

Undertakings to the Commerce Commission under section 113(aa) of the Credit Contracts and Consumer Finance Act 2003

1 Person giving undertakings

- 1.1 These undertakings are given to the Commerce Commission (**Commission**) for the purposes of section 74A of the Commerce Act 1986 via section 113(aa) of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) by Kookmin Bank (**Kookmin**), a registered overseas non-ASIC company in New Zealand (company number 806384) having its registered address at Level 16 Lumley Centre, 88 Shortland Street, Auckland 1010 (**Undertakings**). These Undertakings are set out at Section 5.

2 Background

- 2.1 Kookmin admits that between 6 June 2015 and 21 October 2021 inclusive, it failed to provide compliant Initial Disclosure before entering into 483 consumer credit contracts, in breach of section 17 of the CCCFA.
- 2.2 In order to remedy the breaches:
- (a) Kookmin has offered to give, and the Commission has agreed to accept, pursuant to section 74A of the Commerce Act 1986 via section 113(aa) of the CCCFA, the Undertakings; and
 - (b) contemporaneously with the giving of these Undertakings, Kookmin will enter into a Settlement Agreement with the Commission (the **Agreement**).

3 Interpretation

- 3.1 In this document and Schedule 1:
- (a) **Affected Loan** means one of the 483 consumer credit contracts entered into during the Relevant Period where Kookmin was the creditor and Kookmin failed to provide compliant Initial Disclosure.
 - (b) **Best Endeavours** means using all information currently known to Kookmin, as well as searches of White Pages, and taking any steps that Kookmin would usually take to locate a non-paying debtor.
 - (c) **Borrower** means one of the 343 borrowers (with joint borrowers counted as a single Borrower) identified by Kookmin and notified to the Commission as having entered into an Affected Loan.
 - (d) **Costs of Borrowing** means all credit fees, default fees and interest charges (each as defined in the CCCFA) charged by Kookmin under an Affected Loan to a Borrower in the Non-Disclosure Period.

- (e) **Current Customer** means a Borrower who has, as at the date that Kookmin seeks to refund Costs of Borrowing as required in paragraph 5.2, a Relevant Account with Kookmin.
- (f) **Days** means working days as defined in High Court rule 1.3.
- (g) **Former Customer** means a Borrower who does not have, as at the date that Kookmin seeks to refund the Costs of Borrowing as required in paragraphs 5.3 to 5.5, a Relevant Account with Kookmin.
- (h) **Initial Disclosure** means the information that Kookmin was required to provide to Borrowers under section 17 of the CCCFA.
- (i) **Non-Disclosure Period** means the period between the date of each Affected Loan and:
 - (a) for the Affected Loans repaid before 30 November 2021, the date the Affected Loan was repaid; or
 - (b) for all other Affected Loans, the date that further disclosure was provided, being on 30 November 2021 for 115 Affected Loans, 6 December 2021 for one Affected Loan and 11 April 2022 for four Affected Loans.
- (j) **Refund Amount** means the amount to be refunded to each Borrower in accordance with paragraph 5.1 (a) to (c) and as set out in Schedule 1.
- (k) **Relevant Account** means a bank account into which funds can be readily transferred, including (a) a loan account or (b) a cheque account or (c) any other transactional account.
- (l) **Relevant Period** means the period between 6 June 2015 and 21 October 2021 inclusive.

3.2 In these Undertakings, references to 'paragraph' and 'Schedule' are to a paragraph or a Schedule of these Undertakings respectively.

4 Purpose of the Undertakings

4.1 The Undertakings are given by Kookmin to record its commitment to refund \$11,029,020.46 in Costs of Borrowing to Borrowers, and to do so subject to the terms set out in these Undertakings.

Schedule 1 list of Borrowers

4.2 **Schedule 1** contains a list of all Borrowers who are to be refunded Costs of Borrowing under paragraph 4.1 together with their Refund Amount. Where one person has entered into more than one Affected Loan, they will be listed as a separate Borrower in respect of each such Affected Loan.

