

Solicitors Instructions

General Information and Requirements

These instructions are to be read in conjunction with the Westpac New Zealand Limited (Westpac NZ) Personalised Solicitors Instructions received for each new security Westpac NZ requests you to act for it in.

Westpac NZ and its parent, Westpac Banking Corporation ABN 33 007 457 141, incorporated in Australia ("**Westpac**"), are separate registered banks and between them provide a wide range of banking services. Recognising that some customers will have facilities with both Westpac NZ and Westpac, all securities, guarantees and other surety arrangements to be provided in relation to facilities provided by Westpac NZ and Westpac (or either of them) will be granted in favour of Westpac NZ for the benefit of itself and Westpac, to be held in accordance with the respective liabilities owed to each of them.

In this document, Westpac and Westpac NZ are together referred to as the "**Banks**".

Acting for the Banks, the Customer and any Guarantor

On receipt of the Personalised Solicitors Instructions you need to:

- a) familiarise yourself with all of the terms of the Documents and the Solicitors' Certificate;
- b) satisfy yourself that the Customer and every guarantor (if any) can lawfully enter into the Documents and that the performance of their obligations under the Documents do not conflict with any law, or its constitutional documents;
- c) advise Westpac NZ immediately and seek further instructions if:
 - you become aware that a change has been made to the loan and/or security structure; or
 - security is given by a third party which is not linked to the Customer's obligations by way of a guarantee; and

Make such enquiries and obtain copies of such public records as is prudent in order to make the statements contained in the Solicitors' Certificate. This may include searches at the Land Information New Zealand Office ("**LINZ**"), the register of companies maintained by the New Zealand Registrar of Companies (the "**Register of Companies**") and on the Personal Property Securities Register (the "**PPSR**")

Completion and Execution of Documentation

General

- a) Other than the requirements set out in these Instructions, and Westpac NZ's Personalised Solicitors Instructions, we do not rely on you to verify the pre-printed contents of any Document.
- b) No alterations are to be made to any of the Documents or the Solicitors' Certificate without Westpac NZ's prior written approval. Where alterations are approved, these must be initialled by all signatories.
- c) Unless otherwise stated you should assume that any Document creating a security interest in favour of Westpac NZ is intended to create a first ranking security interest.
- d) You need to verify and complete the Customer's and any guarantors' details correctly in the Documents and in Schedule 1 of the Solicitors' Certificate. Every name in any General Security Agreement and Specific Security Agreement must be completed so as to meet the requirements of Part 1 of Schedule 1 to the Personal Property Securities Regulations 2001 ("**Regulations**") as Westpac NZ will be relying on those completed details when registering its financing statements.

Trusts

- a) Where the Customer or guarantor is a trust, please insert "[*the full names of the trustees of the Trust*]" as trustees of [*insert name of Trust*] (the "Trust") constituted by a certain deed of trust dated [*insert date*] (the "Trust Deed").

- b) The Banks' standard trustee limitation of liability provision is contained in clause 34 of the Deed of Guarantee and Indemnity, clause 5.7 of the Terms and Conditions Residential Mortgage, clause 5.12 of the Terms and Conditions Commercial and Farm Mortgage and clause 26 of the General Security Agreement and Specific Security Agreement. If the provision is not contained in the relevant loan or security document you should contact the instructing unit of Westpac NZ, which will provide you with details of the appropriate provision for the relevant document. Westpac NZ will not agree to any alternative clause, although you may add, for clarification in respect of any independent trustee of the trust, a clause in the following form:

"For the purposes of clause [insert appropriate clause number] as at the date of this [insert name of document i.e. Agreement, Guarantee, mortgage, deed] [name of trustee] is considered by the trustees to be an independent trustee."

An independent trustee must have no beneficial interest under the trust deed.

