions) open for general banking business in Wellington and Auckland.

## 1.2 Interpretation

- (a) In this document:

- (i) headings are for reference only and do not affect interpretation;
  - (ii) the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
  - (iii) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
  - (iv) examples and use of the word **including** and similar expressions do not limit what else may be included.
- (b) Unless the context requires otherwise, a reference in this document to:
- (i) a party to any document includes that person's successors and permitted substitutes and assigns;
  - (ii) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
  - (iii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
  - (iv) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
  - (v) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
  - (vi) a person includes an individual, company, corporation, partnership (including a limited partnership), trustees of a trust, unincorporated body or other entity;
  - (vii) time is to New Zealand time unless stated otherwise;
  - (viii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
  - (ix) an accounting term is to be interpreted according to generally accepted accounting practice in New Zealand, as defined in section 8 of the *Financial Reporting Act 2013*;
  - (x) **indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) to pay or repay money;
  - (xi) **property** or an **asset** includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset; and
  - (xii) **rights** includes authorities, consents, discretions, remedies, powers and causes of action.

## 2. Indemnity

### 2.1 Scope of indemnity

- (a) The Crown undertakes to indemnify the Bank against any Shortfall which arises in relation to a Defaulted Supported Loan.
- (b) The Crown's liability under paragraph (a) above in respect of each Defaulted Supported Loan:
  - (i) is limited to an amount equal to 80 per cent. of the Shortfall; and
  - (ii) is otherwise subject to the provisions of this document.

### 2.2 Payment process

The Crown's obligation to make payment under clause 2.1 above arises following the Bank providing the Crown with a Claim Report in accordance with clause 9.

## 2.3 Liability cap

The Crown's total liability under this document is limited to \$[#]. *[Drafting note: there is no intention to change each Bank's allocation under the Indemnity as part of these changes.]*

## 3. Supported Loan Criteria

### 3.1 Supported Loan – qualification

A loan agreement entered into by the Bank will be a **Supported Loan** for the purposes of this document if it:

- (a) is entered into by the Bank on or following the Commencement Date with a person who, at the time of entering into the Supported Loan, is a Borrower; and
- (b) satisfies the criteria set out in clauses 3.2 to 3.8.

### 3.2 Purpose

- (a) Prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Bank that it is requesting the Supported Loan for the purpose of one or more of responding to, positioning itself to recover from, or recovering from, the impacts of COVID-19.
- (b) Other than as agreed in writing by the Crown, prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Bank that it will not apply the proceeds of the Supported Loan for any of the following purposes:
  - (i) to fund dividends to be distributed outside the Borrower's Guaranteeing Group; or
  - (ii) to fund on-lending outside the Borrower's Guaranteeing Group; or
  - (iii) to fund one or more Excluded Activities; or
  - (iv) to fund residential or commercial property development or investment; or
  - (v) to repay or refinance the Borrower's existing indebtedness to the Bank if that repayment or refinancing would result in more than 20 per cent. of the Borrower's Within Limits Indebtedness (the **Refinance Limit**) having been repaid or refinanced by loans made under the Business Finance Guarantee Scheme (subject to clause 3.3).

### 3.3 Refinancing

The application by the Borrower of all or any part of a Supported Loan towards any of the following purposes will not be included in the calculation of the Refinance Limit:

- (a) the repayment or refinancing of an existing loan provided that:
  - (i) prior to or at the time of entering into the relevant Supported Loan, the Borrower confirms to the Bank that it did not apply the proceeds of its existing loan to fund any of the activities listed in paragraphs (i) to (iv) of clause 3.2(b);
  - (ii) the existing loan had a term of no more than 180 days;
  - (iii) the existing loan was advanced on or after 16 March 2020;
  - (iv) the Facility Limit of the existing loan does not exceed \$5,000,000;
  - (v) the existing loan and any related security or guarantee is documented on terms and conditions that were agreed between the Bank and the Borrower in accordance the Bank's credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes in effect at the time the existing loan was approved;
  - (vi) the Bank's decision to enter into the existing loan was made in accordance with the Bank's credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes in effect at the time the existing loan was approved; and
  - (vii) the Borrower was not on the Bank's Watchlist as at the Commencement Date;

- (b) the repayment or refinancing of any term loans or facilities which mature during the Availability Period;
- (c) the disbursement of all or part of a Supported Loan into the Borrower's overdraft account (except to the extent that, the relevant overdraft limit is cancelled or permanently reduced by the Bank upon or as a result of such disbursement); and/or
- (d) the refinancing of an existing Supported Loan that occurs as part of an amendment to the loan to reflect amendments agreed by the Crown to the criteria set out in clauses 3.1(a) and 3.2 to 3.8.

### **3.4 Supported Loan limit**

- (a) Other than as agreed in writing by the Crown, the Facility Limit for each Supported Loan must not exceed \$5,000,000.
- (b) Other than as agreed in writing by the Crown, the aggregate of the Facility Limits of all Supported Loans between the Bank and a Guaranteeing Group at any one time must not exceed \$5,000,000.

### **3.5 Term**

- (a) Each Supported Loan must be entered into during the Availability Period.
- (b) Each Supported Loan must require that all amounts outstanding under the Supported Loan must be repaid in full by not later than the fifth anniversary of the date of the Supported Loan.
- (c) Subject to paragraph (b) above, the Bank may agree to extend the term of a Supported Loan from time to time, including after the Availability Period.

