

# SETTLEMENT AGREEMENT

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**Between: Commerce Commission**

**And: Kookmin Bank**

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**Agreement dated:** [30<sup>th</sup> June 2023]

## **1 Parties**

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- 1.1 The Commerce Commission is a statutory body established under section 8 of the Commerce Act 1986 (**Commission**).
- 1.2 Kookmin Bank is 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 (**Kookmin**).
- 1.3 Collectively, the Commission and Kookmin are referred to in this Agreement as **the Parties**, and each of which is referred to in this Agreement as a **Party**.

## **2 Introduction**

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- 2.1 Between 6 June 2015 and 21 October 2021 inclusive, Kookmin failed to provide compliant Initial Disclosure before entering into 483 consumer credit contracts, in breach of section 17 of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
- 2.2 This Agreement records the terms on which the Parties have agreed to resolve the Commission's Investigation.
- 2.3 This Agreement will be made public by the Commission (including on the Commission's website).

## **3. Interpretation**

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- 3.1 For the purposes of this Agreement, in addition to those terms defined within the body of this Agreement:

**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.

**Agreement** means this Settlement Agreement.

**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.

**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.

**Days** means working days as defined in High Court rule 1.3.

**Disclosure Statement** means Kookmin's standard loan agreement and a separate disclosure statement that was attached to the standard loan agreement as "Schedule 3".

**Initial Disclosure** means the information that Kookmin was required to provide to Borrowers under section 17 of the CCCFA.

**Investigation** means the Commission's investigation that commenced on or about November 2021 into Initial Disclosure provided by Kookmin during the Relevant Period.

**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.

**Refund Amount** means the amount to be refunded to each Borrower in accordance with the Undertakings.

**Related Parties** of Kookmin includes:

- (a) its past and present directors, officers, employees and agents; and
- (b) its related companies and each related company's past and present directors, officers, employees and agents, where "related company" has the same meaning as in the Companies Act 1993.

**Relevant Period** means the period between 6 June 2015 and 21 October 2021 inclusive.

**Undertakings** means the enforceable undertakings given to the Commission by Kookmin under section 74A of the Commerce Act 1986 via section 113(aa) of the CCCFA contemporaneously with it executing this Agreement, in the form set out at Appendix One to this Agreement.

## **4 Breach of the CCCFA**

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### **Investigation**

- 4.1 The Commission opened an Investigation into Kookmin's compliance with its Initial Disclosure obligations under the CCCFA in November 2021. The Investigation was prompted by Commission staff identifying that the standard disclosure documents displayed on Kookmin's website were missing some of the key information required by Schedule 1 of the CCCFA.
- 4.2 During the Relevant Period, Kookmin carried on a business of providing credit under home loans and personal loans to individual debtors in New Zealand.

- 4.3 Pursuant to section 17 of the CCCFA, before entering into the loans, Kookmin was required to provide Borrowers with as much of the key information set out in Schedule 1 of the CCCFA as was applicable to the loans.
- 4.4 In purported discharge of its obligations under section 17, on at least 322 occasions Kookmin provided Borrowers with its Disclosure Statement. The Disclosure Statement did not include all of the key information set out in Schedule 1 of the CCCFA as was applicable to the loans.
- 4.5 Kookmin's Disclosure Statement failed to provide the following key information to Borrowers before they entered into the Affected Loans:
- (a) the total interest charges payable under the contract as required by paragraph (l) of Schedule 1 of the CCCFA, although the Disclosure Statement set out the monthly interest charge payable and the term of the loan;
  - (b) a statement as to the extent to which the Borrower remains indebted if the secured property is sold and the recovered amount is insufficient to cover the loan, as required by paragraph (q)(iii) of Schedule 1 of the CCCFA;
  - (c) a statement as to the consequences if the Borrower were to give security interest over the property to another creditor, as required by paragraph (q)(iv) of Schedule 1 of the CCCFA;
  - (d) an accurate statement of the Borrower's cancellation rights under section 27 of the CCCFA as required by paragraph (s) of Schedule 1 of the CCCFA, in that Kookmin's Disclosure Statement incorrectly stated that the Borrower could cancel within 3 working days after receiving documents by hand, 5 working days after receiving documents electronically or 7 working days after receiving documents by post (in fact, the Borrower had 5, 7 and 9 working days respectively);
  - (e) a statement of the Borrower's right to apply for relief on the grounds of unforeseen hardship, and advice as to how an application under section 55 of the CCCFA could be made, as required by paragraph (sa) of Schedule 1 of the CCCFA;
  - (f) the name and contact details of the dispute resolution scheme of which Kookmin is a member, as required by paragraph (ua) of Schedule 1 of the CCCFA; and
  - (g) Kookmin's registration number and name on the register of financial service providers as required by paragraphs (ub) and (uc) of Schedule 1 of the CCCFA.
- 4.6 Additionally, Kookmin has no record of providing Schedule 3 of its Disclosure Statement to Borrowers before entering into 161 of the Affected Loans.
- 4.7 As a result of the conduct listed above, the Commission considers that Kookmin did not provide compliant Initial Disclosure before entering into the Affected Loans.

