



Deed of Transfer

in relation to a Deed Poll Guarantee given by New Zealand Post Limited in respect of Kiwibank Limited and its Subsidiaries

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New Zealand Post Limited (**NZ Post**)

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

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Deed of Transfer

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Details

Date 30 November 2022

Parties

Name	New Zealand Post Limited
Short form name	NZ Post
Notice details	Address: Level 1, 7 Waterloo Quay, Wellington Email: malcolm.shaw@nzpost.co.nz Attention: Malcolm Shaw, Chief Governance & Sustainability Officer
Name	The Sovereign in right of New Zealand acting by and through the Minister of Finance
Short form name	the Crown
Notice details	Address: 1 The Terrace, Wellington Central, Wellington Email: caralee.mcliesh@treasury.govt.nz / legalmailbox2@treasury.govt.nz Attention: Secretary to the Treasury / Treasury Solicitor

Background

- A NZ Post gave the Deed Poll Guarantee in respect of Kiwibank and its Subsidiaries at a time when NZ Post owned (directly or indirectly) 100 per cent. of the ordinary shares in Kiwibank.
- B In October 2016, as part of a transaction by which NZ Post sold 47 per cent. of its (indirect) shareholding in Kiwibank, NZ Post gave notice to terminate the Deed Poll Guarantee, with effect from the Termination Date.
- C In accordance with the terms of the Deed Poll Guarantee, NZ Post retains liability for Obligations that were owed to a Creditor at the Termination Date.
- D The Crown (or its nominee) wishes to acquire NZ Post's KGHL shares. As a condition of the Crown's acquisition of NZ Post's KGHL shares, NZ Post requires the Crown to accept a transfer of NZ Post's obligations under the Deed Poll Guarantee.
- E Clause 8.1 of the Deed Poll Guarantee provides, amongst other things, that no consent of Creditors is required in respect of an assignment made in accordance with that clause.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document, capitalised terms used and not otherwise defined in this document have the meaning set out in the Deed Poll Guarantee, and:

Business Day means any day (other than a Saturday or a Sunday) on which registered banks are open for business in Wellington, New Zealand.

Completion has the meaning set out in the SPA.

Creditor means, at any time, a person to whom Transferred Obligations are owed.

Deed of Indemnity means the deed of indemnity between the Crown and NZ Post, dated on or about the date of this document, in respect of the Deed Poll Guarantee.

Deed Poll Guarantee means the Deed Poll Guarantee dated 22 November 2001 and amended on 16 November 2006 and 3 November 2010 and terminated by letter dated 31 October 2016, given by NZ Post as Guarantor in respect of Kiwibank and its Subsidiaries.

Fitch means Fitch Australia Pty Ltd, or any other member of the Fitch Ratings, Inc. or Fitch Ratings Ltd groups.

KGHL means Kiwi Group Holdings Limited.

KGHL Shares means:

- (a) 482,913,423 fully paid ordinary shares of KGHL plus all shares issued to NZ Post pursuant to any taxable bonus issue undertaken by KGHL prior to Completion; and
- (b) 130,910,000 redeemable preference shares issued by KGHL to NZ Post on or about 10 April 2017 pursuant to a subscription agreement between KGHL and NZ Post dated on or about 7 April 2017.

Kiwibank means Kiwibank Limited.

Moody's means Moody's Investors Service Pty Ltd., or any other member of the Moody's Corporation, Moody's Investors Service, Inc. or Moody's Analytics, Inc. groups.

NZ GAAP means 'generally accepted accounting practice' as defined in the *Financial Reporting Act 2013*.

OIA means the *Official Information Act 1982*.

Rating Agency means, at the date of this document, each of Fitch and Moody's.

SPA means the agreement for sale and purchase of shares in KGHL dated on or about the date of this document between Accident Compensation Corporation, NZ Post, NZSF Tui Investments Limited, the Guardians of New Zealand Superannuation as Manager and Administrator of the New Zealand Superannuation Fund and the Sovereign in right of New Zealand acting by and through the Minister of Finance and the Minister for State-Owned Enterprises.

Subsidiary means each of Kiwibank and any subsidiary of Kiwibank within the meaning given to that term in section 5 of the *Companies Act 1993* and in addition a company will be deemed to be a subsidiary in terms of this definition if it is an in substance subsidiary of Kiwibank in accordance with NZ GAAP, and **Subsidiaries** will mean all of them.

Termination Date means 28 February 2017.

Transfer Date means the date on which Completion occurs.

Transferred Obligations means all obligations of NZ Post under the Deed Poll Guarantee as at the Transfer Date.

