

1. Information Document

- 1.1 This is an information document for the purposes of section 65 of the KiwiSaver Amendment Act 2011 (“**Amendment Act**”). It identifies material amendments that have been made to the Trust Deed dated 10 February 2008 (“**Trust Deed**”) that governs the Kiwibank KiwiSaver Scheme (the “**Scheme**”). The Trust Deed has been entered into by Kiwibank Investment Management Limited as the “**Manager**” and Trustees Executors Limited as the “**Trustee**”.
- 1.2 The amendments identified in section 2 below have been made to ensure that the Trust Deed complies with the changes to the law that came into force under the Amendment Act, as well as to reflect other changes in the law and administration of the Scheme.
- 1.3 Together with the Trustee, we have also taken the opportunity to make certain other amendments to the Trust Deed. See section 3 below for more detail about these amendments.

2. Amendments to the Trust Deed

- 2.1 The material amendments that have been made to the Trust Deed under the Amendment Act are set out in the Schedule to this document. In essence, these reflect the following changes:
- (a) The Amendment Act provides for the issuer of membership interests in KiwiSaver schemes to be the manager rather than the trustee. We have therefore amended the Trust Deed to reflect that change. This included amendments:
- (i) reflecting that we are now responsible for (among other things) offering interests in the Scheme for subscription, issuing interests in the Scheme, managing Scheme investments and property and administering the Scheme;
 - (ii) to our general powers, including (for example) that we have the power to administer the Scheme and each Fund, in accordance with “Relevant Requirements” (including the KiwiSaver Act and all relevant laws) rather than the Trustee delegating management of the Scheme and the Fund to us;
 - (iii) reflecting that actions that we previously directed or procured the Trustee to take are now taken by us directly; and
 - (iv) recognising that, as the exercise of our general powers are no longer delegated to us by the Trustee, provisions allowing the Trustee to revoke that delegation, step in and take the actions itself and/or direct us in exercising those powers are no longer appropriate.
- (b) Conversely, the amendments reflect that the Trustee’s role is now as supervisor of the trust governing the Scheme, rather than administrator. The Trust Deed clarifies what the Trustee’s responsibilities and duties are, including to act in the best interests of the members at all times and exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a trustee would exercise in acting as the trustee of a KiwiSaver Scheme. The amendments reflect that the Trustee may apply to the High Court for orders in certain circumstances, such as if it is satisfied that there is a significant risk that the interests of the members of the Scheme will be prejudiced. The Trustee may also refuse a direction from the Manager in respect of borrowing money and/or making investments if this would breach Relevant Requirements or would be manifestly not in the best interests of the members.

- (c) The Trust Deed specifies eligibility requirements, both for us as the Manager and for the Trustee. For us, these include (for example) that we are a company with at least one New Zealand resident director. The Trustee must have a statutory licence. The Trust Deed also specifies when we can be removed as the Manager of the Scheme, including by order of the High Court on an application by the Trustee. The Trustee is not permitted to retire unless it has performed all its functions and duties or the High Court gives its approval.
- (d) Money received by us as the Manager in respect of contributions must be held in a separate account. Investments made with assets of a Fund may be held by a person nominated by the Trustee on the Trustee’s behalf.
- (e) The Trust Deed expressly provides that we are required to act in the best interests of the members at all times, that we have the same liability for our acts and omissions as a trustee, and that we must exercise the care, skill and diligence required of a trustee when exercising our power to make investments. Limitation of liability provisions do not exempt or indemnify us, or the Trustee, for failing to meet the specified standards of care.
- (f) These amendments take effect on 21 September 2012.

- 2.2 There are no material variations in the terms or conditions of your membership interest that result from these amendments.

3. Other changes

- 3.1 We have also taken the opportunity to make certain other changes to the Trust Deed. In accordance with the requirements of the KiwiSaver Act and the Trust Deed, these changes do not have the effect of:
- (a) reducing, postponing or otherwise adversely affecting the benefits that flow from membership of the Scheme;
 - (b) removing any right of the members or other beneficiaries to participate in the management of the scheme;
 - (c) increasing the contributions, fees, or charges payable by any member; or
 - (d) providing for any assets of the scheme to be returned to any employer to any greater extent than already provided for in the trust deed,

and therefore did not require us to obtain your consent.

- 3.2 These changes are listed in paragraph I of the section of the Trust Deed headed “Background”. Information as to how you can obtain a copy of the Trust Deed is set out in section 5 below.

4. Change to Trustee

- 4.1 In addition to the above amendments, the former trustee of the Scheme, Trustees Executors Superannuation Limited, has retired and Trustees Executors Limited has been appointed in its place.

