FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

WELLINGTON OFFICE
Level 2, 1 Grey Street
Wellington
PO Box 1179, Wellington 6140
PHONE +64 4 472 9830
FAX +64 4 472 8076

Financial Markets Conduct (Tonga Development Bank Ave Pa'anga Pau Vouchers) Designation Notice 2016

Pursuant to section 562 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 563 of that Act, gives the following notice.

Contents

Notice

1 Title

This notice is the Financial Markets Conduct (Tonga Development Bank Ave Pa'anga Pau Vouchers) Designation Notice 2016.

2 Commencement

This notice comes into force on 17 June 2016.

3 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

Ave Pa'anga Pau Voucher means an agreement between the Bank and a New Zealand resident customer (the **customer**) by which the Bank agrees to pay an amount in Tongan currency (the **quoted Pa'anga amount**) to a resident of the Kingdom of Tonga (the **intended payee**), at the request of, and in consideration of a New Zealand currency amount paid to the Bank by, its customer, and which has the following features:

(a) it is non-transferable:

(b) it has an expiry date of not more than 30 days:

(c) if the intended payee has a Tongan bank account, the Bank must as soon as is reasonably practicable pay the quoted Pa'anga amount to that account:

(d) if the quoted Pa'anga amount has not been paid to or collected by the intended payee prior to the expiry date, the Bank must as soon as is reasonably practicable repay the customer the New Zealand currency amount originally paid by them for the Ave Pa'anga Pau Voucher less any commission deducted in accordance with the terms of the contract between the Bank and the customer:

(e) the Bank will only deduct funds from the NZD account into which payments are made for Ave Pa'anga Pau Vouchers—

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(i) to the extent that the value of the Ave Pa'anga Pau Vouchers have been paid to or collected by the intended payee; or

(ii) to refund the customer in the event that payment is not made with within 30 days.

Bank means Tonga Development Bank, a statutory corporation governed by the Tonga Development Bank Act 2014 of the Kingdom of Tonga.

Regulations means the Financial Markets Conduct Regulations 2014.

(2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

4 Designation

Ave Pa'anga Pau Vouchers are declared not to be a financial product for the purposes of the Act.

Dated at Wellington this 8th day of June 2016.

Nick Kynoch

Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice comes into force on 17 June 2016. The notice declares that Ave Pa'anga Pau Vouchers (**Vouchers**) issued by Tonga Development Bank (**Bank**) are not a financial product for the purposes of the Financial Markets Conduct Act 2013 (**Act**).

The Financial Markets Authority, after satisfying itself of the matters set out in section 563 of the Act, considers that it is appropriate to grant the designation because—

- The economic substance of the Vouchers is that they are not a debt security—
  - The Vouchers are not an investment or risk management product, and no interest or yield is paid;
  - The right of a New Zealand customer to be repaid in certain circumstances is an incidental feature of the Voucher;
  - The practical effect of the Vouchers as a remittance service is that it can only be used as a payment mechanism and it is non-transferable; and
  - The Vouchers are not a source of funding for the Bank.
- As the Vouchers are in substance a remittance product rather than a debt security and are likely to be seen by customers as a remittance product, regulation as a debt security under the Act is unlikely to contribute to the confident and informed participation of consumers in the financial markets.
- Introduction of the Voucher system will promote the efficiency of the remittance market by increasing competition. A declaration will ensure that regulation is fit for purpose and will avoid unnecessary costs that may unreasonably impact on the commercial viability of the Vouchers.

- Regulation under the Act as a debt security is unlikely to contribute to transparency and/or the provision of useful information to customers, and may in fact detract from those things. In particular, customers are likely to understand the Vouchers as a payment product and be able to assess the costs of using that service and dealing with the Bank. Requiring disclosure as a debt security would be likely to confuse people as to the substance of the Vouchers.
- As the Vouchers are in substance a remittance product, imposing additional governance requirements (such as requiring a trust deed and appointing a licensed Supervisor) would be disproportionate to the governance risks. Also, requiring the Bank to fully comply with the Act for issuing a debt security (such as having a Product Disclosure Statement, a trust deed and a licensed supervisor), would introduce substantial and disproportionate compliance costs.
- Providing the Vouchers will still be a financial service and therefore subject to the fair dealing provisions in Part 2 of the Act.
- The Bank will be registered as a financial service provider and belong to an approved dispute resolution scheme which underpins consumer confidence in the market.

The FMA is therefore satisfied that making the declaration is necessary or desirable in order to promote one or more of the main or additional purposes of the Act —

- to promote the confident and informed participation of businesses, investors, and consumers in the financial markets;
- to promote and facilitate the development of fair, efficient, and transparent financial markets;
- to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services;
- to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks;
- to avoid unnecessary compliance costs;
- to promote innovation and flexibility in the financial markets.

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