
Crown Deed of Nomination (Unit Trust)

Her Majesty the Queen in right of New Zealand

and

Kiwibank Investment Management Limited
(in its capacity as manager)

and

Trustees Executors Limited
(in its capacity as trustee)

of the
Kiwibank PIE Online Call Fund

Date: 3 April 2009

PARTIES

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

Kiwibank Investment Management Limited in its capacity as manager of the Fund and **Trustees Executors Limited** in its capacity as trustee of the Fund (together, the *Nominee*).

BACKGROUND

- A Given turmoil in world financial markets and the need to maintain public confidence in New Zealand's financial system and in order to maintain the confidence of general public depositors in New Zealand financial institutions it appears to the Minister of Finance that it is necessary and expedient in the public interest that the Crown guarantees certain amounts owing to certain persons.
- B To achieve this, the Crown intends to enter into Deeds of Guarantee, under which it will guarantee certain obligations of the Principal Debtor (under each Deed of Guarantee) to Creditors (under each Deed of Guarantee).
- C For the purposes of the Deeds of Guarantee, a Creditor includes any Person that has been designated by the Crown by deed as a Nominated Beneficiary.
- D Recognising that some members of the public obtain exposure to cash deposits through collective investment schemes that only invest in debt securities of the New Zealand government or institutions subject to a Deed of Guarantee, the Crown has agreed to designate the trustee of the Fund as a Nominated Beneficiary for the purposes of the Deeds of Guarantee so that those members of the public who do invest through such collective investment schemes obtain the benefit of the Crown's guarantee.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this Deed, unless the context requires otherwise:

Accrued But Unpaid Returns means accrued but unpaid returns, including in respect of each Class B Unit that was formerly a Class A Unit, those returns accrued but unpaid on the relevant Class A Unit before it was switched to a Class B Unit.

Announcement Date means 12 October 2008.

Capped Amount means, in respect of a Relevant Guarantee and in respect of each Relevant Person in respect of that Relevant Guarantee at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee, the lesser of:

- (a) the aggregate of the amounts calculated in accordance with the following formula in respect of each Class held by the Relevant Person:

The amount calculated in accordance with the formula set out in clause 3.1 in respect of each such Class and the Relevant Guarantee, multiplied by (X divided by Y), where:

X = the Subscription Amount of unsubordinated Fund Securities of that Class that are on issue and held by that Relevant Person plus Accrued But Unpaid Returns on those Fund Securities;

Y = the aggregate Subscription Amounts of unsubordinated Fund Securities of that Class that are on issue and held by all Relevant Persons in respect of that Relevant Guarantee plus the aggregate Accrued But Unpaid Returns on those Fund Securities, and

- (b) one million New Zealand dollars (\$1,000,000).

Conditions means, at any time:

- (a) the Trust Deed and the rules of the Fund at that time; and
(b) the terms and conditions of each Fund Security that is outstanding at that time.

Debt Security has the meaning in section 2 of the Securities Act 1978, but as if the phrase "deposited with, lent to or otherwise owing by any person" in that definition read "deposited with or lent to any person".

Deed of Guarantee means, from time to time, each document under which the Crown has guaranteed the obligations of a Principal Debtor to Creditors as part of the New Zealand government's programme, announced on the Announcement Date, to guarantee certain deposits in eligible financial institutions, and that meets the following conditions:

- (a) the document has been executed and delivered by the Crown and the Principal Debtor thereunder, and remains in full force and effect; and
- (b) the document includes Nominated Beneficiaries in the definition of Creditor therein.

Establishment Deed means the Establishment Deed for the Kiwibank PIE Online Call Fund between the manager and the trustee dated 26 May 2008.

Fund means the Kiwibank PIE Online Call Fund.

Fund Security means a unit issued or to be issued by or in respect of the Fund.

Guarantee Period means the period commencing at 12.01am on the Announcement Date and expiring at 12.01am on 12 October 2010.

