

18 September 2009

CROWN RETAIL DEPOSIT GUARANTEE SCHEME - POLICY GUIDELINES FOR THE EXISTING SCHEME

These are the guidelines that cover the exercise of discretion under the delegated authority granted to the Secretary to the Treasury by the Minister of Finance regarding the management and administration of the Crown's existing Retail Deposit Guarantee Scheme (the **existing scheme**).

The existing scheme is the scheme that was announced on or about 12 October 2008 and which is due to expire on 12 October 2010.

Discretion

The decision to enter into a Crown Guarantee with any specific entity is at the sole discretion of the Crown.

Overarching Principles

The grant of a Crown Guarantee to an entity must be "necessary or expedient in the public interest."

The key "public interest" factors when considering the provision of a Crown Guarantee are:

- a the maintenance of public confidence in New Zealand's financial system; and
- b maintaining the confidence of general public depositors in New Zealand financial institutions.

Entities Eligible to Apply for the Crown Guarantee

The entities eligible to apply for the Crown Guarantee are:

- a Banks registered under the Reserve Bank of New Zealand Act 1989;
- b Building Societies as defined in the Building Societies Act 1965;
- c Credit Unions as defined in the Friendly Societies and Credit Unions Act 1982;
- d Other bank like entities (such as finance companies), existing on 12 October 2008, which issue Debt Securities;
- e Other bank like entities (such as finance companies), which issue Debt Securities established after 12 October 2008:
 - o that have assumed control over two or more Approved Institutions; and
 - o that have a BB rating or higher;

- f Other bank like entities (such as finance companies), established after 12 October 2008 which issue Debt Securities and that are Merged Entities, holding a BB rating or higher;
- g Any other bank like entities (such as finance companies), established after 12 October 2008 to which paragraphs (e) and (f) do not apply, that issue Debt Securities and that have a BBB- rating or higher;
- h Qualifying Collective Investment Schemes.

Explanation of Terms

Approved Institution means an entity that is identified as an “approved institution” for the existing scheme on the webpage

<http://www.treasury.govt.nz/economy/guarantee/retail/approved>

or any successor Treasury web page on which “approved institutions” for the existing scheme are listed.

control means the exercise by one person (“B”) over another person (“A”) of direct and effective control in relation to A, as a result of ownership or control of securities or ownership or control of other interests in or issued by A.

Controlling Institution is described in paragraph e. above.

Debt Securities mean any interest in or right to be paid money that is, or is to be, deposited with or lent to any person (whether or not the interest or right is secured by a charge over any property); and includes—

- a Debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
- b An interest or right that is declared by regulations to be a debt security for the purposes of the Securities Act 1978; and
- c A renewal or variation of the terms or conditions of any such interest or right or of a security referred to in paragraph (a) or paragraph (b) of this definition;—

but does not include—

- d An interest in a contributory mortgage where the interest is offered by a contributory mortgage broker; or
- e Any such interest or right or a security referred to in paragraph (a) or paragraph (c) of this definition that is declared by regulations not to be a debt security for the purposes of the Securities Act 1978.

A **Merged Entity** means:

- a An entity that:
 - o holds a credit rating from Standard and Poor's or Fitch of BB or above or holds a credit rating from Moody's of Ba2 or above; and
 - o is comprised by one or more (but not all) of the entities that are party to a merger, one or more of which is:
 - an Approved Institution under the existing scheme, that meets the Relevant Criteria (set out below); and
 - party to the Crown guarantee for the existing scheme;
- b An entity that:
 - o holds a credit rating from Standard and Poor's or Fitch of BB or above or holds a credit rating from Moody's of Ba2 or above; and
 - o at law is a successor to all the property, rights, powers and privileges, liabilities and obligations of the entities that are party to a merger, one or more of which is:
 - an Approved Institution under the existing scheme, that meets the Relevant Criteria (set out below); and
 - party to the Crown guarantee for the existing scheme;
- c Any other entity or association of entities that the Crown deems to be a merged entity in its sole and unfettered discretion.

A **merger** means:

- a In relation to an entity that is a company incorporated under the Companies Act 1993:
 - o an amalgamation under part 13 of the Companies Act 1993;
 - o an amalgamation or an arrangement approved by the court approved under part 15 of the Companies Act 1993;
- b In relation to a building society registered under the Building Societies Act 1965:
 - o A transfer of engagements under section 33 of the Building Societies Act 1965;
 - o A union of building societies under section 32 of the Building Societies Act 1965;
 - o In relation to a credit union registered as such under the Friendly Societies and Credit Unions Act 1982, an amalgamation or transfer of engagements under section 83 of that Act.

A Qualifying Collective Investment Scheme means:

- a an arrangement or scheme to which a participatory security (within the meaning of section 2(1) of the Securities Act 1978) relates;
- b a superannuation scheme (within the meaning of section 2A(1) of the Superannuation Schemes Act 1989); or
- c a unit trust (within the meaning of section 2(1) of the Unit Trusts Act 1960),

that invests exclusively in:

- d New Zealand government securities; or
- e Debt Securities issued by an entity that is covered by the Crown Deposit Guarantee Scheme.

Relevant Criteria

- a Any existing entity, that (in each case) already carries on business, when applying for the Crown Guarantee under the existing scheme should meet all of the following further eligibility criteria:
 - o have Debt Securities on issue;
 - o be in the business of borrowing and lending, or providing financial services, or both;
 - o carry out a substantial portion of their business in New Zealand; and
 - o do not primarily provide financial services, or lend to, related parties and/or group members.
- b Any Controlling Institution that is not carrying on business at the time of its application and any Merged Entity, applying for the Crown Guarantee under the existing scheme, should meet all of the following further eligibility criteria:
 - o be in the business of borrowing and lending, or providing financial services, or both;
 - o do not primarily provide financial services, or lend to, related parties and/or group members; and
- c A Controlling Institution applying for the Crown Guarantee under the existing scheme should also meet the following further eligibility criteria:
 - o the purpose and intent of that Controlling Institution's assumption of control over those Approved Institutions, is (among other things) to be contractually bound to absorb the businesses of those Approved Institutions; and
 - o the period in which that Controlling Institution is obliged to absorb the businesses of those Approved Institutions is within a time deemed reasonable by the Crown.

Other factors that may be considered in exercising discretion to offer or refuse to offer, the Crown Guarantee

- a The credit worthiness of the entity, including any rating agency reports on the Entity;
- b The related party exposure of the entity;
- c The quality of the information provided by the entity;
- d That the individuals with control of the entity are of good character;
- e That the individuals with control of the entity have the necessary business experience and acumen required for the prudent, proper, efficient and business-like operation of the entity;
- f That the business practices of the entity:
 - o reflect the standards expected of a prudent, proper and efficient business; and
 - o otherwise meet reasonable standards;
- g The track record of the entity with respect to such matters as whether it has:
 - o complied (or has not complied) with any requirement of the Reserve Bank of New Zealand Act 1989 including (without limitation) any prudential supervision, direction or notice of the Reserve Bank;
 - o complied (or has not complied) with:
 - the terms of Debt Securities issued by the entity;
 - the entity's trust deed (where relevant);
 - o met its payments as they fell due and maintained solvency; or
 - o ever been in moratorium or has been the subject of any insolvency administration;
- h That the affairs of the entity are otherwise are being conducted (and have been conducted) in a manner that is not prejudicial to the soundness of:
 - o its own operations; or
 - o New Zealand's financial system; and
- i Any other factors relevant to the:
 - o the maintenance of public confidence in New Zealand's financial system; and
 - o maintaining the confidence of general public depositors in New Zealand financial institutions.