### **3.6 Interest and interest rate**

- (a) The interest rate for each Supported Loan will be set by the Bank and must reflect:
  - (i) the Bank's cost of funding for the Supported Loan as determined by the Bank acting reasonably and in good faith, taking into account the Term Lending Facility to support the Business Finance Guarantee Scheme announced by the Reserve Bank on 2 April 2020; and
  - (ii) the effect of the risk accepted by the Crown under this document on the Bank's regulatory capital requirements.
- (b) Interest on a Supported Loan will only be payable by a Borrower on drawn amounts.
- (c) Establishment fees, commitment fees and line fees in respect of a Supported Loan may be charged at the Bank's discretion in accordance with its Supported Loan Policies, Practices and Processes.

### **3.7 Documentation**

- (a) Each Supported Loan must include a negative undertaking by the Borrower that the proceeds of the Supported Loan will not be used for any Excluded Activity, and a corresponding event of default for breach of that undertaking.
- (b) Each:
  - (i) Supported Loan; and
  - (ii) security or guarantee (if any) required by the Bank in relation to the Supported Loan,

will otherwise be documented on terms and conditions agreed between the Bank and the Borrower in accordance with the Bank's Supported Loan Policies, Practices and Processes.

### **3.8 Loan approval process**

The Bank's decision to enter into a Supported Loan will be made in accordance with the Bank's Supported Loan Policies, Practices and Processes.

### **3.9 Personal guarantees**

For the avoidance of doubt:

- (a) the Bank is not required to take a guarantee from any person in respect of a Supported Loan; and
- (b) a loan that otherwise satisfies the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) above will be a Supported Loan even if the Bank has not taken a guarantee from any person in respect of that loan.

### **3.10 The Bank may rely on certification by a Borrower**

For the purposes of determining whether a loan is a Supported Loan:

- (a) the Bank may rely on any certification or confirmation made by a Borrower:
  - (i) that the Borrower meets the requirements set out in paragraphs (a), (b) and (e) of the definition of Borrower; and
  - (ii) as contemplated by each of clause 3.2(a), clause 3.2(b) and clause 3.3(a)(i); and
- (b) the loan will not cease to be a Supported Loan merely as a result of that Borrower's certification or confirmation being untrue or incorrect,

unless, at the time of certification or confirmation, the Bank had actual knowledge to the contrary of the matters referred to in any of paragraphs (a)(i) or (a)(ii) above.

### **3.11 No obligation to monitor**

The Bank has no obligation to monitor or verify the manner in which a Borrower applies the proceeds of any Supported Loan and a loan will not cease to be a Supported Loan merely as a result of the Borrower applying the proceeds towards a purpose that is not permitted by this document.

## **4. Limit on Supported Loans**

- (a) Without in any way derogating from the limitation of liability under clause 2.3, the Bank agrees that it will not make Supported Loans or loans which it represents to customers are Supported Loans with aggregate Facility Limits at any time exceeding the liability cap amount set out in clause 2.3 multiplied by 1.25 (the **Supported Loans Cap**).
- (b) For the avoidance of doubt, if any Supported Loan is repaid in full, or the Bank's commitment in respect of a Supported Loan is permanently reduced during the Availability Period, the amount of the repayment or reduction in commitment will not count towards the Supported Loans Cap.

## **5. Application of repayments**

### **5.1 Repayments prior to acceleration or enforcement**

For so long as a Supported Loan is not a Defaulted Supported Loan, the Bank will apply scheduled payments made by the relevant Borrower to the facility to which they relate (including the relevant Supported Loan).

### **5.2 Repayments after enforcement**

If a Supported Loan becomes a Defaulted Supported Loan, the Bank will apply any proceeds that it recovers and is entitled to retain under any facility, security or guarantee which relates to the Supported Loan in accordance with the Shortfall Waterfall.

## **6. Supported Loans**

### **6.1 Compliance with Supported Loan Criteria**

The Bank will have systems and controls in place designed to ensure that any loan it represents is a Supported Loan meets the definition of Supported Loan, including the criteria set out in clause 3.



## 6.2 Administration

The Bank will administer and service each Supported Loan in all material respects in accordance with the Bank's Supported Loan Policies, Practices and Processes.

## 6.3 Default and workout

- (a) If a Supported Loan becomes a Defaulted Supported Loan, the Bank:
  - (i) must take such action (including enforcement of any security and any guarantees) as it considers commercially reasonable to recover amounts owing under the Supported Loan in accordance with the arrears management and enforcement aspects of its Supported Loan Policies, Practices and Processes; and
  - (ii) may, but is not required to, take action to recover any other indebtedness of the Borrower in accordance with its policies, practices and processes that apply to that indebtedness.
- (b) For the avoidance of doubt, the Bank may agree to a Creditor Process with the Borrower or a guarantor in respect of a Supported Loan and/or other indebtedness, rather than:
  - (i) appointing a receiver or administrator to the Borrower or a guarantor or the assets of the Borrower or a guarantor; or
  - (ii) taking action under a guarantee of the Borrower's Supported Loan and/or other indebtedness; or
  - (iii) taking mortgagee or similar action; or
  - (iv) making an application for the liquidation or bankruptcy of the Borrower or a guarantor.
- (c) Provided that the Bank is complying with its arrears management and enforcement procedures in accordance with this clause 6.3, there will be no limit on the time in which it must complete those procedures.