1.2 Interpretation

Unless otherwise stated or the context otherwise requires, this document will be construed as follows:

- (a) headings are inserted for reference only and will be ignored in construing this document;
- (b) references to clauses are references to clauses of this document;
- (c) words importing one gender include the other genders and words importing the singular include the plural and *vice versa*;
- (d) references to a person includes an individual, body corporate, an association of persons (whether corporate or not), trust, state or agency of state in each case, whether or not having separate legal personality;
- (e) references to a statute, regulation, order, by-law or other legislation are references to that statute, regulation, order, by-law or other legislation as amended, consolidated, re-enacted, substituted or extended from time to time. References to a statute include a reference to all regulations that may be passed or promulgated under that statute; and
- (f) references to a party in this document include the representatives, successors and permitted assigns of that party.

2. Assignment

2.1 Assignment

Subject to clause 2.2, in consideration for the transfer of KGH Shares to the Crown, and in accordance with clause 8 of the Deed Poll Guarantee:

- (a) NZ Post assigns and transfers absolutely to the Crown all of its right, title, interest and obligations under the Deed Poll Guarantee, including the Transferred Obligations, as at the Transfer Date;
- (b) the Crown accepts the assignment and transfer of NZ Post's right, title, interest and obligations under the Deed Poll Guarantee, including the Transferred Obligations, as at the Transfer Date; and
- (c) to the maximum extent permitted under applicable New Zealand law, the Deed Poll Guarantee will be binding on and enforceable against the Crown to the extent that it was (prior to the Transfer Date) binding and enforceable against NZ Post, as if the Crown had been the original party to the Deed Poll Guarantee.

2.2 Conditions to assignment and transfer

The parties agree that the assignment and transfer contemplated by clause 2.1 is conditional on:

- (a) execution and delivery by both parties of the Deed of Indemnity;
- (b) receipt by the parties of the prior written consent of each Subsidiary to the assignment and transfer contemplated by clause 2.1 (as required by clause 8.1 of the Deed Poll Guarantee);
- (c) receipt by the parties of a prior written confirmation from each Rating Agency that the assignment and transfer contemplated by clause 2.1 will not cause a rating downgrade of any Subsidiary (as required by clause 8.1 of the Deed Poll Guarantee); and
- (d) the occurrence of Completion.

For the purposes of paragraph (c) above, NZ Post confirms that the only Subsidiary with a rating is Kiwibank, and that the relevant Rating Agencies are Fitch and Moody's.

2.3 Documents

Following the Transfer Date and receipt of this document duly executed by the Crown, NZ Post will deliver to the Crown a copy of the notice, duly executed by NZ Post, to be provided under clause 2.4.

2.4 Notice to Subsidiaries

On the Transfer Date, NZ Post will give notice to each Subsidiary, advising that NZ Post has assigned and transferred its interests and obligations under the Deed Poll Guarantee to the Crown, in the form attached as Schedule 1.

2.5 Public notice

- (a) The parties acknowledge NZ Post's intention, within five Business Days of the Transfer Date, to give public notice of the assignment and transfer of the Transferred Obligations to the Crown, by publication of a notice in all major New Zealand metropolitan newspapers and on the website of Kiwibank.
- (b) NZ Post agrees that it will agree the form and content of that notice with the Crown prior to its publication.

2.6 Publication of this document

The parties agree to use reasonable endeavours to procure Kiwibank to publish, and maintain a publicly available copy of this document, on its website.

3. Assumption of obligations

3.1 Assigned obligations

The Crown will, on and from the Transfer Date assume, perform and observe all the obligations of NZ Post under the Deed Poll Guarantee (as if it were NZ Post).

3.2 Creditors to have benefit of assignment

The Crown agrees and acknowledges that, for the purposes of section 12 of the *Contract and Commercial Law Act 2017*, this document confers a benefit on each Creditor to whom Transferred Obligations are owed under the Deed Poll Guarantee. The Crown's obligations as the assignee and transferee in respect of the Deed Poll Guarantee and the Transferred Obligations are intended to be enforceable by each such Creditor.

4. Further assurances

Each party to this document agrees to execute such further documents and to do such further things within that party's power as may be reasonably necessary from time to time to carry out the intent of this document. Each party will bear its own costs incurred in respect of such attendances.

5. Waiver of immunity

The Crown acknowledges that a claim of sovereign immunity is not available to the Crown in respect of any legal proceeding arising out of or in connection with this document, or in respect of the enforcement of this document.

