



Australian Government

DEED

INTERIM DEED OF GUARANTEE IN RESPECT OF SPECIFIED WHOLESALE
BORROWING AND DEPOSITS OF AUTHORISED DEPOSIT-TAKING
INSTITUTIONS

This Deed will expire on 27 November 2008

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DEED OF GUARANTEE

Date

This Deed is dated the 2nd day of November 2008.

Parties

This Deed is made by:

1. **THE COMMONWEALTH OF AUSTRALIA** (the **Commonwealth** or **Guarantor**)

IN FAVOUR OF

2. **THE BENEFICIARIES** being persons to whom the Guaranteed Liabilities are from time to time owed (the **Beneficiaries**).

Context

This Deed is made in the following context:

- A. The Commonwealth wishes to maintain public confidence in Eligible Institutions and, to the extent they operate within Australia, Foreign ADIs and maintain the stability of the Australian wholesale debt markets.
- B. The Commonwealth has given effect to a guarantee of deposits with Eligible Institutions under the Financial Claims Scheme established under the *Banking Act 1959*.
- C. In accordance with this Deed, the Commonwealth guarantees payments by:
 - a. Eligible Institutions due on or before 27 November 2008 under certain debt instruments; and
 - b. Foreign ADIs due on or before 27 November 2008 under certain debt instruments and deposits.
- D. It is intended that a separate facility for the guarantee of certain liabilities will be available to Eligible Institutions and Foreign ADIs after 27 November 2008.

NOW THIS DEED OF GUARANTEE WITNESSES as follows:

1. Interpretation

1.1. Definitions

1.1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

Australian Resident	means a person treated as an Australian resident for the purposes of Australian income taxation law.
Beneficiary	means a person to whom a Guaranteed Eligible Institution Liability or Guaranteed Foreign ADI Liability is from time to time is owed.
Business Day	means a day (excluding Saturday and Sunday) on which banks are generally open in the Australian Capital Territory for the transaction of banking business.
Due Date	has the meaning given to it in Clause 2.1.1.b or 2.1.2.b.
Eligible Institution	means an authorised deposit-taking institution within the meaning of the <i>Banking Act 1959</i> , other than a Foreign ADI.
external administration	has the same meaning as in section 5 of the <i>Payment Systems and Netting Act 1998</i> .
Foreign ADI	has the same meaning as in subsection 5(1) of the <i>Banking Act 1959</i> .
Guaranteed Eligible Institution Liability	means a liability of an Eligible Institution which: a. is a senior unsecured debt; b. has arisen from a payment obligation in a debenture, certificate of deposit, bank bill, commercial paper, bond or note issued, drawn or made by the Eligible Institution that is not complex and has a term of 60 months or less; c. has not become due and payable on account of the operation of any cross-default clause; and d. has not become due and payable on account of the operation of a clause entitling the Beneficiary to require prepayment before the scheduled maturity of the payment obligation, other than as a result of the Eligible Institution being placed under external administration.

<p>Guaranteed Foreign ADI Liability</p>	<p>means either:</p> <p>a. a liability of a Foreign ADI which:</p> <ul style="list-style-type: none"> (i) is a senior unsecured debt; (ii) has arisen from a payment obligation: <ul style="list-style-type: none"> (A) in a debenture, certificate of deposit, bank bill, commercial paper, bond or note issued, drawn or made in Australia by the Foreign ADI; (B) which is held by an Australian Resident; (C) that is not complex; and (D) has a term of 60 months or less; (iii) has not become due and payable on account of the operation of any cross-default clause; and (iv) has not become due and payable on account of the operation of a clause entitling the Beneficiary to require prepayment before the scheduled maturity of the payment obligation, other than as a result of the Foreign ADI being placed under external administration; <p>OR</p> <p>b. a liability of a Foreign ADI to an Australian Resident in respect of a deposit in Australia;</p> <p>but does not include a liability that satisfies a. or b. of this definition as a result of a transfer from a non-Australian Resident to an Australian Resident on or after 24 October 2008.</p>
<p>Guaranteed Liability</p>	<p>means a liability that is guaranteed under either Clause 2.1.1 or 2.1.2.</p>

1.2. Interpretation

- 1.2.1. Any reference in this Guarantee to a Clause or the Schedule is, unless otherwise stated, to a clause hereof or the schedule hereto.
- 1.2.2. Any reference in this Guarantee to "**this Guarantee**" shall be deemed to be a reference to this Guarantee as a whole and not limited to the particular clause, schedule or provision in which the relevant reference appears and to this Guarantee as varied, amended, supplemented or substituted from time to time.
- 1.2.3. In this Guarantee, unless the contrary intention appears:
 - a. The headings in this Guarantee are inserted for convenience only and shall be of no legal effect;

- b. Words denoting the singular number only shall include the plural and vice versa;
- c. A reference to a person includes a body politic, body corporate or partnership;
- d. The word "includes" in any form is not a word of limitation;
- e. A reference to a person includes that person's administrators, successors and permitted assigns; and
- f. Any reference to time of day shall be a reference to that time of day in the Australian Capital Territory.