4.8 During the Relevant Period Kookmin failed to identify the disclosure issue identified by the Commission.

### **Costs of Borrowing**

4.9 During the Non-Disclosure Period, Kookmin charged Borrowers Costs of Borrowing under the Affected Loans of at least \$13,139,065. As Kookmin did not provide compliant Initial Disclosure during the Non-Disclosure Period, Kookmin received Costs of Borrowing that the Commission considers:

- (a) borrowers were not liable to pay under section 99(1A) of the CCCFA; and
- (b) Kookmin was not entitled to retain under section 48(1) of the CCCFA.

4.10 The Commission considers that Kookmin was required by section 48 of the CCCFA to, as soon as practicable:

- (a) refund the Costs of Borrowing to the Borrowers; and/or
- (b) credit the Costs of Borrowing against any amount otherwise owing by the Borrowers to Kookmin.

4.11 At the date of this Agreement, Kookmin has not refunded and/or credited the Costs of Borrowing to any Borrowers.

## **5 Terms of settlement**

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5.1 This Agreement sets out the terms on which the Parties have agreed to resolve all issues related to the Commission's Investigation.

5.2 To resolve all issues related to the Investigation, including the Commission's claim that Kookmin has breached section 17 of the CCCFA, Kookmin will:

- (a) admit that it breached section 17 of the CCCFA, by failing to ensure that it provided compliant Initial Disclosure to Borrowers during the Non-Disclosure Period;
- (b) give the Undertakings to the Commission, contemporaneously with it executing this Agreement, which records its commitment to:
  - (i) pay no less than \$11,029,020.46 to Borrowers in accordance with the Undertakings;
  - (ii) write to Borrowers advising them about the effect of this Agreement and the Undertakings on them in accordance with the Undertakings; and
  - (iii) provide the Commission with an interim and a final report in accordance with the Undertakings.

## **6 Admission of breach**

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- 6.1 Kookmin admits that in failing to provide compliant Initial Disclosure to Borrowers before entering into Affected Loans, during the Relevant Period, Kookmin breached section 17 of the CCCFA.
- 6.2 The admissions in this Agreement are limited to those admissions expressly made. Nothing in this Agreement constitutes:
- (a) any wider admission of liability by Kookmin or its Related Parties;
  - (b) any admission or agreement as to the correct interpretation or application of the CCCFA so far as it relates to the consequences of a failure to provide compliant Initial Disclosure; and
  - (c) any admission that any Borrowers have suffered loss or harm or have been prejudiced as a result of Kookmin's failure to provide compliant Initial Disclosure.

## **7 No further action by the Commission**

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- 7.1 The Commission will close its Investigation into Kookmin upon the execution of this Agreement and the Undertakings.
- 7.2 Provided that Kookmin completes all of its obligations as set out in this Agreement, the Commission will not issue, encourage or assist (except as required by law), any civil or criminal proceeding against Kookmin, and/or any of its Related Parties, in respect of matters related to the Investigation or this Agreement.
- 7.3 This Agreement is entered into without prejudice to the rights (if any) of Borrowers in respect of the breach, which rights the Commission is not compromising on their behalf.
- 7.4 Nothing in this Agreement will limit or affect the ability of:
- (a) the Commission to issue proceedings against Kookmin in respect of matters related to this Investigation in the event that Kookmin does not complete all of its obligations as set out in this Agreement and/or the Undertakings;
  - (b) the Commission to issue proceedings against Kookmin in respect of matters not related to this Investigation, or in respect of conduct engaged in by Kookmin after the date of this Agreement or for breach of this Agreement and/or the Undertakings; and
  - (c) any person who has not consented to be bound by the terms of this Agreement and/or the Undertakings from pursuing any rights available to him, her or it under the CCCFA or under any other law.

## **8 Enforceable undertakings**

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- 8.1 At the same time as the execution of this Agreement, Kookmin will give the Undertakings.