4.3 At the time that these Undertakings are given, Kookmin provided a draft of **Schedule 1** which identified the Borrowers who are entitled to a Refund Amount in accordance

with the Agreement and these Undertakings. A finalised version of **Schedule 1** will be provided to the Commission by Kookmin within one month of the execution of the Undertakings.

- 4.4 Kookmin is responsible for any errors in the finalised version of **Schedule 1** provided in accordance with paragraph 4.3. If a Borrower who is entitled to a Refund Amount has been omitted from **Schedule 1** or the Refund Amount due to that Borrower (as calculated in accordance with paragraph 5.1(a) to (c)) is understated in **Schedule 1**, then Kookmin will pay the correct amount to that Borrower, and will do so even if that causes the total refunds payable to exceed \$11,029,020.46. For the avoidance of doubt, no payments listed in the finalised version of **Schedule 1** will be reduced or any listed Borrowers removed.

5 The Undertakings

The refund undertaking

- 5.1 Kookmin undertakes to the Commission that it will pay not less than \$11,029,020.46 to Borrowers in accordance with the following calculation and distribution methodologies:
- (a) Kookmin will refund all Costs of Borrowing accruing in the period from 6 June 2015 to 19 December 2019. The total Costs of Borrowing refunded by Kookmin in this category will be no less than \$8,501,128.92.
 - (b) Kookmin will refund all Costs of Borrowing accruing in the period from 20 December 2019 to the end of the Non-Disclosure Period where Kookmin does not have a record of any Initial Disclosure being provided to the Borrower. For the avoidance of doubt, this category of Borrower does not include Borrowers who received partial or non-compliant Initial Disclosure. The total Costs of Borrowing refunded by Kookmin in this category will be no less than \$417,846.44.
 - (c) Kookmin will refund half (50%) of the Costs of Borrowing accruing in the period from 20 December 2019 to the end of the Non-Disclosure Period where Kookmin has a record of some Initial Disclosure (including partial or non-compliant Initial Disclosure) being provided to the Borrower. The total Costs of Borrowing refunded by Kookmin in this category will be no less than \$2,110,045.10.
 - (d) Kookmin will refund the Refund Amount as required above by:
 - (i) paying or crediting each Current Customer their Refund Amount to a Relevant Account with Kookmin as set out at paragraph 5.2; and
 - (ii) paying each Former Customer their Refund Amount as set out at paragraphs 5.3 to 5.5.

Current Customers

- 5.2 Kookmin must pay the Refund Amount to each Current Customer by direct crediting any Relevant Account with Kookmin within four months of the date of these Undertakings. For the avoidance of doubt, this may include crediting a Current Customer's Refund Amount against any outstanding balance the Current Customer may have on a credit contract with Kookmin.

Former Customers

- 5.3 Subject to paragraphs 5.4 and 5.5, Kookmin must pay each Former Customer their Refund Amount by direct credit to a bank account in accordance with payment instructions provided by that Former Customer.
- 5.4 If Kookmin receives payment instructions from a Former Customer within two months of the date of these Undertakings, then Kookmin must pay that Former Customer their Refund Amount in accordance with those instructions within six months of the date of these Undertakings.
- 5.5 If Kookmin does not hold contact details for a Former Customer, or if Kookmin has not received payment instructions from a Former Customer within two months of the date of these Undertakings, then Kookmin must:
- (a) use Best Endeavours to contact the Former Customer and provide them with the information set out in paragraph 5.6(a)-(d) and to obtain payment instructions:
 - (i) for a period of nine months from the date of these Undertakings, if Kookmin does not hold contact details for a Former Customer; or
 - (ii) for a period of seven months from the date that is two months after the date of these Undertakings, if Kookmin holds contact details for a Former Customer but has not received payment instructions from the Former Customer within two months of the date of these Undertakings;
 - (b) if it receives payment instructions from a Former Customer, pay the Refund Amount to that Former Customer in accordance with those instructions within one month of receipt of the instructions; or
 - (c) otherwise comply with paragraph 5.7 if Kookmin has not received any payment instructions from a Former Customer during the period of nine months from the date of these Undertakings.