2. Guarantee

2.1.1. The Guarantor:

- a. guarantees to the Beneficiaries the payment by each Eligible Institution of the Guaranteed Eligible Institution Liabilities; and
- b. undertakes in favour of the Beneficiaries that, whenever the Eligible Institution does not pay any Guaranteed Liability on the date on which it is, or becomes, due and payable (the "**Due Date**"), the Guarantor shall, upon a claim by a Beneficiary made in accordance with Clause 3, and following the expiry of any applicable grace period, pay that Guaranteed Eligible Institution Liability in accordance with Clause 3.

2.1.2. The Guarantor:

- a. guarantees to the Beneficiaries the payment by each Foreign ADI of the Guaranteed Foreign ADI Liabilities; and
- b. undertakes in favour of the Beneficiaries that, whenever the Foreign ADI does not pay any Guaranteed Foreign ADI Liability on the date on which it is, or becomes, due and payable (the "**Due Date**"), the Guarantor shall, upon a claim by a Beneficiary made in accordance with Clause 3, and following the expiry of any applicable grace period, pay that Guaranteed Foreign ADI Liability in accordance with Clause 3.

3. Payment of Claims

3.1.1. A claim by a Beneficiary for payment under this Guarantee must be in writing, in the form of Schedule 1 and delivered to the Guarantor in accordance with Clause 7.1.1.a.

3.1.2. A claim by a Beneficiary for payment under this Guarantee which is not made in the form of Schedule 1 is not a valid claim and shall be treated as not having been made.

- 3.1.3. The Guarantor shall pay to the Beneficiary the amount specified in a valid claim as soon as is practicable.
- 3.1.4. All payments made under this Deed in respect of a Guaranteed Liability shall be made in the currency in which the Guaranteed Liability is denominated.
- 3.1.5. A valid claim is one that establishes that the amount claimed is:
- a. due to the Beneficiary;
 - b. unpaid despite the Beneficiary having made a claim on the Eligible Institution or Foreign ADI; and
 - c. in respect of a Guaranteed Liability with a Due Date on or before 27 November 2008.
- 3.1.6. In consideration of making any payment to a Beneficiary, the Guarantor may require the Beneficiary to:
- a. procure in favour of the Guarantor such additional release, discharge, acknowledgement or similar documents in such form as the Guarantor may reasonably require;
 - b. assign the liability which is the subject of the claim to the Guarantor.

4. Benefit of Guarantee

- 4.1.1. This Guarantee shall inure to the benefit of each Beneficiary and its administrators, successors and permitted assigns. Such administrators, successors and permitted assigns shall be entitled to enforce this Guarantee against the Guarantor.

5. Website

- 5.1.1. The Guarantor may publish information relevant to this Deed on the website at www.treasury.gov.au.

6. Amendment and termination

- 6.1.1. Subject to Clause 6.1.2 below, this Guarantee shall terminate at midnight on 27 November 2008 but without prejudice to the rights of any Beneficiary in respect of a Guaranteed Liability with a Due Date on or before 27 November 2008 who has lodged a valid claim prior to 5.00pm on 4 December 2008.
- 6.1.2. The Guarantor may extend the date of termination of this Guarantee at any time prior to termination at its discretion by publishing such an extension on the website referred to in Clause 5.

- 6.1.3. The Guarantor may amend the terms of this Guarantee at any time at its discretion by publishing such amendment on the website referred to in Clause 5, provided that (except insofar as such amendment is required by law) such amendment is not prejudicial to the interests of the Beneficiaries in respect of any subsisting Guaranteed Liability.

7. Notices

- 7.1.1. Any notice or other communication under this Guarantee shall be in writing and dealt with as follows:

- a. If to be given to the Guarantor then signed by the person giving the notice and:
- i. Delivered by hand;
 - ii. Sent by pre-paid post; or
 - iii. Transmitted electronically by facsimile transmission:

To : Australian Government Solicitor
50 Blackall Street
BARTON ACT 2600

Attention: Director, Canberra.