Indebtedness means any obligation:

- (a) of a Principal Debtor to pay money (whether present or future) to the trustee of the Fund in respect of Debt Securities issued by that Principal Debtor, if that Principal Debtor is a Person incorporated or established in New Zealand; and
- (b) of a Principal Debtor to pay money (whether present or future) to the trustee of the Fund in respect of Debt Securities issued by that Principal Debtor from and in respect of its New Zealand Branch, if that Principal Debtor is a Person incorporated or established overseas,

but excluding (in each case) any obligations which in terms of priority of payment and otherwise on a winding up, dissolution or liquidation of the Principal Debtor would rank behind the unsecured unsubordinated obligations of the Principal Debtor.

New Zealand Branch, in respect of a Relevant Guarantee, has the meaning given to that term in the Relevant Guarantee.

Party means the Crown or the Nominee, and *Parties* means them collectively.

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

Registered Bank means a Person registered as a bank under the Reserve Bank Act.

Relevant Guarantee has the meaning given to that term in clause 3.1.

Relevant Person means, in respect of a Relevant Guarantee, a Person who would be a Creditor under that Relevant Guarantee if they had held a Debt Security issued by the Relevant Principal Debtor, provided that to the extent any such Person is acting as a bare trustee for one or more beneficiaries of a trust, each beneficiary who would be a Creditor under the Relevant Guarantee if they had held a Debt Security issued by the Relevant Principal Debtor shall be a *Relevant Person*, and that trustee shall not be a *Relevant Person*.

Relevant Principal Debtor has the meaning given to that term in clause 3.1.

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

Subscription Amount means, in relation to a Fund Security, the aggregate of:

- (a) the initial subscription amount for the Fund Security; and
- (b) any further amount or amounts paid by, or for the benefit of, the holder of the Fund Security in respect of the Fund Security in accordance with the Trust Deed,

minus any amount or amounts paid to or for the benefit of the holder of the Fund Security which constitutes a repayment of any of the amounts referred to in paragraphs (a) or (b) above in respect of the Fund Security, whether by way of redemption of the Fund Security, withdrawal or any other means.

Trust Deed means the Kiwibank PIE Unit Trust Deed between the manager and the trustee dated 26 May 2008.

- 1.2 **Definitions and Interpretation:** Unless the context otherwise requires, any term in this Deed which is defined in the Trust Deed or Establishment Deed and is not specifically defined in this Deed shall have the meaning given in the Trust Deed or Establishment Deed on the date of this Deed. Any change to the definition of any such term in the Trust Deed or Establishment Deed subsequent to the date of this Deed shall be disregarded for the purposes of clause 1.2 and this Deed.

1.3 **Construction**

In this Deed, unless the context requires otherwise:

- (a) *Headings:* headings are for convenience only, and do not affect interpretation;

- (b) *Sections, Clauses and Schedules*: a reference to a section or a clause or schedule is a reference to a section or clause in, or schedule to, this Deed;
- (c) *Singular and plural*: the singular includes the plural and the converse;
- (d) *Particular party or person*: a reference to a particular party or person includes that party's or person's executors, administrators, successors, substitutes and assigns;
- (e) *Deed or document*: a reference to a deed or a document is to the deed or document as amended, novated, supplemented or replaced from time to time;
- (f) *Legislation*: a reference to legislation or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a statutory regulation, rule, order or instrument made under or issued pursuant to it;
- (g) *Capitalised terms*: each capitalised term used in this Deed, but not defined in this Deed, has the meaning given to it in each Deed of Guarantee or the Relevant Guarantee, as the context requires; and
- (h) *Nominee*: for the avoidance of doubt, each reference:
 - (i) in clauses 4.1(a) and 4.3 to information relating to the Nominee shall include a reference to information relating to the Fund;
 - (ii) in clause 10.2(a) to the business or affairs of the Nominee shall include a reference to the business or affairs of the Fund; and
 - (iii) in clauses 4.2(b) and 4.2(c) to the Nominee shall include a reference to the Fund.

2 DESIGNATION

- 2.1 The Crown hereby designates the trustee of the Fund as a Nominated Beneficiary for the purposes of each Deed of Guarantee, on and subject to the terms and conditions of this Deed.