Contacting Current Customers and Former Customers

- 5.6 Kookmin must within five weeks of the date of these Undertakings send a letter or email to each Current Customer and Former Customer at their last known address or email address (where held) advising:

- (a) that Kookmin failed to provide compliant Initial Disclosure during the Non-Disclosure Period to the Current Customer or Former Customer;
- (b) that Kookmin has entered into the Agreement with, and given these Undertakings to, the Commission;
- (c) that the Agreement and Undertakings do not affect any obligations Kookmin may have to the Current Customer or Former Customer; and
- (d) the Refund Amount owing to the Current Customer or Former Customer and either:
 - (i) that a Relevant Account with Kookmin of the Current Customer will be credited; or
 - (ii) seeking payment instructions from the Former Customer where payment is required to be made under paragraphs 5.3, 5.4 or 5.5(b).

Payments where Former Customers cannot be located or payment instructions obtained

5.7 If, after using Best Endeavours in accordance with paragraph 5.5(a), Kookmin has not received the necessary payment instructions from a Former Customer, Kookmin undertakes:

- (a) to record a credit for the Refund Amount against an account for that Former Customer, and to pay that credited Refund Amount to that Former Customer in accordance with any payment instructions received from that Former Customer within one month of receiving those instructions; and
- (b) if after two years from the date of these Undertakings, that Former Customer has not provided Kookmin with payment instructions for the Refund Amount:
 - (i) to reverse the credit made under paragraph 5.7(a); and
 - (ii) to pay the Refund Amount to the Commissioner of Inland Revenue as unclaimed money under section 4(3)(b) of the Unclaimed Money Act 1971.

Bankrupt Customers

5.8 Notwithstanding paragraphs 5.1 to 5.5, if any Borrower who is entitled to a Refund Amount is bankrupt in New Zealand, their Refund Amount must be paid by Kookmin to the Official Assignee, unless otherwise agreed with the Official Assignee.

Deceased Estates

5.9 Notwithstanding paragraphs 5.1 to 5.5, if any Borrower who is entitled to a Refund Amount is deceased:

- (a) Kookmin must use Best Endeavours for a period of nine months from the date of these Undertakings to contact the representative(s) of the deceased Borrower and provide the representative(s) of the deceased Borrower with the information set out in paragraph 5.6(a)-(d) (for the avoidance of doubt "representatives" are such persons empowered to administer the deceased estate, by way of a grant of probate or such other operation of law in the relevant case, including s 77 of the Administration Act 1969); and
- (b) pay the deceased Borrower's Refund Amount at the direction (if any) of the representative(s) of the deceased Borrower; or
- (c) if the representative(s) of the deceased Borrower has not provided payment instructions to Kookmin within nine months of the date of these Undertakings, Kookmin will proceed as set out at paragraph 5.7 (for this purpose, with references in that paragraph to 'Former Customer' being read as a reference to the representative(s) of the deceased Borrower, as the context requires).

The reporting undertakings

Interim report

- 5.10 Kookmin undertakes, at its own expense, to provide to the Commission six months from the date of these Undertakings an interim report recording the progress it has made with locating, crediting, and/or refunding Current Customers and Former Customers.
- 5.11 The interim report will be in the form of:
- (a) a spreadsheet for Current Customers which identifies for each Affected Loan:
 - (i) each Current Customer by name;
 - (ii) the total Refund Amount the Current Customer is entitled to;
 - (iii) whether a credit or payment has been made; and
 - (iv) the date of the credit or payment.
 - (b) a spreadsheet for Former Customers which identifies for each Affected Loan:
 - (i) each Former Customer by name;
 - (ii) the Refund Amount the Former Customer is entitled to;
 - (iii) whether Kookmin has received payment instructions from the Former Customer (and if so, the date on which those instructions were received);
 - (iv) whether a payment has been made; and

- (v) if a payment has been made, the date it was made.
 - (c) information explaining the steps Kookmin has taken to locate Former Customers, and any Best Endeavours used to contact individual Former Customers where required.
- 5.12 Kookmin must provide the spreadsheets at paragraph 5.11(a) and (b) in an Excel format.