## 7. Reporting

### 7.1 Periodic reporting and certification

- (a) No more than 15 Working Days after the end of each calendar month, the Bank will provide the Crown with:
  - (i) a report setting out portfolio level information as required by the BFGS Reporting Template and the BFGS Data Specifications (the **Portfolio Information**) in respect of the Bank's Supported Loans (the **Report**); and
  - (ii) a certificate from the Bank signed by the Bank's Relevant Officer (the **Certificate**) confirming that, to his or her knowledge having made due enquiry, as at the date of the certificate:
    - (A) the Bank has systems and controls in place designed to ensure that it meets its obligations under this document;
    - (B) the underlying systems and controls that are used to produce the information in each Report are the same as the Bank uses in the ordinary course of its business, subject to any modifications which the Bank considers are required for the purposes of its involvement with the Business Finance Guarantee Scheme;
    - (C) save as described in the Certificate, the systems and controls referred to in paragraph (A) above have worked effectively in all material respects from the date of the previous Certificate (or, in the case of the first Certificate, from the Commencement Date); and
    - (D) the information set out in the Report to which the Certificate relates is complete and accurate in all material respects.
- (b) If the Bank provides a Certificate which includes a description of the systems and controls referred to in paragraph (a)(ii)(A) above not working effectively in all material respects, the Bank must provide, with that Certificate, an explanation of the steps it intends to take to

remedy the issues with its systems and controls and a timeframe for that remedy to be implemented.

- (c) If, at any time following the Commencement Date, the Crown reasonably determines that the Portfolio Information is insufficient to enable the Crown to adequately assess the potential exposure assumed by it under the Business Finance Guarantee Scheme (**Information Deficiency**), the Crown may, by written notice to the Bank (and each other Approved Bank), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the Portfolio Information to remedy the Information Deficiency. If, after 20 Working Days from the date of that written notice, the Crown and the Bank have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Bank, amend the Portfolio Information as is reasonably necessary to remedy the Information Deficiency and is reasonably capable of being reported on by the Bank.

## 7.2 Agreed upon procedures engagement

- (a) To enable the Crown to prepare its annual financial statements in accordance with generally accepted accounting practice (including the requirement for the Crown's financial statements to be audited by an independent external auditor), the Bank agrees that it will:
- (i) for every financial year except the financial year ending 30 June 2020 engage its independent external auditors to perform an agreed upon procedures engagement in accordance with the New Zealand Institute of Chartered Accountants Engagement Standard APS-1 (revised) *Agreed-Upon Procedures Engagements to Report Factual Findings* (or any equivalent replacement standard) to prepare a factual findings report (the **Agreed Upon Procedures Engagement**);
  - (ii) for every financial year except the financial year ending 30 June 2020 provide the factual findings report prepared pursuant to paragraph (a) above to the Crown and its independent external auditor no later than 25 Working Days after the end of the Crown's financial year; and
  - (iii) in relation to the financial year ending 30 June 2020, provide the Crown's independent auditors with such information relating to the Bank's participation in the Scheme as the Crown's independent auditors may request, if during the course of the audit such information is reasonably required for the Crown's independent auditors to gain adequate assurance over the Crown's annual financial statements.
- (b) The Crown and the Bank (each acting in good faith), together with their respective independent external auditors, will agree by no later than 31 May 2021:
- (i) the details of the agreed upon procedures to be undertaken by the Bank's external auditors as part of the Agreed Upon Procedures Engagement; and
  - (ii) the matters to be covered by the factual findings report.
- (c) If the Crown, the Bank, and their respective auditors cannot reach agreement in accordance with paragraph (b) above by 31 May 2021, the Crown will determine the matters set out in paragraphs (b)(i) and (b)(ii) above, such determination to be that as is reasonably necessary to enable the Crown to comply with the requirements of the Office of the Auditor General.
- (d) The agreed costs of the Bank's independent external auditor in respect of each Agreed Upon Procedures Engagement and factual findings report will be shared equally by the Bank and Crown.

## 8. Investigation

### 8.1 Crown rights of investigation

- (a) Subject to clauses 8.2 and 8.3, the Crown is entitled to investigate:
- (i) the Bank's compliance with clause 6.3; and
  - (ii) in relation to each loan that the Bank claims is a Supported Loan:

- (A) whether the loan agreement was entered into during the Availability Period;
  - (B) whether the borrower met the criteria to be a Borrower when the loan agreement was entered into; and
  - (C) whether the loan otherwise met the criteria in clauses 3.2 to 3.7(a) when the loan agreement was entered into.
- (b) The Crown may issue a notice in writing to the Bank requiring it to produce to the Crown or its agent such copies of its books, records and accounts relevant to the Bank's Supported Loan Policies, Practices and Processes or any Supported Loan, including any Supported Loan where a claim is being considered by, or has been paid by, the Crown as are reasonably necessary to facilitate an investigation pursuant to paragraph (a) above.
  - (c) The Bank must comply with a notice issued pursuant to paragraph (b) above and otherwise take all reasonable steps to facilitate the Crown (or its agent)'s investigation.
  - (d) Nothing in paragraph (c) above requires the Bank to disclose to the Crown or its agent any privileged document or personal information pertaining to a Borrower or any other person where such disclosure would breach the *Privacy Act 1993*.

## 8.2 Procedural matters regarding investigation

- (a) A notice issued under clause 8.1(b) must allow a reasonable time for a Bank to produce copies of the relevant documents. This reasonable time must be at least 15 Working Days.
- (b) The Crown:
  - (i) will appoint an agent to conduct an investigation who is, in the Crown's opinion, by reason of training or experience suitably qualified to conduct such an investigation; and
  - (ii) will not appoint any existing financial services regulator as agent.
- (c) Notwithstanding any other clause in this document, documents supplied pursuant to a notice issued under clause 8.1(b) may not be disclosed by the Crown or its agent to any third party including the Reserve Bank or Financial Markets Authority (except where required by law), and may not be used for any purpose other than as set out in this clause 8.

