

SCHEDULE 10 FORM OF LEGAL OPINION IN RESPECT OF ELIGIBLE SCHEME LIABILITIES

A. OPINION REGARDING VALID, BINDING AND ENFORCEABLE NATURE OF OBLIGATIONS

A.1. THIS OPINION IS FOR USE FOR AUSTRALIAN INCORPORATED ELIGIBLE INSTITUTIONS ONLY IN RESPECT OF ELIGIBLE SCHEME LIABILITIES

The Commonwealth of Australia
c/- Scheme Administrator
Australian Government Guarantee Scheme for
Large Deposits and Wholesale Funding
c/- The Secretary
Reserve Bank of Australia
GPO Box 5367
SYDNEY NSW 2001

Dear Sirs

[insert name of Eligible Institution] (“**Issuer**”)

[insert description of proposed Eligible Scheme Liabilities] (“**Liabilities**”)

We refer to the proposed issue of the Liabilities in respect of which we have acted as legal advisers to the Issuer which is an authorised deposit-taking institution under the *Banking Act* 1959 of Australia (“**Banking Act**”).

This opinion relates only to the laws of New South Wales (“**NSW**”), [insert a reference to the jurisdiction in which the Issuer is registered if not NSW] and the Commonwealth of Australia (together the “**Relevant Laws**”) and is given on the basis that it will be construed in accordance with the laws of NSW. We express no opinion about the laws of any other jurisdiction or factual matters.

Documents

We have examined copies (certified or otherwise identified to our satisfaction) of the following documents:

- a. the Deed of Guarantee dated [insert date] executed by the Commonwealth;
- b. [insert a description of the documents evidencing the proposed Eligible Scheme Liabilities] (“**Documents**”);
- c. [insert details of the authorisations and any power of attorney in respect of the entry into, and performance of obligations under, the Documents];

- d. the certificate of registration and the constitution of the Issuer; and
- e. the authority to carry on banking business in Australia given in favour of the Issuer dated [*insert date*] under the Banking Act.

In this opinion, the expression “laws” means the common law, principles of equity and laws constituted or evidenced by documents available to the public generally.

Assumptions

We have relied on the assumptions specified in section 129 of the *Corporations Act 2001* of Australia (“Corporations Act”) and assumed:

- a. the authenticity of all signatures, seals, duty stamps and markings;
- b. the completeness, and conformity to originals, of all documents submitted to us;
- c. that all authorisations referred to above remain in full force and effect;
- d. that the Documents have been, or will be, duly authorised by all parties to them (other than the Issuer) and have been, or will be, duly executed by all parties to them;
- e. on, and immediately following, the execution of the Documents, the Issuer was solvent;
- f. that, if an obligation is to be performed in a jurisdiction outside Australia, its performance will not be contrary to an official directive, impossible or illegal under the law of that jurisdiction; and
- g. that no person has been, or will be, engaged in conduct that is unconscionable, dishonest, misleading or deceptive or likely to mislead or deceive, or any other conduct in contravention of Parts 2E.1, 5.7B or 7.10 of the Corporations Act or Part 2 of the *Australian Securities and Investment Commission Act 2001* of Australia.

We have not taken any steps to verify these assumptions.

Searches

We have examined and relied on an inspection of the public records of the Issuer in extract which are available to the public and obtained from the Australian Securities and Investments Commission in [*insert place*] as at [*insert time*] local time on [*insert date*]. These records are not necessarily complete or up to date. We have not examined any documents filed by the Issuer nor have we made any other searches.

Opinion

On the foregoing basis and subject to the qualifications set out below, we are of the opinion that:

- a. the Issuer:
 - i. is incorporated and validly existing under the laws of Australia; and

- ii. is capable of suing and being sued in its corporate name;
- b. the Issuer has:
 - i. the corporate power to incur the Liabilities and enter into the Documents and to observe its obligations under them; and
 - ii. taken all corporate action required on its part to authorise the incurring of the Liabilities and the execution, delivery and observance of its obligations under the Documents;
- c. under the Relevant Laws, the obligations of the Issuer in respect of the Liabilities and under each Document are, or when executed and delivered will be, legal, valid, binding and (subject to the terms of the documents) enforceable.

The expression “enforceable” means that the relevant obligations are of a type that the courts enforce and does not mean that the obligations will necessarily be enforced in all circumstances in accordance with their terms; and

- d. the incurring of the Liabilities and the execution and delivery of the Documents and the observance of obligations under them has not violated and will not contravene any Relevant Law or its constitution.