Final report

- 5.13 Kookmin undertakes, at its own expense, to provide a final report to the Commission 12 months from the date of these Undertakings.
- 5.14 The final report must be prepared by an independent accountant approved by the Commission and engaged by Kookmin, who has reviewed the steps taken by Kookmin to comply with these Undertakings.
- 5.15 The final report must include:
- (a) the reviewer's report on whether Kookmin has undertaken the steps it has agreed to take in these Undertakings;
 - (b) details of any steps that have not yet been completed, including when they are likely to be completed by Kookmin;
 - (c) the reviewer's report (having reviewed a reasonable random sample of accounts of Former Customers) as to whether Kookmin has complied with its obligation to use Best Endeavours to contact Former Customers who have been unable to be contacted at the time of the final report;
 - (d) a summary of the credits and payments made; and
 - (e) details of any Refund Amounts that have yet to be credited and/or paid to Current and/or Former Customers.
- 5.16 The final report must also attach an updated final version of the spreadsheets set out at paragraph 5.11(a) and (b). The Commission requires that the spreadsheets attached to the final report be provided in an Excel format.

Undertaking to notify breaches

- 5.17 If Kookmin becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it must notify the Commission within five Days of becoming aware, giving full particulars of the breach.
- 5.18 For the avoidance of doubt, nothing in paragraph 5.17 prevents the Commission from seeking any information from Kookmin at any time for the purpose of checking compliance with the Undertakings.

6 Effect of the Undertakings

- 6.1 These Undertakings are court enforceable undertakings in terms of section 74A of the Commerce Act 1986 via section 113(aa) of the CCCFA.

7 Commencement of the Undertakings

- 7.1 These Undertakings come into effect when:
- (a) executed by Kookmin; and
 - (b) the Commission confirms its acceptance of the Undertakings by signing the Undertakings.

8 Duration of the Undertakings

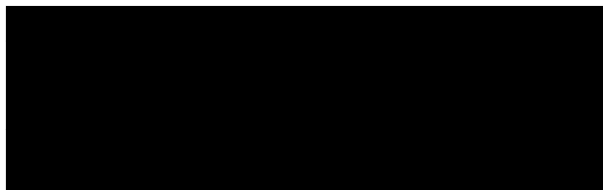
- 8.1 These Undertakings will continue to have effect until they are performed in full, or the Commission discharges Kookmin from the Undertakings.

9 Miscellaneous

- 9.1 No variation to these Undertakings will be effective unless it is in writing, executed by Kookmin, and signed as accepted by the Commission.
- 9.2 These Undertakings are properly executed when Kookmin has signed the Undertakings below and the Commission has confirmed its acceptance and signed the Undertakings further below. Kookmin and the Commission can sign the same copy, or separate identical copies of the execution page. Where separate copies are signed by Kookmin and the Commission, the signed copy can be the original document, or an emailed copy.
- 9.3 Kookmin acknowledges that:
- (a) The Commission will make the Undertakings publicly available (other than information on Borrowers, or any other personal information, in Schedule 1) including publishing them on the Commission's case register on its website.
 - (b) The Commission may, from time to time, make public reference to the Undertakings including in media statements and in the Commission's publications.
 - (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the CCCFA or any other statute or law.

Execution

Signed by and on behalf of Kookmin Bank:

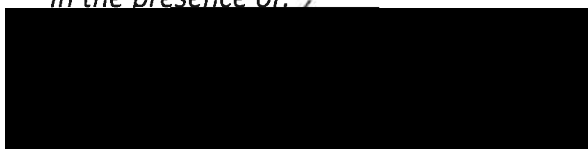


Director/authorised signatory

Kim. Dehan

Name

In the presence of:



Signature of witness

AN, HONG MIN

Name of witness

Compliance Officer

Occupation

Auckland.

City/town of residence

30. June. 2023

Date

Acceptance

Signed by and on behalf of the Commerce Commission:



Commission Chair

Dr John Small

Name

3rd July 2023

Date