## 8.3 Frequency

- (a) The Crown will not conduct an investigation under clause 8.1 during the Availability Period.
- (b) After the Availability Period, the Crown will conduct an investigation under clause 8.1 no more than once annually.

## 8.4 Cost of investigation

The cost of each investigation (which must be properly documented and out-of-pocket) under clause 8.1 will be borne by the Bank unless the investigation has identified that, in the reasonable opinion of the Crown there have been no material deficiencies in the Bank's application of the Supported Loan criteria set out in in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that applied at the time the Supported Loan was entered into) which have resulted in loans being incorrectly classified as Supported Loans, in which case, the Crown will bear the cost.

## 8.5 Consequences

- (a) If an investigation under clause 8.1 reveals that:
  - (i) a loan in respect of which the Crown has made payment to the Bank under this document does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that applied at the time the Supported Loan was entered into), the Bank must refund the Crown in accordance with clause 10; and
  - (ii) any other loan which the Bank had classified as a Supported Loan does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that

applied at the time the Supported Loan was entered into), the Bank will not be entitled to any payment from the Crown in respect of that loan under this document.

- (b) It will be an **Event of Review** if an investigation under clause 8.1 reveals that:
  - (i) a material number of loans which the Bank has claimed for or classified as Supported Loans do not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.7(a) (or the relevant criteria that applied at the time the Supported Loan was entered into); or
  - (ii) the Bank is not complying with its obligations under clause 6.3 in a way that will or is likely to materially increase the amount payable by the Crown to the Bank under this document.
- (c) If an Event of Review subsists, and the Crown requests, the Bank must promptly meet and consult in good faith with the Crown concerning the Event of Review with a view to agreeing the terms, if any, on which the Crown is willing to continue to allow the Bank to participate in the Business Finance Guarantee Scheme. If, after 10 Working Days from the date of that written notice, the Crown and the Bank have not agreed (and amended this document to record) such acceptable amendments or the Crown has otherwise determined that the Bank shall not continue in Business Finance Guarantee Scheme, the Crown may, at any time, terminate this document in accordance with clause 13.2.

## 9. Claims process

### 9.1 Timing of claims

- (a) Once in each calendar month, the Bank may provide the Crown with a report setting out claim information as required by the BFGS Claim Report Template and the BFGS Claim Report Data Specifications in respect of any Defaulted Supported Loans which have not previously been the subject of a claim and in respect of which the Bank has:
  - (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and
  - (ii) determined that it does not reasonably expect to make any further recoveries, (each such report being a **Claim Report**).
- (b) A claim in respect of a Defaulted Supported Loan must be received by the Crown no later than three months after the Bank has completed its arrears management and enforcement processes in respect of that Defaulted Supported Loan in accordance with clause 6.3 and has determined that it does not reasonably expect to make any further recoveries.
- (c) The Bank is not required to take any legal action against the Crown or any other person before it provides a Claim Report to the Crown.

### 9.2 Additional information

Each Claim Report must be accompanied by information about how the Shortfall was calculated for each Defaulted Supported Loan (which may include a provisioning paper or loan loss review paper, where prepared by the Bank).

### 9.3 Claim Certificate

Each Claim Report must be accompanied by a statement from the Bank (the **Claim Certificate**) signed by the Bank's Relevant Officer certifying that, to his or her knowledge having made due enquiry, as at the date of the certificate:

- (a) all Defaulted Supported Loans listed in the Claim Report:
  - (i) have not been included in a previous Claim Report;
  - (ii) qualified as Supported Loans at the time they were made; and
  - (iii) have been subject to the Bank's arrears management and enforcement processes in accordance with clause 6.3 in all material respects;
- (b) the Bank does not reasonably expect to make any further recoveries in respect of the Defaulted Supported Loans listed in the Claim Report;

- (c) the Bank's arrears management and enforcement processes in relation to the Defaulted Supported Loans listed in the Claim Report were completed no more than three months prior; and
- (d) the information in the Claim Report to which the Claim Certificate relates is complete and accurate in all material respects.

#### 9.4 Payment

The Crown will pay the Bank any amount payable by it under this document no more than 20 Working Days after receiving a duly completed Claim Report.

#### 9.5 Change to BFGS Claim Report Template

If at any time following the Effective Date, the Crown reasonably determines that the information required by the BFGS Claim Report Template and the BFGS Claim Report Data Specifications:

- (a) is insufficient to enable the Crown to adequately assess and pay claims by the Bank under this document; and/or
- (b) is provided in a form that materially increases the time required for the Crown to adequately assess and pay claims by the Bank under this document,

(the **Claim Information Deficiency**), the Crown may, by written notice to the Bank (and each other Approved Bank), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the BFGS Claim Report Template and/or the BFGS Claim Report Data Specifications to remedy the Claim Information Deficiency. If, after 20 Working Days from the date of that written notice, the Crown and the Bank have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Bank, amend the BFGS Claim Report Template and/or BFGS Claim Report Data Specifications as is reasonably necessary to remedy the Claim Information Deficiency and as is reasonably capable of being reported on by the Bank.