6. Official Information Act

- (a) The Crown and NZ Post each acknowledge that the other is subject to the OIA.
- (b) The Crown and NZ Post each agree that if they receive a request under the OIA in relation to this document, information provided under this document, or any related matter, they will inform and consider the views of the other party prior to responding to that request, provided that this will not require either party to delay its response to any such OIA request, and that the decision of each party in determining how to respond to any such OIA request is final.

7. Amendments

This document may be amended at any time as agreed in writing by both parties.

8. Assignment

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

9. Notices and communications

9.1 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 prepaid post or email 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).

9.2 Effective on receipt

A Notice given in accordance with this clause 9 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 prepaid post, on the fifth Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside New Zealand); or
- (c) if sent by e-mail, on the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the e-mail was sent to the e-mail address of the addressee notified for the purposes of this clause 9),

but if the delivery, receipt or transmission is not on a Business Day or is after 5:00 p.m. (addressee's time) on a Business Day, the Notice is taken to be received at 9:00 a.m. (addressee's time) on the next Business Day.

10. General

10.1 Costs

Unless expressly agreed otherwise in writing:

- (a) each party will bear its own costs incurred in connection with the preparation, negotiation and entry into this document; and
- (b) a person who has an obligation to do anything under this document will perform that obligation at its own cost.

10.2 Entire agreement

This document, together with the Deed of Indemnity, reflect the entire understanding of the parties relating to the matters dealt with in them.

10.3 Partial invalidity

If any part or 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.

10.4 Severability

If any term or provision of this document is held to be illegal, invalid or unenforceable, it will be severed from this document without affecting the legality, validity or enforceability of the remaining provisions.

10.5 Waiver

- (a) Any waiver by a party of any of its rights or remedies under this document will be effective only if it is in writing and signed by that party.
- (b) If the waiver relates to a breach of any provision of this document, it will not (unless stated otherwise) operate as a waiver of any other breach of that provision or any other provision of this document.
- (c) No failure or delay on the part of either party in the exercise of any rights or remedy under this document will operate as a waiver.
- (d) No waiver of any breach, or failure to enforce any provision, of this document at any time by a party will in any way affect, limit or waive that party's right to subsequently require strict compliance with this document.

10.6 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.

10.7 Electronic signatures permitted

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

10.8 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 each party (the **Delivering Party**) immediately on the earlier of:

- (a) physical delivery of an original of this document, executed by the Delivering Party, into the custody of the other party or the other party's solicitors; or
- (b) transmission by the Delivering Party or its solicitors (or any other person authorised in writing by the Delivering Party) 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 Delivering Party, to the other party or the other party's solicitors.

10.9 Governing law and jurisdiction

- (a) This document is governed by, and will be construed in accordance with, the laws of New Zealand.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the New Zealand courts for the purpose of hearing and determining any dispute under, or in connection with, this document.

Schedule 1 – Notice of Assignment and Transfer

Date: 2022

TO: Kiwibank Limited [and any other Subsidiaries]

We give notice that we have assigned and transferred absolutely to **The Sovereign in right of New Zealand acting by and through the Minister of Finance** (the **Crown**) all of our right, title, interest and obligations under the Deed Poll Guarantee dated 22 November 2001 and amended on 16 November 2006 and 3 November 2010 and terminated by letter dated 31 October 2016, given by NZ Post as Guarantor in respect of Kiwibank and its Subsidiaries.

1. The Crown's contact details are:

Secretary to the Treasury / Treasury Solicitor

Address: 1 The Terrace, Wellington, New Zealand

Email: caralee.mcliesh@treasury.govt.nz / legalmailbox2@treasury.govt.nz

2. The transfer is effective on and from [date].

Yours faithfully

Signing page

EXECUTED AND DELIVERED as a deed

SIGNED by **NEW ZEALAND POST LIMITED**

by:



Signature of director

Carol Campbell

Name of director



Signature of director

John Sproat

Name of director

SIGNED by **THE SOVEREIGN IN RIGHT OF
NEW ZEALAND** acting by and through the
Minister of Finance in the presence of:

Signature of Minister of Finance

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Signing page

EXECUTED AND DELIVERED as a deed

SIGNED by **NEW ZEALAND POST LIMITED**

by:

Signature of director

Signature of director

Name of director

Name of director

SIGNED by **THE SOVEREIGN IN RIGHT OF
NEW ZEALAND** acting by and through the
Minister of Finance in the presence of:



Signature of witness

Jordan Ward

Name of witness

Treasury Private Secretary

Occupation of witness

Wellington

City/town of residence



Signature of Minister of Finance