3 PAYMENTS

- 3.1 Any amount payable to the trustee of the Fund by the Crown under a Deed of Guarantee (the Relevant Guarantee) shall be payable in accordance with, and on the terms set out in, the Relevant Guarantee, except that the amount payable to the trustee of the Fund by the Crown under a Relevant Guarantee shall be, subject to clauses 3.2, 3.3 and 3.4, the aggregate of the amounts calculated in accordance with the following formula in respect of each Class in the Fund:

$P = I_{\text{D}}$ multiplied by (X divided by Y), where:

P = the amount payable by the Crown to the trustee of the Fund pursuant to the Relevant Guarantee;

I_{D} = the total Indebtedness to the trustee of the Fund of the Principal Debtor whose obligations are guaranteed under the Relevant Guarantee (the *Relevant Principal Debtor*) in respect of deposits attributable to the relevant Class at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee to the extent that such Indebtedness has not been subsequently paid to the trustee of the Fund;

X = the aggregate Subscription Amount of unsubordinated Fund Securities of the relevant Class that are on issue and that are held by or on behalf of Relevant Persons in respect of the Relevant Guarantee at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee, plus Accrued But Unpaid Returns on those Fund Securities;

Y = the aggregate Subscription Amounts of unsubordinated Fund Securities of the relevant Class that are on issue at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee, plus Accrued But Unpaid Returns on those Fund Securities.

- 3.2 In the event that the amount calculated to be payable by the Crown to the trustee of the Fund pursuant to a Relevant Guarantee in accordance with the formula set out in clause 3.1 exceeds the aggregate of the Capped Amounts for each Relevant Person at 5.00pm on the day the relevant Default Event occurs under the Relevant Guarantee, the amount payable by the Crown to the trustee of the Fund pursuant to that Relevant Guarantee shall be, subject to clause 3.3, the aggregate of those Capped Amounts.
- 3.3 In devising the formula set out in paragraph (a) of the definition of Capped Amount, the Crown has assumed that Relevant Persons will be entitled to receive amounts paid from the Fund in accordance with uniform rights applying to Relevant Persons generally. The Crown therefore reserves the right to alter the formula set out in paragraph (a) of the definition of Capped Amount in respect of each Relevant Person, depending on the structure and rules of the Fund, to ensure that the amount calculated by that formula correctly reflects that Relevant Person's rights to receive amounts paid from the Fund.
- 3.4 The Crown's obligation to make any payment in respect of a Relevant Guarantee is conditional on the Crown being satisfied that, under the Conditions or otherwise, no amount of that payment can be paid to (or otherwise made available for the benefit of) a Person who would not be a Relevant Person in respect of that Relevant Guarantee.

4 **REPORTING**

4.1 **Nominee to Supply Information to the Crown**

- (a) The Crown may at any time during the Guarantee Period require from the Nominee any information relating to the financial position or affairs, or the business, management or operation, of the Nominee.
- (b) During the Guarantee Period, the Nominee shall promptly deliver to the Secretary to the Treasury the following:
 - (i) a true, correct and up to date copy of any trust deed in respect of the Fund, any investment policy of the Fund and the most recent investment statement and registered prospectus (if any) from time to time in respect of Fund Securities;
 - (ii) any memorandum of amendments that is registered in respect of any trust deed or registered prospectus referred to in clause 4.1(b)(i) above, and any amendments in respect of any investment policy referred to in clause 4.1(b)(i) above.
- (c) At any time the trustee of the Fund delivers a Notice of Claim under a Deed of Guarantee, the Nominee shall also deliver to the Crown such evidence as the Crown reasonably considers appropriate in order to ascertain the extent of its liability to the trustee of the Fund, including in respect of the matters relevant under clause 3.4.

4.2 **Third Party Information**

The Nominee authorises the Crown to contact and request information from those third parties that the Crown requires, including (but not limited to):

- (a) The trustee of any Debt Security held by the Nominee;
- (b) The auditors of the Nominee;
- (c) The Nominee's bankers or any other providers of finance;
- (d) The Securities Commission;
- (e) The Registrar of Companies; and
- (f) The Reserve Bank of New Zealand,

and shall authorise all such requested disclosure and use its best endeavours to ensure that any such person provide requested information as soon as practicable.