#### 9.6 Exclusions

- (a) The Crown will have no obligation to pay the Bank for a claim made under this document for an amount under a Supported Loan:
  - (i) to the extent that under any relevant law:
    - (A) the Supported Loan is (wholly or partly) unenforceable, invalid, or not binding on the Borrower;
    - (B) the Borrower's obligation to pay money owing under the Supported Loan is (wholly or partly) unenforceable against the Borrower; or
    - (C) the Borrower is entitled to a reduction in respect of its payment obligations to the Bank including where the Borrower's payment obligations are held to be a penalty,

and as a consequence that amount is not payable by the Borrower;
  - (ii) to the extent that non-payment by the Borrower of that amount under the Supported Loan is due to any breach of contract, negligence in relation to the Bank's application of its Supported Loan Policies, Practices and Processes, or fraud by the Bank;
  - (iii) to the extent that the Bank is in breach of any of its obligations under this document and such breach has caused non-payment by the Borrower of that amount under the Supported Loan; or
  - (iv) where the loan subject to the claim is not a Supported Loan.
- (b) The exclusion in clause 9.6(a)(i) will not apply where the relevant circumstance is caused solely as a result of any or a combination of the following:
  - (i) a Creditor Process; or
  - (ii) the winding up of the Borrower; or

- (iii) the Supported Loan (or any related security) being set aside (in whole or in part) or the Bank being required to pay an amount to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws; or
- (iv) despite the Bank having made due enquiry prior to the Supported Loan being entered into, the fraud of the Borrower.

## 10. Refund by Bank

- (a) If the Crown has paid a claim under this document and it is subsequently established, including following any investigation, that the payment or a part of the payment of that claim was greater than the amount required to be paid by the Crown (such surplus amount being the **Amount**) under the terms of this document (including as a result of the exclusions set out in clause 9.5 above), the Bank must repay the Amount together with interest on the Amount calculated daily at the three-month "BKBM-FRA" rate as published by The New Zealand Financial Markets Association from time to time (provided that if that rate is a negative number, then it will be deemed to be zero) from the date the Crown made the payment until the Bank repays the Amount to the Crown in full.
- (b) No more than 10 Working Days after the end of each calendar month, the Bank will make payment to the Crown of all Amounts (and interest) that the Bank has become aware of during the preceding calendar month in accordance with paragraph (a) above.

## 11. Transfer of Supported Loans

- (a) If the Bank transfers a loan that is a Supported Loan to any other person, that loan will cease to be a Supported Loan for the purposes of this document, unless:
  - (i) the Crown has given its prior written consent to the transfer; or
  - (ii) the transfer is to another Approved Bank, in which case the loan will be a Supported Loan for the purposes of that other Approved Bank's BFGS Crown Deed of Indemnity provided that the other Approved Bank complies with the provisions of its BFGS Crown Deed of Indemnity in relation to the loan.
- (b) If the Bank is the transferee of a loan that is a Supported Loan for the purposes of another Approved Bank's BFGS Crown Deed of Indemnity, that loan will be a Supported Loan for the purposes of this document, provided that the Bank complies with clauses 3.4, 3.5, and 3.6 in relation to the loan.

## 12. Same terms for all Approved Banks

- (a) The Crown has entered into, or will enter into, a BFGS Crown Deed of Indemnity with each Approved Bank, on identical terms as this document except as to:
  - (i) the definitions of Commencement Date and BFGS Reporting Template;
  - (ii) the definition of Watchlist, and the inclusion of the definition "Retail Customer" or "Relationship Customer", as applicable;
  - (iii) the liability cap in clause 2.3; and
  - (iv) the limit on Supported Loans in clause 4(a).
- (b) The Crown will not amend the terms of this document or any other Approved Bank's BFGS Crown Deed of Indemnity in such a way as to make another Approved Bank's BFGS Crown Deed of Indemnity more favourable to that Approved Bank, except:
  - (i) if the Crown terminates this document in accordance with clause 13; or
  - (ii) in response to an Event of Review, in accordance with clause 8.5(c).
- (c) The Crown will exercise its discretions under this document and each BFGS Crown Deed of Indemnity in a reasonable and consistent manner.

## 13. Termination

### 13.1 Termination by notice

Each of the Bank and, following the Availability Period, the Crown, may, by notice in writing to the other, terminate this document. Any such notice will take effect from the date 10 Working Days after the date of the notice, or any subsequent date specified in the notice.

### 13.2 Termination for cause

The Crown may, by notice in writing to the Bank, terminate this document with effect from the date of the notice or any subsequent date specified in the notice if:

- (a) it is entitled to do so pursuant to clause 8.5(c) following an Event of Review; or
- (b) the Bank has not provided a Report or Certificate under clause 7 by its due date and has not remedied that failure within 30 days; or
- (c) an Insolvency Event has occurred in respect of the Bank.

### 13.3 Effect of termination

- (a) Subject to paragraph (b) below, termination of this document under clause 13.1 or clause 13.2 will not affect the parties' rights and obligations under this document (including clause 2.1) in relation to each Supported Loan that was entered into prior to the date on which the termination of this document takes effect, including if any amount owing under the Supported Loan is repaid (in part or full) and redrawn from time to time.
- (b) The Bank may elect, in its notice of termination provided to the Crown under clause 13.1, to cease to have the benefit of the indemnity under clause 2.1 in relation to all of its outstanding Supported Loans entered into on or before the date of the notice of termination. If the Bank so elects, then, without affecting any obligations under this document which have accrued or are due but yet to be performed, the parties' rights and obligations under this document (including under clause 2.1) will terminate.
- (c) The following provisions will survive termination:
  - (i) clause 18.2 (Official Information Act requests); and
  - (ii) clause 19 (Confidentiality).