Facsimile +61 2 6253 7333

- b. If to be given by the Guarantor to an Eligible Institution then:
- i. Published on the website referred to in Clause 5;
 - ii. Delivered by hand;
 - iii. Sent by pre-paid post; or
 - iv. Transmitted electronically by facsimile transmission:

at the discretion of the Guarantor as the case may be.

- 7.1.2. In the case of delivery under 7.1.1.b.ii, 7.1.1.b.iii or 7.1.1.b.iv the notice will be effective if sent to the registered office, or the publicly listed or otherwise notified facsimile number or email address of the Eligible Institution to be notified.

- 7.1.3. Any notice or other communication under this Guarantee to be made by the Guarantor to a Beneficiary shall be made in such manner as the Guarantor, in its absolute discretion, decides is the most appropriate manner in the circumstances at the time. For the avoidance of doubt the manner of notification or communication may be by publication on the website referred to in Clause 5.

- 7.1.4. A notice or communication is deemed to be effected:

- a. *If published on the website referred to in Clause 5* - upon publication or, if publication takes place after 5.00 pm, or on a day that is not a Business Day, then on the next Business Day;
- b. *if delivered by hand* - upon delivery to the relevant address;
- c. *if sent by post* - upon delivery to the relevant address; or
- d. *if transmitted electronically* - upon actual receipt by the addressee.

7.1.5. A notice received after 5.00 pm, or on a day that is not a Business Day, is deemed to be effected on the next Business Day.

8. Governing law

8.1.1. This Guarantee is governed by, and shall be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.

Executed as a Deed.

Signatures

SIGNED for and on behalf of the
Commonwealth of Australia by:

)
)
)



The Honourable Wayne Swan MP,
Treasurer

Signature

In the presence of:

Andrew Thomas



Name of Witness

Signature of witness

SCHEDULE 1 FORM OF CLAIM

To: The Commonwealth of Australia

c/o Australian Government Solicitor
50 Blackall Street
BARTON ACT 2600

Attention Director, Canberra

Facsimile: +61 2 62537333

A. Detail of Guaranteed Liability

A.1.1. We, [INSERT FULL LEGAL NAME OF BENEFICIARY and ABN/ACN if applicable], are owed the following Guaranteed Liability by [INSERT THE NAME OF THE ELIGIBLE INSTITUTION OR FOREIGN ADI WHICH IS THE PRINCIPAL DEBTOR] (**Debtor**):

- a. [INSERT DETAILS: including details of the Liability and whether the Liability claimed is a Guaranteed Eligible Institution Liability or a Guaranteed Foreign ADI Liability.]

B. Claim

B.1.1. We refer to the Deed of Guarantee applicable to the above-mentioned Guaranteed Liability dated [INSERT Date of Deed of Guarantee] and executed on behalf of the Commonwealth of Australia. Words and expressions defined in the Deed of Guarantee have the same meanings where used in this notice.

B.1.2. We claim payment, in accordance with the Guarantee, of the sum of [.....] being due and payable by the Debtor, but unpaid, to us under or in respect of the Guaranteed Liability (the "**Claimed Sum**").

B.1.3. [The due date, after the expiry of the applicable grace period (if any), for the payment of interest to us under or in respect of the Guaranteed Liability was [.....] and such payment has not been made to us.]

B.1.4. [The redemption date of the Guaranteed Liability was [] and the amount due and payable to us in respect of the Guaranteed Liability on such date has not been paid to us.]

B.1.5. We certify that we have validly claimed payment of the Claimed Sum from the Debtor and that the Debtor has failed to pay the Claimed Sum to us in accordance with our valid claim and we attach documentary evidence in support of this certification.

B.1.6. [Where the liability claimed is a Guaranteed Foreign ADI Liability] We attach documentary evidence that we are Australian Residents within the meaning of the Guarantee and that the liability was issued to us in Australia.

C. Consent

C.1.1. We consent to the Guarantor sharing the information provided in and concerning this claim with the Debtor and other Commonwealth agencies, including but not limited to the Australian Prudential Regulation Authority and the Reserve Bank of Australia, for the purposes of assessing the claim or for general administration of the Guarantee.

D. Release

D.1.1. Upon payment of the Guaranteed Liability to us by the Guarantor in accordance with the Guarantee, we hereby release the Guarantor from further liability to us arising from or in connection with the Guaranteed Liability and this claim.

Signed by:

Position:
