

# **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 [facility or] 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
- d) 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 but we do require you to verify and amend, as necessary, the pre-populated contents.
- b) No alterations are to be made to any of the Documents or the Solicitors’ Certificate without Westpac NZ’s prior written approval, except where alterations to pre-populated details are necessary. 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. You must review and confirm every name in any General Security Agreement and Specific Security Agreement that is pre-populated and when not pre-populated, you must complete 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.

**Professional indemnity insurance.**

By accepting these instructions you acknowledge that you hold a professional indemnity insurance policy with cover which:

- meets the minimum standards for professional indemnity (as referred to in rule 3.4(b) of the Lawyers and Conveyances Act (Lawyers: Conduct and Client Care) Rules 2008) as specified by the New Zealand Law Society from time to time; and
- has a claim limit equal to or greater than the maximum commitment under the facilities offered.

If you do not hold such insurance please notify Westpac NZ immediately as we may wish to instruct another solicitor.

**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 35 of the Deed of Guarantee and Indemnity, clause 5.13 of Memorandum of Mortgage number 2015 / 4325 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.

**Guarantee.**

If you are advising a guarantor that you are unable to meet in person, the guarantor may have their signature witnessed by an appropriate third party listed below.

If the guarantor is located:

- In New Zealand – the guarantor’s signature must be witnessed by a New Zealand solicitor, New Zealand Justice of Peace.
- In Australia – the guarantor’s signature must be witnessed by an Australian solicitor or Notary Public.
- Overseas (other than in Australia) – the guarantor’s signature must be witnessed by a Notary Public.

The guarantor can also have their signature witnessed by an officer at a New Zealand consulate or embassy in the country where the guarantor resides.

You must take all reasonable steps that you deem appropriate and necessary in order to provide the Banks with an un-amended Guarantor’s Solicitor’s Certificate as set out in the Deed of Guarantee.

## **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 that is likely to prejudice Westpac NZ's mortgage; or
  - subject to any other charge, limitation, restriction, easement, covenant 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 2010 (referred to as the Act in this Mortgage section), you must ensure that you:
  - obtain the following information (either by obtaining the disclosure statements referred to in sections 146 to 148 of the Act or by requesting the necessary information under section 206 of the Act, or otherwise):
    - i. a copy of the body corporate's operational rules;
    - ii. details of the contribution levied by the body corporate;
    - iii. details of any amounts owed to the body corporate by the owner of the property which remain unpaid;
    - iv. details of any repair work performed, or intended to be performed, by the body corporate in relation to which the owner of the property has incurred, or is likely to incur, costs, and details of any cost which remains unpaid; and
    - v. details of any proceedings pending against the body corporate in any court or tribunal:
      - disclose to Westpac NZ any matter contained in that information which you consider would adversely affect Westpac NZ's interests as mortgagee;
      - give notice to the Body Corporate (in terms of section 134(5) of the Act) and to the Body Corporate's insurer of Westpac NZ's interests in the property as mortgagee.
- d) Please ensure that any charge, limitation, encumbrance, restriction, easement or covenant affecting the Record(s) of Title that is likely to prejudice Westpac NZ's mortgage is brought to Westpac NZ's attention and specifically approved by Westpac NZ.

Please note that Westpac NZ considers an encumbrance to be prejudicial to its mortgage if the encumbrance does not expressly prohibit the encumbrancee from exercising any of the powers and remedies given to an encumbrancee under the Land Transfer Act 2017 and the Property Law Act 2007, including the power of sale given to a mortgagee.

- 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.

## **Registered licence to occupy.**

If the title to the property to be mortgaged is a registered licence to occupy ("Licence") pursuant to part 3, subpart 6 of the Land Transfer Act 2017, 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 3, subpart 6 of the Land Transfer Act 2017, 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;
- 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 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, if the names have not been pre-populated then 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].

If the names have been pre-populated then you must confirm the names are correctly pre-populated and amend as necessary.
- b) If the party executing the General Security Agreement or Specific Security Agreement is a partnership, if the names have not been pre-populated then 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].

If the names have been pre-populated then you must confirm the names are correctly pre-populated and amend as necessary.
- 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 the shares are listed, 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.
- c) If the shares are unlisted, 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 ([nzba.org.nz/priority](http://nzba.org.nz/priority)). 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 New Zealand incorporated companies, any Documents must be signed in accordance with section 180 of the Companies Act 1993;
- for non- New Zealand incorporated companies any Documents must be signed in accordance with the laws of its country of incorporation.

### 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:

- Westpac NZ must be provided with an original or certified copy of any relevant power of attorney before Westpac NZ will consider granting its prior written consent;
- 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;

- if the attorney is in **New Zealand** and is acting for an existing customer of the Banks and the attorney:
  - is **not** a signatory of an account of the Banks (either an account of the Customer(s) or a personal account); or
  - has **not** already provided to the Banks:
    - i. acceptable identification\* verifying their full name and date of birth; and
    - ii. their relationship to the Customer,

then the attorney must take acceptable identification\* to a Westpac NZ branch for sighting by Westpac NZ staff, and must provide suitable evidence of their relationship to the Customer(s). The attorney must do this before the attorney acts on behalf of the Customer(s).

- if the attorney is unable to go into a Westpac NZ branch for any reason they can get a copy of their acceptable identification\* certified by a trusted referee\* and the copy can be handed into a Westpac NZ branch.
- if the Customer(s) and the attorney are not existing customers of the Banks then proof of the attorney's physical address\* (not a PO Box), in addition to acceptable identification\*, must also be taken into a Westpac NZ branch. The attorney should do this before the Customer(s) establishes a business relationship with Westpac NZ and, in any event, before the date of the relevant drawdown.
- If the attorney is **overseas** and is acting for an existing customer of the Banks and the attorney:
  - is **not** a signatory of an account of the Banks (either an account of the Customer(s), guarantor(s) or a personal account); or
  - has **not** already provided to the Banks:
    - i. acceptable identification\* verifying their full name and date of birth; and
    - ii. their relationship to the Customer(s),

then please act on our behalf to obtain their acceptable identification\* and their relationship to the Customer, by doing the following. These requirements must be met before the attorney acts on behalf of the Customer(s):

- a) The loan/facility agreement(s), mortgage and Account Opening Form(s) are to be forwarded to the attorney's overseas based solicitor. They will attend to disclosure/sign-up and the identity requirements.
- b) The attorney is to be formally identified by an offshore trusted referee\* and provide to the Banks prior to drawdown a certified copy/ies of acceptable identification\* certified by an offshore trusted referee\* and the attorney's relationship to the Customer or guarantor.

The certified copy/ies is/are to be dated, certified and signed as being true and correct copies by the offshore trusted referee\*.

- if the Customer(s) and the attorney are not existing customers of the Banks then proof of the attorney's physical address\* (not a PO Box), in addition to acceptable identification\*, must also be certified by an offshore trusted referee\*. The attorney should do this before the Customer(s) establishes a business relationship with Westpac NZ and, in any event, before the date of the relevant drawdown.
- 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);

\*More details about acceptable identification, trusted referees (including offshore trusted referees) and proof of address are available at [westpac.co.nz/AML](http://westpac.co.nz/AML).

- we will not accept a power of attorney for a trustee of a trust, unless:
  - the relevant circumstances in the Trustee Act 1956 apply;
  - 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 Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to ensure that certain information has been provided and verified, or may be, required to verify the identity of the Customer(s) and certain other information provided in the relevant application forms. Please refer to Westpac NZ's list of acceptable verification documentation (available at [westpac.co.nz/AML](http://westpac.co.nz/AML)).

Note that the identity information referred to below may already have been obtained by the Banks where completed application forms have been returned.

If the Customer(s) is in **New Zealand** and:

- is **not** an existing customer of the Banks; or
- has **not** already provided acceptable identification\* and proof of address\* to the Banks,

we require that they visit a Westpac NZ branch and provide their acceptable identification\*, proof of address\* and complete the Account Opening Form. If the Customer is unable to go into a Westpac NZ branch for any reason they can get a copy of their acceptable identification\* certified by a trusted referee\* and the copy can be handed into a Westpac NZ branch.

If the Customer(s) is **overseas** and:

- is not an existing customer of the Banks; or
- has not already provided acceptable identification\* and proof of address to the Banks, please act on our behalf to obtain their acceptable identification\*, proof of address\* and Account Opening Form, by doing the following. These requirements should be met before a business relationship is established with Westpac NZ and, in any event, 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 requirements.
  - b) The Customer is to be formally identified by an offshore trusted referee\* and provide to the Banks prior to drawdown:
    - a certified copy/ies of acceptable identification\* certified by an offshore trusted referee\*; and
    - certified copy of proof of address\* certified by an offshore trusted referee\*.

The certified copies are to be dated, certified and signed as being true and correct copies by the offshore trusted referee\*.

Westpac NZ must also obtain and verify the full name, date of birth and address of individuals (excluding existing customers of the Banks), who ultimately own, or have effective control of the Customer (beneficial owners). A beneficial owner is an individual who:

- ultimately owns more than 25% of the Customer; or
- has effective control of the Customer (for example, someone in a senior management role or who can appoint senior management).

Beneficial owner identity information should be provided to the Banks before the Customer establishes a business relationship with the Banks and, in any event, before the date of the relevant drawdown.

If the Customer is:

- a trust; or
- a company with nominee shareholders or shares in bearer form; or
- holding assets on behalf of an individual,

then information must also be provided regarding either the source of the wealth of the Customer or the source of the funds being used in this transaction. This information should be provided to the Banks before the Customer establishes a business relationship with the Banks and, in any event, before the date of the relevant drawdown. Please note that Westpac NZ may ask for additional information about a customer if it considers them a high risk individual or organisation.

### 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.

\*More details about acceptable identification, trusted referees (including offshore trusted referees) and proof of address are available at [westpac.co.nz/AML](http://westpac.co.nz/AML).

## 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 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, administrator 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 but it does certify as to the pre-populated content of the Documents provided to you.

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