## 14. No counter indemnity or rights of subrogation

- (a) Except as specifically provided in this document, the Crown acknowledges and agrees that the Bank has no liability to repay, reimburse or counter-indemnify the Crown for any payment the Crown may make under this document.
- (b) The Crown will not seek to:
  - (i) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Bank under a Supported Loan or of any other guarantee or security taken pursuant to, or in connection with, the Supported Loan; or
  - (ii) enforce any right of counter-indemnity against a Borrower arising from any payment by the Crown under this document.
- (c) The Bank has no duty to marshal in favour of the Crown or any other person.

## 15. Obligations not prejudiced

Except as specifically provided in this document, the obligations of the Crown under this document will not be affected by any act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this document, including:

- (a) any time, waiver or other concession or consent granted to, or composition with, any Borrower or other person; or
- (b) any composition or arrangement with any creditor of any Borrower or other person; or

- (c) any amendment to any Supported Loan or any other document or security including any extension of or any increase in any facility amount (provided that the Supported Loan as amended would have satisfied the criteria in clause 3 where it originally entered into on such terms).

## 16. Assignment

The Bank may not assign, transfer or otherwise deal with its rights, interests or obligations under this document without the prior written consent of the Crown.

## 17. Information to be provided to the Crown

### 17.1 Supported Loan Policies, Practices and Processes

- (a) The Bank acknowledges that it provided a summary of its Supported Loan Policies, Practices and Processes to the Crown as a condition precedent to the Crown entering into this document.
- (b) The Bank may amend its Supported Loan Policies, Practices and Processes at any time as it considered necessary or desirable. The Bank will retain a copy of each version of its Supported Loan Policies, Practices and Processes until 31 December 2027.

### 17.2 Other information

- (a) The Bank will provide the Crown, no more than 15 Working Days following request by the Crown (acting reasonably), any other relevant information that is available to, or that can reasonably be obtained by, the Bank in relation to a Supported Loan or a Borrower.
- (b) The Bank will, at or prior to the time each Supported Loan is entered into, obtain the consent of the relevant Borrower and any applicable new guarantor to provide information requested by the Crown under paragraph (a) above to the Crown.
- (c) The Crown will use information provided by the Bank under paragraph (a) above solely for the purposes of the management and administration of the Business Finance Guarantee Scheme.
- (d) Without limiting the Bank's obligation under paragraph (b) above, nothing in paragraph (a) above requires the Bank to disclose to the Crown any privileged document or personal information pertaining to any person where such disclosure would breach the *Privacy Act 1993*.

## 18. Information sharing

### 18.1 Information sharing with the Reserve Bank

- (a) The Bank authorises the Crown to contact and request information from the Reserve Bank which the Crown requires solely for the purposes of the management and administration of the Business Finance Guarantee Scheme.
- (b) The Bank authorises the Reserve Bank to share with the Crown any information requested by the Crown under paragraph (a) above that the Reserve Bank has collected in connection with its functions under the *Reserve Bank of New Zealand Act 1989*.
- (c) Subject to paragraph (d) below, the Bank authorises the Crown to share information provided to it in connection with this document with the Reserve Bank for the sole purpose of the management and administration of the Business Finance Guarantee Scheme.
- (d) The Crown will not share with the Reserve Bank without the Bank's prior written consent, any specific information pertaining to a Borrower, guarantor or any other customer of the Bank

### 18.2 Official Information Act requests

- (a) The Bank acknowledges that the Crown is subject to the *Official Information Act 1982* (the **OIA**) and that the Crown is obliged to disclose information under the OIA if so requested and if there are no grounds pursuant to the terms of the OIA to withhold that information.
- (b) The Bank acknowledges that the Crown intends to proactively release this document, subject only to any redactions necessary on the grounds set out in the OIA.



- (c) The Crown acknowledges that, in connection with this document, the Bank will provide to the Crown information that is, if publicly released, likely unreasonably to prejudice the commercial position of the Bank.
- (d) The Crown will advise the Bank if it receives a request under the OIA that relates to information provided by the Bank in connection with this document, and will consider any views that the Bank provides to the Crown before responding to any such request under the OIA, provided that:
  - (i) nothing in this paragraph (d) will require the Crown to delay its response to any such request under the OIA; and
  - (ii) all of the Crown's decisions in relation to requests received under the OIA are final.

## 19. Confidentiality

### 19.1 Confidentiality

Subject to clause 19.2, the Bank must keep confidential:

- (a) any terms of this document which are not proactively released by the Crown as contemplated in clause 18.2(b); and
- (b) any information provided to the Bank under this document or as part of the Bank's participation in the Business Finance Guarantee Scheme.

### 19.2 Permitted disclosure

- (a) Nothing in clause 19.1 will limit:
  - (i) any disclosures required to be made by law or required by any stock exchange or regulatory authority; or
  - (ii) disclosures to professional advisers and affiliates or to any liquidator, statutory manager, receiver or administrator appointed to, or in respect of, the Bank or any of its assets or any of their respective advisers; or
  - (iii) disclosures to any credit rating agency that has assigned a credit rating to the Bank or any of its securities; or
  - (iv) disclosure by the Bank that it is a participant bank in the Business Finance Guarantee Scheme; or
  - (v) disclosures in defence of legal proceedings brought against any person; or
  - (vi) disclosures in the context of any legal proceedings in respect of this document; or
  - (vii) disclosure of information that is publicly available; or
  - (viii) disclosure of information to any permitted transferee of any Supported Loan; or
  - (ix) any disclosure agreed to in writing by the Crown.
- (b) Prior to any disclosure under paragraph (a)(i), (a)(v) and (a)(vi) above, to the extent permitted by law, the Bank must first notify the Crown in writing of the intended disclosure and exercise its reasonable efforts to obtain assurances, including confidentiality orders in any legal proceeding, that the terms disclosed will be treated confidentially.