Qualifications

This opinion is subject to the following qualifications:

- a. the nature and enforcement of obligations may be affected by lapse of time, failure to take action, laws and defences generally affecting creditors’ rights, court orders, public policy, restitution and the discretionary nature of equitable remedies;
- b. the rights of a party to a Document to enforce its rights may be limited or affected by:
 - i. breaches by that person of its obligations under the Document, or misrepresentations made by it in, or in connection with, the Document;
 - ii. conduct of that party in relation to the document which is unlawful; or
 - iii. conduct of that person in relation to the document which gives rise to an estoppel or claim against that person by the person against whom it is seeking to enforce its rights under the Document;
- c. the Relevant Laws may require that parties act reasonably and in good faith in their dealings with each other, discretions are exercised reasonably and opinions and determinations are based on good faith;
- d. we express no opinion as to:
 - i. the severance of invalid or unenforceable provisions, an indemnity for legal costs, provisions precluding oral amendments or waivers or the accuracy, completeness or suitability of any formula set out in Document;

- ii. whether a judgment for a monetary amount would be given in a currency other than Australian dollars or the date on which a conversion from a foreign currency would be made for the purpose of enforcing a judgment; or
- iii. whether the Issuer is in compliance with any prudential standard, prudential regulation or direction made by the Australian Prudential Regulation Authority;
- e. regulations in Australia restrict or prohibit payments, transactions and dealings with assets having a prescribed connection with certain countries or named individuals or entities subject to international sanctions or associated with terrorism;
- f. court proceedings may be stayed if the subject of the proceedings is concurrently before another court and a document may not be admissible in court proceedings unless applicable stamp duty has been paid; and
- g. claims against the Issuer are subject to the provisions of sections 13A and 16 of the Banking Act and section 86 of the *Reserve Bank Act* 1959 of Australia. In addition, under section 15C of the Banking Act, the fact that an ADI statutory manager (as defined in the Banking Act) is in control of the Issuer's business is not a ground for any other party to a contract to which the Issuer is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.

Benefit

This opinion is addressed to you personally and may not, without our prior written consent, be:

- a. relied on by another person;
- b. disclosed, except to persons who in the ordinary course of government have access to your papers and records on the basis that they will make no further disclosure; or
- c. quoted or referred to in a public document.

This opinion is strictly limited to the matters stated in it and does not apply by implication to other matters.

This opinion is given in respect of the Relevant Laws which are in force at 9.00 am on the date of this letter.

Yours faithfully

A.2. THIS OPINION IS FOR USE FOR FOREIGN ADI ELIGIBLE INSTITUTIONS ONLY IN RESPECT OF ELIGIBLE SCHEME LIABILITIES

The Commonwealth of Australia
c/- The Scheme Administrator
Australian Government Guarantee Scheme for Large Deposits
and Wholesale Funding
c/o The Secretary
Reserve Bank of Australia
65 Martin Place
Sydney NSW 2001

Dear Sirs

[insert name of Eligible Institution] (“Issuer”)

[insert description of proposed Eligible Scheme Liabilities] (“Liabilities”)

We refer to the proposed issue of the Liabilities in respect of which we have acted as legal advisers to the Issuer which is an authorised deposit-taking institution under the *Banking Act* 1959 of Australia (“Banking Act”).

This opinion relates only to the laws of New South Wales (“NSW”), [insert a reference to the jurisdiction in which the Issuer is registered if not NSW] and the Commonwealth of Australia (together the “Relevant Laws”) and is given on the basis that it will be construed in accordance with the laws of NSW. We express no opinion about the laws of any other jurisdiction or factual matters. We have relied upon the attached opinion of [insert details of foreign law counsel] dated [insert date] in relation to the Issuer and the laws of [insert jurisdiction of incorporation of foreign ADI] (“Foreign Law Opinion”).

Documents

We have examined copies (certified or otherwise identified to our satisfaction) of the following documents:

- a. the Deed of Guarantee dated [insert date] executed by the Commonwealth;
- b. [insert a description of the documents evidencing the proposed Eligible Scheme Liabilities] (“Documents”); and
- c. the authority to carry on banking business in Australia given in favour of the Issuer dated [insert date] under the Banking Act.

In this opinion, the expression “laws” means the common law, principles of equity and laws constituted or evidenced by documents available to the public generally.