Mortgage

- a) If there are indicators that the property may be Maori land, please ensure an appropriate search of the Maori Land Register is undertaken to verify or otherwise. If the search indicates the property is Maori land please advise Westpac NZ immediately.
- b) If any property over which a Mortgage is being taken is:
- a leasehold estate (other than a composite title);
 - subject to any encumbrance; or
 - subject to any other charge, limitation, restriction, easement or other matter of which you consider the Banks should be aware,
- please obtain Westpac NZ's further instructions before proceeding with these Instructions.
- c) Where the title to the property to be mortgaged is a stratum estate under the Unit Titles Act 1972 (referred to as the **Act** in this Mortgage section), you must ensure that you:
- obtain a certificate under section 36 of the Act together with a copy of the minutes of the Body Corporate for the preceding two year period;
 - disclose to Westpac NZ any matter in the contents of the section 36 certificate or the rules of the Body Corporate which you consider would adversely affect Westpac NZ's interests as mortgagee;
 - give notice to the Body Corporate (in terms of section 41(2) of the Act) and the Body Corporate's insurer of Westpac NZ's interests in the property as mortgagee.
- d) Please ensure that any charge, limitation, restriction or easement affecting the Certificate of Title that is likely to prejudice Westpac NZ's mortgage is brought to Westpac NZ's attention and specifically approved by Westpac NZ.
- e) Unless you have notified us otherwise, we are assuming (and will rely upon the fact) that you are not aware of any breach of any relevant building and local authority consent or compliance certificate that may be required under the Resource Management Act 1991 and/or the Building Act 2004. Please note:
- If you become aware of any unremedied non compliance with those Acts you must immediately notify Westpac NZ
 - Westpac NZ may require that the non-compliance be remedied before drawdown can proceed.

Guarantee and Indemnity

The Guarantee and Indemnity is to be completed with a limitation amount only if one is provided for in the Personalised Solicitors Instruction letter. Otherwise, you should make any necessary deletions to the "limitation" section of the Guarantee so it is unlimited.

Registered Licence to Occupy

If the title to the property to be mortgaged is a registered licence to occupy ("Licence") pursuant to part VIIA of the Land Transfer Act 1952, you must ensure that:

- if required in terms of the Licence, the written consent of the Licensor to the mortgage by the Customer of its interest to Westpac NZ is obtained;
- there is no existing breach of the terms of the Licence which would entitle the Licensor to cancel the Licence or refuse to register the Licence in favour of the Customer;
- the pre-emptive rights (if any) of the other shareholders and licensees have been waived;
- if any security is held by a creditor of the Licensor, that creditor has consented to the mortgage by the Customer of the Licence to Westpac NZ.

Unregistered Licence to occupy

If the title to the property to be mortgaged is an unregistered licence to occupy ("Licence") pursuant to part VIIA of the Land Transfer Act 1952, you must ensure that:

- if required in terms of the Licence, the written consent of the Licensor to the Specific Security Agreement being granted by the Customer in respect of the Licence to Westpac NZ is obtained;
- there is no existing breach of the terms of the Licence which would entitle the Licensor to cancel the Licence or refuse to register the Licence in favour of the Customer;
- the pre-emptive rights (if any) of the other shareholders and licensees have been waived;
- if any security is held by a creditor of the Licensor, that creditor has consented to the Specific Security Agreement being granted by the Customer in respect of the Licence to Westpac NZ;
- the insert sheet accompanying these instructions is inserted as an appendix to the Specific Security Agreement;
- the Deed of Covenant in Relation to Unregistered Licence to Occupy is executed by all parties. If there is likely to be any delay in your client signing the Deed of Covenant we recommend that a copy of the Deed is submitted in advance to the Licensor company for their approval to prevent any delay in settlement particularly if there are any clauses in the deed that they may require clarification on or amending.

General Security Agreement/Specific Security Agreement

- a) If the party executing the General Security Agreement or Specific Security Agreement is a trust, complete the "Organisation" section of the Debtor description as follows:

name of organisation: *[insert name of trust]*, including *[insert full names of trustees]* as trustees of *[insert name of trust]*.

- b) If the party executing the General Security Agreement or Specific Security Agreement is a partnership, complete the "Organisation" section of the Debtor description as follows:

name of organisation: *[insert name of partnership]*, including *[insert full names of partners]* as partners of *[insert name of partnership]*.

