

Chair
CABINET LEGISLATION COMMITTEE

CROWN RETAIL DEPOSIT GUARANTEE SCHEME BILL: APPROVAL FOR INTRODUCTION

Proposal

1. This paper proposes that the Cabinet Legislation Committee approve the introduction of the Crown Retail Deposit Guarantee Scheme Bill into the House on 8 September 2009.

Policy

2. The Retail Deposit Guarantee Scheme was put in place on 12 October 2008 to maintain depositor confidence in a period of extreme financial market stress during the interregnum. The scheme currently guarantees over \$120 billion retail deposits and expires on 12 October 2010. The Bill will extend the Retail Deposit Guarantee Scheme on changed terms and conditions until 31 December 2011.

3. The objectives that guided the design of the extended scheme are:

- ensuring deposit confidence promotes system-wide financial stability;
- minimising economic distortions and ensuring well-price credit markets;
- ensuring a viable non-bank sector in the future; and
- managing Crown exposure and fiscal costs.

4. The Cabinet Business Committee referred the policy paper to Cabinet on 10 August 2009 (CBC Min (09) 10/1 refers). Cabinet agreed to the policy recommendations relating to the Bill on 17 August 2009 (CAB Min (09) 29/2 refers).

5. Some elements of the proposed design are likely to attract mixed views. Institutions in the scheme will pay higher fees than under the current Retail Deposit Guarantee Scheme. Smaller New Zealand banks would be paying a higher fee than the large banks, due to their lower credit ratings.

6. The Retail Deposit Guarantee Scheme could have been extended using existing powers under the Public Finance Act 1989 which were used to establish the scheme. However having specific new legislation for the extension is more appropriate from a constitutional perspective, given the size of the contingent liability and given that Parliament is in session. Having specific new legislation for the extension also provides a more certain end date for the scheme.

7. To this end, the Bill:
- enables the Minister of Finance to set eligibility criteria for the extended scheme and give appropriate guarantees for the period up to 31 December 2011;
 - confirms the Crown's right to recover money paid under the guarantees and, to assist with such recovery, ensures that the Crown can rely on the rights of creditors that receive guarantee payments;
 - provides permanent legislative authority for any guarantee payments;
 - confirms the exercise of powers to establish the Retail Deposit Guarantee Scheme; and
 - clarifies that the Public Finance Act and Crown Wholesale Funding Guarantee Facility are not affected by the Bill.

8. To the extent the confirmation of the establishment of the scheme is retrospective, this is fair as the existing guarantee scheme confers significant benefits, and any detriments (for example fees) have been agreed to by those affected on a contractual "opt-in" basis (i.e. it is effectively benign).

9. If the Crown makes payment under the guarantee to a creditor, the Crown takes the rights and remedies that the creditor would have had with respect to the entity and any third party, including any security that the creditor would have had. These rights are stated to be proportionate to the payment that the Crown makes. As a result, if the creditor holds security for amounts that exceed the guarantee cap, the Crown and creditor will share any proceeds of that security on a pro-rata basis where the deposit exceeds the coverage cap.

10. There are no outstanding policy issues yet to be resolved.

Regulatory impact analysis

11. A regulatory impact statement (RIS) has been prepared in accordance with the necessary requirements. The RIS was submitted at the time approved the policy relating to the Bill was sought (CBC (09) 88; CAB Min (09) 29/2 refers).

Compliance

12. The Bill complies with all of the following:
- principles of the Treaty of Waitangi;
 - rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - principles and guidelines set out in the Privacy Act 1993;
 - relevant international standards and obligations; and
 - LAC Guidelines: Guidelines on Process and Content of Legislation, a publication by the Legislation Advisory Committee.

Note that at the date of submission to Cabinet Office the Ministry of Justice had not completed vetting in relation to the Bill of Rights Act 1990. In the unlikely event this vetting raises queries, the Attorney General will report directly to the Cabinet Legislation Committee.

Consultation

13. This paper was developed by the Treasury. The following departments/ agencies have been consulted in the preparation of this paper: Crown Law, the Ministry of Economic Development (including the Companies Office), the Reserve Bank of New Zealand and the Securities Commission. The views of these departments and agencies have been reflected in the paper. The Department of Prime Minister and Cabinet has been informed of the paper.

14. The decision was made not to consult proactively on the Bill with the public. This is because:

- officials already have a reasonable amount of information about stakeholder views from regular interactions;
- the desirability of making an announcement soon, limiting the time available for any consultation;
- commercial sensitivity;
- concern that public consultation could create further uncertainty in the market; and
- the proposed course of action is temporary.

15. All Parliamentary parties have last week been offered briefings on this policy decision and draft Bill.

Binding on the Crown

16. As the Bill proposes new powers for the Minister of Finance its purpose would be defeated if it did not bind the Crown. As a result clause 4 states that the Bill will bind the Crown.

Creating new agencies or amending law relating to existing agencies

17. No new agencies are created and no laws relating to existing agencies are amended.

Allocation of decision making powers

18. The Bill gives the Minister of Finance authority to set eligibility criteria for entities under the guarantee scheme extension and to give guarantees to those entities on terms and conditions the Minister thinks fit if he considers it necessary or expedient in the public interest to do so.

19. Given the Minister of Finance's responsibilities in relation to the New Zealand economy and the Crown's fiscal position it is appropriate for these decision making powers to be given to the Minister of Finance.

20. The LAC Guidelines have been complied with in allocating these decision making powers.

Associated regulations

21. No regulations are necessary to bring the Bill into operation.

Deemed regulations

22. The Bill does not include provisions empowering the making of deemed regulations.

Definition of Minister/department

23. The term 'Minister' is defined in Part 1 of the Bill. The Cabinet Office has been consulted in relation to this definition and has no concerns with the definition.

Commencement of legislation

24. The Bill will come into force on the day after the date on which it receives the Royal Assent.

Parliamentary stages

25. This paper proposes that the Bill be given priority 2 on the 2009 legislative programme. To minimise any uncertainty in financial markets, this paper proposes that the Bill be introduced and passed through all stages under urgency (without reference to Select Committee) on 8 September 2009.

Recommendations

26. The Minister of Finance recommends that the Committee:

1. **agree** that the Crown Retail Deposit Guarantee Scheme Bill be given priority 2 on the legislation programme;
2. **note** that the Bill will extend the Retail Deposit Guarantee Scheme on changed terms and conditions until 31 December 2011;
3. **approve** for introduction the Crown Retail Deposit Guarantee Scheme Bill, subject to the final approval of government caucuses; and
4. **agree** the Bill be introduced and passed through all stages under urgency (without reference to Select Committee) on 8 September 2009.

Hon Bill English
Minister of Finance