4.3 **Sharing of Information**

The Nominee authorises the Crown to share information provided in accordance with clauses 4.1 and 4.2 with the Reserve Bank of New Zealand and authorises the Reserve Bank of New Zealand to share with the Crown any information relating to the Nominee that the Reserve Bank has collected in connection with its functions under the Reserve Bank Act.

4.4 **Failure to Comply with Information Request**

- (a) If the Nominee fails to comply with clause 4.1 or clause 4.2, or supplies information or data that is false or misleading in a material particular, the Crown may give public notice that the Nominee has failed to comply with the relevant provision and that the Nominee has 14 days to comply with it.
- (b) If the Nominee fails to comply within the 14 day period in clause 4.4(a) the Crown may give public notice that the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each Deed of Guarantee in 14 days.
- (c) Following the expiry of the second 14 day period the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each Deed of Guarantee.

5 **COMPLIANCE WITH PRUDENTIAL SUPERVISION OR OTHER MATTERS**

5.1 If the Nominee fails to comply with:

- (a) any prudential supervision direction, notice or requirement under any statute or regulation or otherwise; or
- (b) the Conditions applicable at any time,

then such failure shall be a breach of this Deed and the Crown may give public notice that the Nominee is in breach of this Deed.

5.2 If the breach is not remedied to the Crown's satisfaction within 14 days of the public notice the Crown may give public notice that the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each Deed of Guarantee in 14 days.

5.3 Following the expiry of the second 14 day period the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each Deed of Guarantee.

6 ACKNOWLEDGEMENT

- 6.1 The Parties acknowledge that the offering or entering into of this Deed does not in any respect restrict any regulatory or supervisory action by the Reserve Bank or other regulator, or any action the Crown may take, including but not limited to extending any Deed of Guarantee, not extending the term of any Deed of Guarantee or entering into any other Crown Deed of Nomination or other document of similar effect.

7 INITIAL AND ONGOING OBLIGATIONS

7.1 Warranty on signing of Deed

- (a) The Nominee warrants that, as of the date of the Nominee signing this Deed, the Fund's only investments are securities issued by the New Zealand government and/or Debt Securities issued by any Person that is a Principal Debtor and being Debt Securities that would constitute Indebtedness (as defined in a Deed of Guarantee).
- (b) The Nominee warrants on the date of the Nominee signing this Deed and on each other day during the Guarantee Period that the Conditions existing on that day provide or have the effect that no amount received by the trustee of the Fund from the Crown in respect of a Relevant Guarantee could be paid to (or otherwise made available for the benefit of) a Person who would not be a Relevant Person in respect of that Relevant Guarantee.

7.2 Business of the Fund

During the Guarantee Period the Nominee shall ensure that the Fund does not make any new investment in anything other than securities issued by the New Zealand government and/or Debt Securities issued by any Registered Bank that is a Principal Debtor at the time of that investment and being Debt Securities that would constitute Indebtedness (as defined in a Deed of Guarantee).

7.3 Non-compliance

- (a) If the Nominee fails to comply with clauses 7.1(a), 7.1(b) or 7.2, the Crown may give public notice that the Nominee has failed to comply with the relevant provision and that the Nominee has 14 days to remedy that non-compliance.
- (b) If the Nominee fails to remedy that non-compliance within the 14 day period in clause 7.3(a) the Crown may give public notice that the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each Deed of Guarantee in 14 days.

- (c) Following the expiry of the second 14 day period the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each Deed of Guarantee.

8 NO ASSIGNMENT

- 8.1 Neither Party may assign or transfer any of its rights under this Deed.

9 GOVERNING LAW AND JURISDICTION

9.1 Governing Law

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

9.2 New Zealand Courts

Each of the Parties irrevocably and unconditionally agrees that the Courts of New Zealand shall have non-exclusive jurisdiction to hear and determine each suit, action or proceeding (proceedings) and to settle disputes that may arise out of or in connection with this Deed and for these purposes irrevocably submits to the non-exclusive jurisdiction of those courts.