Assumptions

We have assumed:

- a. as confirmed in the Foreign Law Opinion, that the Issuer is duly established and existing and has status as a legal entity under the laws of [*insert jurisdiction of incorporation of foreign ADI*] with full power and authority to enter into and observe its obligations under the Documents and to own and possess its properties and conduct its business;
- b. that the Foreign Law Opinion is true and correct in all respects and none of the qualifications made in the Foreign Law Opinion affects the matters opined on in this opinion;
- c. the authenticity of all signatures, seals, duty stamps and markings;
- d. the completeness, and conformity to originals, of all documents submitted to us;
- e. that the Documents have been, or will be, duly authorised and executed by all parties to them;
- f. on, and immediately following, the execution of the Documents the Issuer was solvent;
- g. that, if an obligation is to be performed in a jurisdiction outside Australia, its performance will not be contrary to an official directive, impossible or illegal under the law of that jurisdiction; and
- h. that no person has been, or will be, engaged in conduct that is unconscionable, dishonest, misleading or deceptive or likely to mislead or deceive, or any other conduct in contravention of Parts 5.7B or 7.10 of the *Corporations Act 2001* or Part 2 of the *Australian Securities and Investment Commission Act 2001* of Australia.

We have not taken any steps to verify these assumptions.

Searches

We have examined and relied on an inspection of the public records of the Issuer in extract which are available to the public and obtained from the Australian Securities and Investments Commission in [*insert place*] as at [*insert time*] local time on [*insert date*]. These records are not necessarily complete or up to date. We have not examined any documents filed by the Issuer nor have we made any other searches.

Opinion

On the foregoing basis and subject to the qualifications set out below, we are of the opinion that:

- a. the Issuer would be recognised as a legal entity under the Relevant Laws under either the common law or the *Foreign Corporations (Application of Laws) Act 1989* of Australia due to the recognition of the Issuer as a legal entity under the laws of [*insert jurisdiction of incorporation of foreign ADI*];
- b. the Issuer is registered under the Corporations Act as a foreign company carrying on business in Australia;
- c. under the Relevant Laws, the obligations of the Issuer in respect of the Liabilities and under each Document are, or when executed and delivered will be, legal, valid, binding and (subject to the terms of the documents) enforceable.

The expression “enforceable” means that the relevant obligations are of a type that the courts enforce and does not mean that the obligations will necessarily be enforced in all circumstances in accordance with their terms; and

- d. the incurring of the Liabilities and the execution and delivery of the Documents and the observance of obligations under them has not violated and will not contravene any Relevant Law.

Qualifications

This opinion is subject to the following qualifications:

- a. the nature and enforcement of obligations may be affected by lapse of time, failure to take action, laws and defences generally affecting creditors’ rights, court orders, public policy, restitution and the discretionary nature of equitable remedies;
- b. the rights of a party to a Document to enforce its rights may be limited or affected by:
 - i. breaches by that person of its obligations under the Document, or misrepresentations made by it in, or in connection with, the Document;
 - ii. conduct of that party in relation to the document which is unlawful; or
 - iii. conduct of that person in relation to the document which gives rise to an estoppel or claim against that person by the person against whom it is seeking to enforce its rights under the Document;
- c. the Relevant Laws may require that parties act reasonably and in good faith in their dealings with each other, discretions are exercised reasonably and opinions and determinations are based on good faith;
- d. we express no opinion as to:
 - i. the severance of invalid or unenforceable provisions, an indemnity for legal costs, provisions precluding oral amendments or waivers or the accuracy, completeness or suitability of any formula set out in Document;
 - ii. whether a judgment for a monetary amount would be given in a currency other than Australian dollars or the date on which a conversion from a foreign currency would be made for the purpose of enforcing a judgment; or

- iii. whether the Issuer is in compliance with any prudential standard, prudential regulation or direction made by the Australian Prudential Regulation Authority;
- e. regulations in Australia restrict or prohibit payments, transactions and dealings with assets having a prescribed connection with certain countries or named individuals or entities subject to international sanctions or associated with terrorism;
- f. court proceedings may be stayed if the subject of the proceedings is concurrently before another court and a document may not be admissible in court proceedings unless applicable stamp duty has been paid; and
- g. claims against the Issuer are subject to the provisions of section 11F of the Banking Act and section 86 of the *Reserve Bank Act 1959* of Australia.¹

Benefit

This opinion is addressed to you personally and may not, without our prior written consent, be:

- a. relied on by another person;
- b. disclosed, except to persons who in the ordinary course of government have access to your papers and records on the basis that they will make no further disclosure; or
- c. quoted or referred to in a public document.

This opinion is strictly limited to the matters stated in it and does not apply by implication to other matters.

This opinion is given in respect of the Relevant Laws which are in force at 9.00 am on the date of this letter.