## 20. Notices and communications

### 20.1 Form of Notice

Each notice, demand, consent, approval or other communication (a **Notice**) under this document:

- (a) must be in writing, in English and signed by an authorised representative of the party; and
- (b) must be hand delivered or sent by email or post to the recipient's address for notices specified in the "Details" section of this document (as varied by any Notice given by the recipient to the party).

## 20.2 Effective on receipt

A Notice given in accordance with this clause 20 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or
  - (b) if sent by post, on the fifth Working Day after the date of posting (or on the seventh Working Day after the date of posting if posted to or from a place outside New Zealand); or
  - (c) if sent by email, when transmitted to the correct email address of the recipient,
- but if the delivery, receipt or transmission is not on a Working Day or is after 5:00 p.m. (addressee's time) on a Working Day, the Notice is taken to be received at 9:00 a.m. (addressee's time) on the next Working Day.

## 21. Amendment

### 21.1 Crown amendments

The Crown may, by no less than 10 Working Days' written notice to all Approved Banks (unless the amendment related to item (d) below, in which case the written notice will be to the Bank alone) (a **Scheme Notice**), amend:

- (a) the date on which the Availability Period ends;
- (b) the definition of Borrower;
- (c) the definition of Excluded Activity;
- (d) the liability cap amount set out in clause 2.3; and
- (e) the Supported Loan criteria set out in clauses 3.2 to 3.8.

Any amendment made by the Crown in accordance with this clause 21.1 will not apply in respect of any Supported Loan entered into prior to the date on which such amendment takes effect.

### 21.2 Amendments in response to COVID-19 changes to legislation

If requested by either party, the other party will consider amendments to this document which may be necessary or desirable in light of changes to relevant legislation as a response to COVID-19.

### 21.3 Other amendments

No amendment to this document other than an amendment pursuant to a Scheme Notice is effective unless it is in writing and signed by or on behalf of each party to it.

## 22. Representations and warranties

The Bank represents and warrants to the Crown that, to the best of its knowledge and belief having made due enquiry:

- (a) any factual written information that the Bank provided to the Crown as part of its application to participate in the Business Finance Guarantee Scheme was true and accurate in all material respects and not misleading in any material respect at the time at which it was provided; and
- (b) any factual written information the Bank provides to the Crown under this document is true and accurate in all material respects and not misleading in any material respect at the time at which it is provided (excluding any information provided to the Bank by a Borrower).

## 23. Incapacity of key people

It will not be a breach of this document if the Bank does not comply with its obligations under clause 7.1 by the relevant due date where:

- (a) one or more key people are unable to perform their duties due to illness or other unexpected circumstances; and

- (b) the Bank notifies the Crown prior to the relevant due date, giving full particulars of the reasons why it is unable to comply with its obligations under clause 7.1 and providing an alternative due date for complying with its obligations under clause 7.1,

provided that the Bank must, regardless of paragraph (a) or (b) above, comply with its obligations under clause 7.1 within five Working Days of the relevant due date.

## **24. General**

### **24.1 Third parties**

This document is not intended to create any benefit for, or give rise to an obligation enforceable at the suit of, any person (other than a liquidator, statutory manager, receiver or administrator appointed to, or in respect of any of the assets of, the Bank) who is not party to this document.

### **24.2 Entire agreement**

This document constitutes the entire agreement between the parties in relation to its subject matter. It replaces all earlier discussions, negotiations and agreements relating to that subject matter. The Bank acknowledges that in entering into this document, the Crown relied on information the Bank provided to it as part of its application to participate in the Business Finance Guarantee Scheme.

### **24.3 Currency**

Any reference in this document to an amount will, to the extent that the amount is not already denominated in New Zealand dollars, mean the amount determined by the Crown to be the New Zealand dollar equivalent of that amount as at the time relevant to its calculation or determination.

### **24.4 Partial invalidity**

If at any time a provision of this document is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision will be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of this document in any jurisdiction.

### **24.5 Counterparts**

- (a) This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.
- (b) A party who has executed a counterpart of this document, may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.
- (c) Where a party executes this document, by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email transmission.

### **24.6 Electronic signatures permitted**

The parties agree that this document may be executed by way of electronic signature.

### **24.7 Delivery**

For the purposes of section 9 of the *Property Law Act 2007*, and without limiting any other mode of delivery, this document will be delivered by:

- (a) the Bank immediately on the earlier of:
  - (i) physical delivery of an original of this document, executed by the Bank, into the custody of the Crown or the Crown's solicitors; or
  - (ii) transmission by the Bank or its solicitors (or any other person authorised in writing by the Bank) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by the Bank, to the Crown or the Crown's solicitors; and
- (b) the Crown, immediately on the earlier of:

- (i) physical delivery of an original of this document, executed by the Crown, into the custody of the Bank or the Bank's solicitors; or
- (ii) transmission by the Crown or its solicitors (or any other person authorised in writing by the Crown) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by the Crown, to the Bank or the Bank's solicitors.

#### **24.8 Governing law and jurisdiction**

This document will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any legal action or proceedings arising out of or in connection with this document.