## **9 Public statements**

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- 9.1 The Parties agree that the Agreement, the Undertakings (other than Schedule 1 of the Undertakings) and the fact that Kookmin has entered into the Agreement and given the Undertakings are not confidential and, subject to clause 9.2 and 9.3 below, the Parties may make public statements in relation to the settlement after this Agreement and the Undertakings have been executed.
- 9.2 The Parties agree that:
- (a) any public statements relating to the Investigation will be made in good faith; and
  - (b) any public statement must be consistent with the matters as set out in this Agreement and the Undertakings;
  - (c) nothing in this Agreement and the Undertakings prevents either Party from referring to the fact that Kookmin has admitted to breaching section 17 of the CCCFA; and
  - (d) they will not disclose any personal information held by Kookmin, including the information on Borrowers in Schedule 1 of the Undertakings. In no circumstances will the information on Borrowers in Schedule 1 of the Undertakings be disclosed or be the subject of any public statements.
- 9.3 Kookmin understands that this Agreement does not prevent the Commission from making any public statement regarding its views of whether Kookmin's conduct in failing to provide Borrowers with Initial Disclosure engages the requirement to refund Costs of Borrowing under sections 99(1A) and 48 of the CCCFA.
- 9.4 Except as required by law, Kookmin agrees that it will not make any public statement in relation to this Agreement and the Undertakings until after the Commission has issued a media statement notifying the public of this settlement. The Commission's media release will be published on the same day the Commission posts its notice of this Agreement and the Undertakings on the Commission's website.
- 9.5 The Parties agree to provide written copies of their draft initial press releases to the other Party at least 24 hours in advance of their release to allow the other Party the opportunity to comment. A Party will be free to amend their draft initial press release after provision to the other Party and will not be obligated to accept the comments of the other Party.

## **10 Miscellaneous**

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- 10.1 The Commission acknowledges that some of the information provided by Kookmin in the course of the Investigation may be confidential, commercially sensitive or subject to privilege. The Commission agrees that, if it receives a request pursuant to the Official Information Act 1982 that relates or might relate to this type of information, it will notify Kookmin of that request and allow a reasonable opportunity for Kookmin to provide its views when making the decision as to whether any of the requested material ought to be withheld under Part 1 of the Official Information Act 1982.
- 10.2 Each Party will meet its own expenses incurred in the course of performing its obligations under this Agreement.
- 10.3 The Parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Agreement, and to demonstrate good faith in performing their obligations and in resolving any issues arising under this Agreement.
- 10.4 If necessary or desirable, the payment processes required to give full effect to the terms of this Agreement may be amended by agreement between the Parties.
- 10.5 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.
- 10.6 The Parties agree that the New Zealand courts will have exclusive jurisdiction to determine any proceedings arising out of or in connection with this Agreement and the matters to which it relates, including any proceedings brought by the Commission.
- 10.7 This Agreement constitutes the entire agreement between the Parties in relation to resolving the Investigation. It supersedes all prior communications, understandings or representations whether oral or written between the Parties.
- 10.8 The Parties to this Agreement may agree to vary the recipient of any Refund Amount in accordance with section 15(b) of the Contract and Commercial Law Act 2017.
- 10.9 No amendment to this Agreement will be effective unless it is in writing and signed by both Parties.
- 10.10 Any failure by any Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.
- 10.11 Any person signing this Agreement on behalf of one of the Parties warrants that by signing it they have all the necessary authority from the Party to sign this Agreement on their behalf.
- 10.12 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single document. A Party may execute this Agreement by one

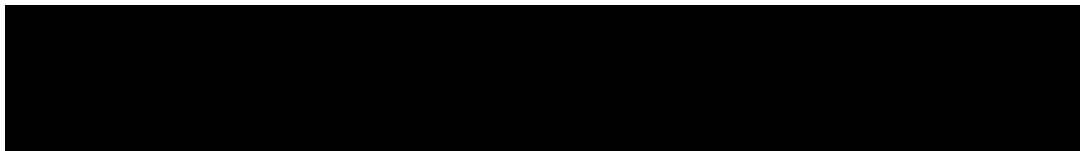


signatory executing one counterpart and another signatory executing a different counterpart. A Party's delivery of a signed PDF counterpart of this Agreement by email will have the same legal effect as that Party delivering a signed original counterpart.

10.13 Any notice or communication that is given or served under or in connection with this Agreement and/or the Undertakings must be given in writing in the following manner:

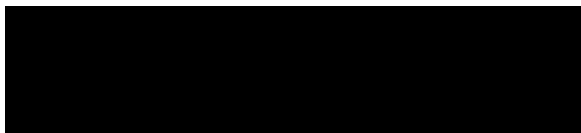
(a) If addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission  
Level 9  
55 Shortland Street  
Auckland



(b) If addressed to Kookmin, by hand delivery or email to the following address:

Kookmin Bank, Auckland Branch  
Level 16  
88 Shortland Street  
Auckland Central  
Auckland



**Execution**

Signed by and on behalf of the **Commerce Commission** by:

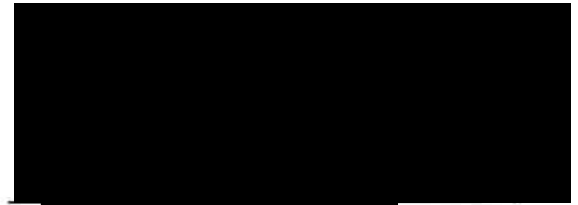


Commission Chair

Dr John Small

Name

Signed by and on behalf of Kookmin by:



Director/authorised signatory

Kim, Dohan

Name