5. Other information

- 5.1 You can obtain a copy of this information document, free of charge, on our website www.kiwibank.co.nz, or by contacting us at:

Kiwibank Investment Management Limited
 Level 1, New Zealand Post House
 7 Waterloo Quay
 Wellington 6011

Postal address:
Kiwibank Investment Management Limited
Private Bag 39888
Wellington Mail Centre
Lower Hutt 5045

Telephone: 0800 11 33 55
From overseas: +64 4 473 11 33

Fax: (04) 462 7996
Email: service@kiwibank.co.nz

- 5.2 You can also obtain a copy of the Trust Deed free of charge from us by contacting us at our contact details set out above. The Trust Deed will be forwarded within five business days from the date we receive your request. It is also available for inspection, without fee, during normal business hours at our offices, and is filed (in accordance with the statutory requirements as to timeframes) on the public register at the Companies Office. A copy of the Trust Deed may be viewed on the Companies Office website at www.business.govt.nz/companies under "Other Registers Search", "Superannuation Scheme" and then "Kiwibank KiwiSaver Scheme". Copies can also be obtained (on payment of the relevant fee) by telephoning the Companies Office Contact Centre on 0508 266 726.

Schedule – Material Amendments to the Trust Deed

1. Under the Amendment Act, the Manager of the Scheme is to be the issuer of membership interests in the Scheme for securities legislation purposes, rather than the Trustee. We have therefore amended the Trust Deed to refer to the Manager rather than the Trustee in respect of things that must be done by the issuer (and made all necessary consequential amendments in respect of this change).
2. Consequently, the Trust Deed has been amended to reflect the new responsibilities of the Manager (as the issuer). It now provides that the Manager is responsible for (among other things) offering interests in the Scheme for subscription, issuing interests in the Scheme, managing Scheme investments and property and administering the Scheme. The Manager's general powers have also been amended to provide for the following:
 - (a) The Manager has the power to administer the Scheme and each Fund (rather than the Trustee delegating management of the Scheme and the Fund to the Manager). The Manager agrees to carry out its duties and perform its obligations contained in the "Relevant Requirements". These are defined as including the KiwiSaver Act 2006, any other relevant law and any legally binding ruling, notice or approval given by the Financial Markets Authority, Commissioner of Inland Revenue or Registrar of Financial Service Providers.
 - (b) The Manager retains the power and duty to liaise with members of the Scheme, but must ensure that the Trustee receives a copy of any communications to investors that the Manager considers material.
 - (c) Previously, the Manager was not permitted to register or distribute a prospectus or advertisement under the Securities Act 1978 unless it had been approved by the Trustee as issuer. As amended, the Manager is instead required to provide to the Trustee, with reasonable notice, drafts of all offer documents required to be prepared under the Securities Act 1978 in respect of the Scheme and provide copies of all advertisements issued in relation to the Scheme.
 - (d) The Manager is now required to prepare and provide the reports and returns in respect of the Scheme required by the Relevant Requirements and (because the Scheme is a Portfolio Investment Entity ("PIE"), the rules for PIEs under the Income Tax Act. This includes providing draft financial statements to the Trustee to review and provide comments to the Manager. The Manager must prepare and provide these reports and returns in consultation with the Trustee.
3. These general powers are now the Manager's, rather than powers of the Trustee that have been delegated to the Manager. This means that provisions allowing the Trustee to:
 - (a) exercise those powers instead of the Manager;
 - (b) direct the Manager in its exercise of those powers; or
 - (c) terminate the Manager's authority to exercise any of those powers,if the Trustee reasonably believed it was necessary to prevent the Trustee being in breach of any law or to ensure that the Scheme was managed and administered in accordance with the Relevant Requirements, are no longer appropriate. Therefore, these provisions have been removed.
4. Similarly, before the amendments, the Trust Deed provided that the Trustee would take certain actions at the direction of the Manager, or that the Manager would "procure" that the Trustee do things. This is no longer needed because, as noted above, the Manager is now the issuer and therefore takes these actions, and does these things, itself. For example, this applies to:
 - (a) the establishment of separate investment funds within the scheme ("**Fund**") and the winding up of any Fund. The Manager must still consult with the Trustee in respect of the winding up of a Fund; and
 - (b) the issue of units in the relevant Fund(s) on the payment or transfer of any amount credited to a member's account.
5. The Trust Deed now provides that the Trustee has responsibility for "supervising" the trust governing the Scheme in accordance with the Trust Deed and Relevant Requirements, rather than "administering" the trust. It also specifies that the Trustee's responsibilities are to supervise the Manager's performance of its functions as set out in the KiwiSaver Act and any other functions that the Manager performs in relation to the Scheme under the Trust Deed or the Relevant Requirements. The Trust Deed clarifies that these responsibilities cannot be delegated by the Trustee. It also provides that the Trustee must:
 - (a) act in the best interests of the members at all times; and
 - (b) exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a trustee would exercise in acting as the trustee of a KiwiSaver Scheme.
6. The Trust Deed now recognises that, under the KiwiSaver Act, the Trustee may apply to the High Court for an order (for example, amending the provisions of the Trust Deed or removing the Manager and appointing a new manager of the Scheme) if it is satisfied that:
 - (a) there is a significant risk that the interests of members will be materially prejudiced; or
 - (b) the provisions of the Trust Deed are no longer adequate to give proper protection to members.
7. Under the Trust Deed, the Manager has the power to instruct the Trustee to borrow or raise money from any person, and grant any security interest, up to the limit specified in the establishment deed for the relevant Fund. The Trustee is not required to do so if it reasonably believes that it would cause it to breach the Relevant Requirements or the Trust Deed or impose a personal liability on the Trustee or, as amended, the Trustee reasonably believes that it would be manifestly not in the best interests of members. Similarly, the Trustee may refuse to act on instructions of the Manager in respect of investments, acquisitions and disposals if (among other things) the Trustee believes that it would be contrary to the Relevant Requirements or not manifestly in the best interests of members. The Trustee must give written notice of any such opinion to the Financial Markets Authority as well as the Manager.