# Deed of amendment and restatement

in relation to the Crown Deed of Indemnity relating to the  
Business Finance Guarantee Scheme

—

The Sovereign in right of New Zealand acting by and through the Minister of  
Finance (the **Crown**)

[Bank] (the **Bank**)

—

# Deed of amendment and restatement

## relating to the Crown Deed of Indemnity in relation to the Business Finance Guarantee Scheme

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# Details

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## Date

## Parties

Name	The Sovereign in right of New Zealand acting by and through the Minister of Finance
Short form name	The <b>Crown</b>
Notice details	Address: The Treasury, 1 The Terrace, Wellington Email: legal@treasury.govt.nz Attention: Treasury Solicitor
Name	[●]
Short form name	The <b>Bank</b>
Notice details	Address: [●] Email: [●] Attention: [●]

---

## Agreed terms

### 1. Defined terms and interpretation

#### 1.1 Defined terms

In this document:

**Original Deed of Indemnity** means the Crown Deed of Indemnity originally dated [●] entered into between the Crown and the Bank, as amended from time to time. [**Drafting note: date to reflect the date of each Bank's Original Deed of Indemnity.**]

**Restated Deed of Indemnity** means the Original Deed of Indemnity as amended and restated in accordance with this document.

#### 1.2 Interpretation

Except to the extent varied by this document and unless the context requires otherwise, words and terms defined in the Restated Deed of Indemnity will have the same meaning when used in this document.

### 2. Amendment and restatement

#### 2.1 Amendment and restatement

With effect on and from the date of this document, the Original Deed of Indemnity will be amended and restated in the form set out in Schedule 1 so that the rights and obligations assumed by the parties will, on and after the date of this document, be governed by and construed in accordance with the Restated Deed of Indemnity.

#### 2.2 Existing Supported Loans

Notwithstanding clause 2.1 above, a loan agreement that was a Supported Loan under the Original Deed of Indemnity shall continue to be treated as a Supported Loan under the Restated Deed of Indemnity.

### 3. Continuing rights and liabilities

Notwithstanding any other provision of this document, on and from the date of this document all accrued rights and liabilities of the parties which arose under the Original Deed of Indemnity prior to the date of this document will be preserved.

### 4. General

- (a) This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.
- (b) A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.
- (c) Where a party executes this document, by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email transmission.

#### 4.2 Electronic signatures permitted

The parties agree that this document may be executed by way of electronic signature.

#### 4.3 Delivery

For the purposes of section 9 of the *Property Law Act 2007*, and without limiting any other mode of delivery, this document will be delivered by:

- (a) the Bank immediately on the earlier of:
  - (i) physical delivery of an original of this document, executed by the Bank, into the custody of the Crown or the Crown's solicitors; or
  - (ii) transmission by the Bank or its solicitors (or any other person authorised in writing by the Bank) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by the Bank, to the Crown or the Crown's solicitors; and
- (b) the Crown, immediately on the earlier of:
  - (i) physical delivery of an original of this document, executed by the Crown, into the custody of the Bank or the Bank's solicitors; or
  - (ii) transmission by the Crown or its solicitors (or any other person authorised in writing by the Crown) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by the Crown, to the Bank or the Bank's solicitors.

#### 4.4 Governing law and jurisdiction

This document will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any legal action or proceedings arising out of or in connection with this document.



# Signing page

**EXECUTED** as a deed

[Each bank to provide its own preferred signature block.]

**SIGNED** by **HER MAJESTY THE QUEEN IN RIGHT OF NEW ZEALAND** acting by and through [the Minister of Finance in the presence of]:

---

Signature of the Minister of Finance

---

Signature of witness

---

Name of witness

---

Occupation of witness

---

City/town of residence

# Schedule 1 – Restated Deed of Indemnity

## Statement of Guarantees Given Under the Public Finance Act 1989



Pursuant to section 65ZD(3) of the Public Finance Act 1989, the Secretary to the Treasury makes the following statement:

"I, Dr Caralee McLiesh, Secretary to the Treasury, on behalf of the Crown, under delegation from the Minister of Finance, dated 10 August 2020 under section 28 of the State Sector Act 1988, amended and restated the indemnities previously given to the following persons:

ANZ Bank New Zealand Ltd  
ASB Bank Limited  
Bank of New Zealand  
Heartland Bank Limited  
Kiwibank Limited  
Westpac New Zealand Limited  
Southland Building Society  
TSB Bank Limited  
Bank of China (New Zealand) Limited  
Bank of China Limited, Auckland Branch

Under Crown Deeds of Indemnity in relation to the Business Finance Guarantee Scheme (BGFS).

The Crown Deeds of Indemnity (Deeds) given to each participating bank is an integral part of the BGFS. The amended and restated Deeds implement changes to the form of that indemnity and are intended to remove certain barriers to banks' use of the BFGS. The amendments to the Deed that are intended to achieve this are:

- expanding the purpose
- extending the availability period
- extending the maximum borrower annual revenue
- extending the maximum amount and loan term
- permitting banks to refinance up to 20 percent of a borrower's total existing facility limits
- removing the restriction on using funds for capital investment
- clarifying that banks can claim under the BFGS even if personal guarantees were either not taken or not enforced
- relaxing the SLPPPs, and
- relaxing the watchlist criteria.

The changes to the BFGS reflected in the amended and restated Deeds remove certain barriers to banks' use of the BFGS. As a result, some of the amendments to the indemnities create, or are likely to create, a contingent liability of the Crown that exceeds \$10 million.



Dated at Wellington this 20th day of August 2020.  
Dr Caralee McLiesh, Secretary to the Treasury.