- c) You need to verify all necessary details of the motor vehicles or aircraft in order to complete the Serial-Numbered Goods Register in the relevant Annexure to the General Security Agreement (as applicable). The details must be completed so as to meet the requirements of clause 9 of Schedule 1 to the Regulations, as Westpac NZ will be relying on those completed details when registering its financing statement.

Specific Security Agreement over Shares

- a) You need to complete Annexure 1 of the Specific Security Agreement by describing, in accordance with section 36 of the Personal Property Securities Act 1999, the shares intended to be the subject of the security agreement.
- b) If listed shares, please arrange for the Faster Identification Number to be cancelled. The facilities cannot be drawn down until we receive confirmation from the securities registry that the cancellation has been effected.

If unlisted shares, please ensure that any share certificate or other documents of title for any shares have been provided to us prior to settlement. If no share certificate has been issued, please arrange for a share certificate to be issued and provided to us prior to settlement.

Enquiries and Searches

Please ensure you search the PPSR to identify any financing statements that refer to any of the same collateral as will be covered by our security interest. If your searches indicate that another secured party has a security interest (or if you are aware that another party has or proposes to obtain an interest) in the same collateral as will be covered by our security interest, you must urgently contact us to seek further instructions (including the approval of priority arrangements, if necessary). Where priority arrangements are necessary, Westpac NZ will instruct you with further details to enable you to prepare Subordination and Priority document(s) using the templates on the New Zealand Bankers' Association website (www.nzba.org.nz/prioritydocs.htm). When contacting us for further instructions you must advise us as to the effect of the relevant security interest on our priority position. For that purpose, you may assume (unless you are aware of the contrary) that a party who has registered a financing statement has a security interest in all of the collateral described in that financing statement.

Execution of Documents

All of the Documents must be signed in the following manner (and witnessed where we have specified on the document that this is required):

- for natural persons, all individuals must sign any Documents;
- for trusts, partnerships, informal groups and associations, all trustees, partners or members must sign any Documents;
- for incorporated societies and charitable trusts, any Documents must be signed in accordance with the relevant constitutional documents;
- for companies, any Documents must be signed in accordance with section 180 of the Companies Act 1993.

Power of Attorney

The Banks require that the Customer and the guarantor(s) sign Documents personally. You must obtain Westpac NZ's prior written consent if it is intended that an attorney sign Documents on behalf of the Customer or guarantor(s). Please be aware that:

- any Document signed under a power of attorney should have attached to it a signed certificate of non-revocation dated not earlier than the date of execution of the Document;
- we will not accept a power of attorney granted to an individual in a personal capacity to be used for documents required to be signed by that person as a director of a company (please note we will accept Documents signed under a power of attorney granted by the company itself, or signed by an alternate director);
- we will not accept a power of attorney for a trustee of a trust, unless:
 - the circumstances in the Trustee Act 1956 apply; and
 - the power of attorney contains a deed of delegation which specifically authorises the attorney to act on behalf of the grantor in that capacity; and
 - it is not restricted by the Trust Deed;
- if the document signed by the attorney is to be registered by LINZ, please ensure the power of attorney under which the attorney was appointed is in a registrable form;
- for persons authorised under a power of attorney signed overseas by the Customer or guarantor, the power of attorney must have been witnessed by a Notary Public, using the English language, and the seal of the Notary Public must be attached to the original power of attorney document.

Customer Identification

Before the Banks can provide drawdown or open an account for a Customer, we are required in terms of the Financial Transactions Reporting Act 1996 to ensure that formal identification of the Customer has been carried out.

If the customer is in New Zealand we require that they visit a Westpac NZ Branch and provide formal identification e.g. Passport, NZ Drivers Licence, etc. **and** complete the Account Opening Form.