8. The Trust Deed now provides that if an employer elects to become a participating employer for the Scheme, the Manager and the employer must enter into a Participation Agreement and that the Trustee must approve the general provisions of that agreement. Before the amendments, the Trustee was required to be a party to the agreement.
 - (b) the High Court orders that the Manager be removed, on an application to the Court by the Trustee; or
 - (c) the Manager retires.

The Trust Deed recognises that the appointment of the Manager as the manager of the scheme is subject to all “Relevant Requirements”.
9. As amended, the Trust Deed provides that all money received by the Manager in respect of contributions to the Scheme must be paid into a separate bank account in the name of the Trustee.
10. We also amended the Trust Deed to provide that investments made with assets of a Fund may be held by a person nominated by the Trustee on the Trustee’s behalf. This means that those investments must be held by either the Trustee or the Trustee’s nominee.
11. As amended, the Trust Deed requires the Manager to act in the best interests of the members at all times, and provides that the Manager has the same liability for its acts and omissions in the performance of its functions and duties, and exercise of its powers, as it would if it performed those functions or duties, or exercised those powers, as a trustee. The Manager must also exercise the care, diligence and skill required of a trustee under the Trustees Act when exercising its power to make investments.
12. The Trust Deed now contains a summary of the eligibility requirements for the manager of the Scheme. Specifically, it provides that there will be one manager, who must:
 - (a) be a company (as defined in the Companies Act 1993);
 - (b) have at least one director who is a New Zealand resident;
 - (c) not be an associated person (as defined in tax legislation) of the Trustee;
 - (d) be a person who is legally entitled to act as manager of the Scheme; and
 - (e) be party to the Trust Deed (or otherwise bound to comply with the relevant provisions of the Trust Deed as if it were a party).
13. Similarly, the Trust Deed now provides that the Manager shall cease to be the administration manager and investment manager of the Scheme if:
 - (a) a resolution is passed or an order is made for the Manager to be wound up, or the Manager is placed in receivership or statutory management;
14. Eligibility requirements have also been inserted in respect of the Trustee. Specifically, the Trustee must hold a licence under the Securities Trustees and Statutory Supervisors Act 2011 and must not be an associated person (as defined in tax legislation) of the Manager.
15. In addition, before the amendments, the Trust Deed provided that the Trustee could retire on the appointment of a new trustee (subject to compliance with all Relevant Requirements and the giving of notice). As amended, the Trustee must also have performed all its functions and duties or the High Court must have given consent. Removal of the Trustee by the Manager also requires the approval of the High Court.
16. Before the amendments, the Trust Deed provided that nothing in the Trust Deed prohibited the Trustee or Manager or any shareholder or officer of the Trustee or Manager from being a member or from acting in any representative capacity for a member of the Scheme. This has been amended to apply only to the Manager and its shareholders and officers.
17. The Trust Deed now provides that the provisions in the Trust Deed limiting the liability of the Trustee and Manager do not have the effect of exempting or indemnifying the Manager or Trustee from liability for breach of trust in the event of the Manager or Trustee, as relevant, failing to meet the standard of care specified in certain provisions of the Trust Deed.
18. Finally, the Trust Deed now includes a definition of “Effective Date”, which is the date that the changes to the Trust Deed come into effect. The Effective Date is 21 September 2012.