Yours faithfully

¹ If this opinion is being given in respect of the Bank of China this qualification should be replaced with the following:

claims against the Issuer are subject to the provisions of sections 13A and 16 of the Banking Act and section 86 of the Reserve Bank Act 1959 of Australia. In addition, under section 15C of the Banking Act, the fact that an ADI statutory manager (as defined in the Banking Act) is in control of the Issuer's business is not a ground for any other party to a contract to which the Issuer is a party to deny any obligations under that contract, accelerate any debt under that contract or close out any transaction relating to that contract.

B. SATISFACTION OF THE ELIGIBILITY CRITERIA

B.1. THIS OPINION IS FOR USE FOR BOTH AUSTRALIAN INCORPORATED AND FOREIGN ADI ELIGIBLE INSTITUTIONS IN RESPECT OF THE SATISFACTION OF THE ELIGIBILITY CRITERIA FOR NON-DEPOSIT ELIGIBLE LIABILITIES ONLY

The Commonwealth of Australia
c/- The Scheme Administrator
Australian Government Guarantee Scheme for Large Deposits
and Wholesale Funding
c/o The Secretary
Reserve Bank of Australia
65 Martin Place
Sydney NSW 2001

Dear Sirs

[insert name of Eligible Institution] (“Issuer”)

[insert description of proposed Eligible Scheme Liabilities] (“Liabilities”)

We refer to the proposed issue of the Liabilities in respect of which we have acted as legal advisers to the Issuer which is an authorised deposit-taking institution under the *Banking Act* 1959 of Australia (“**Banking Act**”).

This opinion relates only to the laws of New South Wales (“**NSW**”), [*insert a reference to the jurisdiction in which the Issuer is registered if not NSW*] and the Commonwealth of Australia (together the “**Relevant Laws**”) and is given on the basis that it will be construed in accordance with the laws of NSW. We express no opinion about the laws of any other jurisdiction or factual matters except as expressly stated in this opinion.

This opinion is given only to confirm that the terms and conditions of the Liabilities satisfy the “Eligibility Criteria” set out in Schedule 3 to the Australian Government Guarantee Scheme For Large Deposits and Wholesale Funding Rules (“**Rules**”).

Documents

We have examined copies (certified or otherwise identified to our satisfaction) of the following documents:

- a. the Deed of Guarantee dated [*insert date*] executed by the Commonwealth;
- b. the version of the Rules dated [●] and published on www.guaranteescheme.gov.au as at the date of this opinion; and
- c. [*insert a description of the documents evidencing the proposed Eligible Scheme Liabilities*] (“**Documents**”).

Confirmation

On the foregoing basis and subject to the assumptions and qualifications set out below, we confirm that:

- a. the Liabilities [will be / are] unsecured;
- b. the Liabilities [will] have a maturity [of / not exceeding] [●] months;
- c. the Liabilities [do not / will not] include any of the features in their terms and conditions which are set out in the “Not Complex” guidelines issued under the Rules as being features that are likely to be regarded by the Commonwealth as complex. In the schedule to this opinion, we specifically address each of the matters set out in the “Not Complex” guidelines issued under the Rules; and
- d. the Liability [will be / is] expressed to be [a bank bill / a certificate of deposit / a transferable deposit / a debenture / commercial paper / a bond / a note],

and consequently, the terms and conditions of the Liabilities (subject to completion of the relevant Documents) satisfy the Eligibility Criteria.

Assumptions

We have assumed:

- a. that any Document in draft form is completed, executed and delivered in a manner that is consistent with the Eligibility Criteria; and
- b. that the final terms of the Documents have not been, and will not be, varied or waived in a manner that is inconsistent with the Eligibility Criteria

We have not taken any steps to verify these assumptions.

[Qualifications¹]

[This opinion is subject to the qualification that Rule B.2.1 requires that the Liability be held by an Australian Resident. This is a matter of fact that can only be determined after the Liability has been issued or accepted and a claim made.]

Benefit

This opinion is addressed to you personally and may not, without our prior written consent, be:

- a. relied on by another person;
- b. disclosed, except to persons who in the ordinary course of government have access to your papers and records on the basis that they will make no further disclosure; or
- c. quoted or referred to in a public document.

This opinion is strictly limited to the matters stated in it and does not apply by implication to other matters.

This opinion is given in respect of the Relevant Laws which are in force at 9.00 am on the date of this letter.

Yours faithfully

¹ Only insert this qualification if providing the opinion in connection with a Liability of a foreign ADI.

Schedule

Guidelines as to features that are likely to be treated as “complex”	Terms and conditions of the Liabilities
A [insert relevant text from guidelines – available on www.guaranteescheme.gov.au]	[describe terms and conditions relevant to each guideline]
B	
C	
D	
E	
F	
G	
H	
etc	