If the Customer(s) is/are overseas, please act on our behalf to obtain formal identification of the Customer(s) in terms of the Financial Transactions Reporting Act 1996 and Account Opening, by doing the following. These requirements need to be met prior to settlement:

- a) The loan/facility agreement(s), mortgage and Account Opening form(s) are to be forwarded to the Customer's overseas based solicitor. They will attend to disclosure/sign up and the Identity Verification requirements in terms of the Financial Transactions Reporting Act 1996.
- b) The Customer is to be formally identified by a Notary Public (or, if the relevant Customer is in Australia, a Solicitor or Justice of the Peace) and to provide to the Banks prior to drawdown:
 - a copy of the original passport document showing the Customer's photograph and passport number: and
 - a photocopy of some form of proof of the Customer's residential address (eg a utility bill)Both photocopies are to be dated, certified and signed as being true and correct copies by the Notary Public, Solicitor or Justice of the Peace, as applicable.

Advising Guarantors

It is your responsibility to ensure there is a full understanding by every guarantor of the obligations being undertaken and there is no undue influence being exerted on the guarantor. In particular, if you are also acting on behalf of the Customer or are in any way associated with the Customer, you should advise every guarantor that he/she should seek independent legal advice before signing the guarantee because of his/her risk of liability under the guarantee.

Every guarantor should also be advised that, if he/she does not understand the financial risks of guaranteeing the Customer, then he/she should also seek independent financial advice. All costs are for the account of the Customer.

When you do refer a guarantor to an independent solicitor for advice, please send to that solicitor a copy of these instructions and Westpac NZ's Personalised Solicitors Instructions, the guarantee (both for the guarantor and the counterpart for the Banks), and any other document provided by the Banks for disclosure purposes.

The Banks strongly recommend that each guarantor (if any) takes independent legal advice. However if any guarantor declines to take independent legal advice, please advise Westpac NZ and ensure that the "waiver of independent legal advice" form is signed by that guarantor. In such cases, you will need to provide the advice to the guarantor and execute the solicitors' certificate in the guarantee.

Disclosure

If the facility is a consumer credit contract, as that term is defined in the Credit Contracts and Consumer Finance Act 2003 (CCCFA) please attend to initial disclosure in accordance with CCCFA.

If and to the extent required by CCCFA, you should ensure disclosure is made to any guarantors (or, if any guarantor is to be advised by an independent solicitor, ensure that independent solicitor makes disclosure to the guarantor) in accordance with CCCFA ("**guarantee disclosure**"). Any required guarantee disclosure will include giving the guarantor a copy of the Guarantee and Indemnity and disclosing to the guarantor the key information set out in Schedule 1 of CCCFA in relation to each consumer credit contract to which the Guarantee and Indemnity applies. For the purposes of disclosure you may assume that the enclosed Documents are the only consumer credit contracts for which the guarantee disclosure is also required. If the facility is not a consumer credit contract then guarantee disclosure is not required.

Your Solicitors Certificate

Personally Connected

If you are personally connected with the Customer (for example and without limitation, a director, shareholder or beneficiary) in any borrowing or guaranteeing capacity, as trustee or otherwise, your Solicitors' Certificate must be completed by a partner independent of the transaction or if you are a sole practitioner you must have a partner of another firm sign.

Assumptions and Qualifications

The Banks acknowledge that your Solicitors' Certificate is received on the following basis:

- a) That unless you have knowledge to the contrary, you are entitled to assume the following assumptions are made for the purposes of the Solicitors' Certificate:
 - copy documents examined by you conform to the originals, and all documents examined by you are authentic and complete;
 - all signatures on documents examined by you are genuine;
 - in the case of each company:
 - i. In determining that it enter into the transactions contemplated by the Documents, its directors have acted for a proper purpose; and
 - ii. Its entry into the transactions contemplated by the Documents is in its best interests or, where permitted by its constitution, the best interests of its holding company; and
 - no receiver or liquidator has been appointed to any company, and no company has been made subject to statutory management (and these assumptions are not contradicted by your search of the Register of Companies).
- b) That your Solicitors' Certificate does not certify as to the form and printed content of the Documents provided to you.

For any enquiries regarding these security instructions, please contact the Lending Support Centre whose details will be provided with each Personalised Solicitors Instruction Letter you receive.