10 GENERAL

10.1 Entire Agreement

This Deed 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, except that any rights of the Crown and obligations of the Nominee arising as a result of any misrepresentation by or on behalf of the Nominee prior to execution of this Deed shall continue.

10.2 Withdrawal and amendment

- (a) If the Crown reasonably considers that the business or affairs of the Nominee are being, or are intended or likely to be, carried on in a manner which:

- (i) will or may extend the effective benefit of any Deed of Guarantee to Persons who are not intended to receive that benefit; or
- (ii) is or would be otherwise inconsistent with the intentions of the Crown in entering into this Deed,

in each case an "Inappropriate Activity", the Crown may withdraw the designation of the trustee of the Fund as a Nominated Beneficiary for the purposes of one or more Deeds of Guarantee by written notice to the Nominee.

- (b) The Crown may, without the consent of the Nominee, amend any provision of this Deed if the Crown is reasonably satisfied that the amendment will not be materially adverse to that group of investors in the Fund taken as a whole, who would be Creditors under each Deed of Guarantee if they held a Debt Security issued by each Principal Debtor.
- (c) Any notice given under clause 10.2(a) may be expressed to take effect immediately on delivery or at any time thereafter, and shall take effect accordingly.
- (d) On the taking effect of a notice given under clause 10.2(a), the trustee of the Fund shall cease to be a Nominated Beneficiary for the purposes of each relevant Deed of Guarantee.

10.3 **Public Notice**

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

10.4 **Currency amounts**

Any reference in this Deed to an amount shall, to the extent that that 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.

10.5 **Warranty**

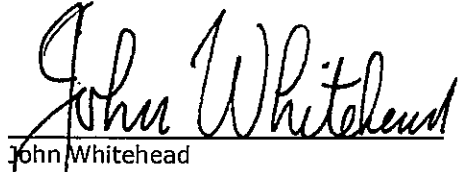
Each of the trustee of the Fund and the manager of the Fund represents and warrants to the Crown that it is duly authorised to execute and deliver this Deed, and that upon execution of this Deed by it and the Crown it will constitute the legal, valid and binding obligations of it, enforceable against it in accordance with its terms.


10.6 **Joint and several obligations**

Each of the trustee of the Fund and the manager of the Fund shall have, on a joint and several basis, all of the obligations of the Nominee under this Deed.

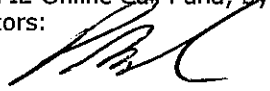
EXECUTED AND DELIVERED as a Deed by

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


John Whitehead

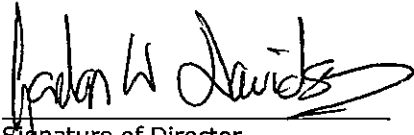
Witness signature: 
Witness occupation: Exec. Assistant
Witness address: Wellington

**KIWIBANK INVESTMENT MANAGEMENT
LIMITED**, in its capacity as manager of the
Kiwibank PIE Online Call Fund, by
two Directors:



Signature of Director
PAUL BROCK

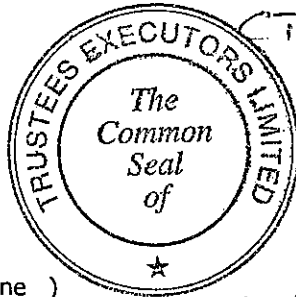
Name of Director



Signature of Director
GORDON W DAVIDSON

Name of Director

CTS 2009-030(1/3)



TRUSTEES EXECUTORS LIMITED, in its capacity as trustee of the Kiwibank PIE Online Call Fund, by two Authorised Signatories in the presence of:

Witness' signature: *Vera Nobilo*

Witness' occupation: **Vera Lella Nobilo**
Administrative Assistant

Witness' address: **Wellington**

[Handwritten Signature]

Signature
Yogesh Mody

Name

[Handwritten Signature]

Signature

Eva Quarrie

Name