
SECTION 15

LOANS AND GUARANTEES

15.03 LOAN GUARANTEES

AUTHORITY:

FINANCIAL ADMINISTRATION ACT

ADMINISTRATION:

TREASURY BOARD SECRETARIAT AND
DEPARTMENT OF FINANCE

EFFECTIVE DATE:

JUNE 2024

15.03 LOAN GUARANTEES

(1) INTRODUCTION

Section 32 of the *Financial Administration Act* makes provision for the Lieutenant-Governor-in-Council, upon recommendation of Treasury Board, to guarantee the payment of a debt or obligation.

The ease of administration and procedural reference guarantees have been categorized into two types; guarantees on behalf of “internal organizations” and guarantees on behalf of “external organizations”. Internal and External organizations are defined in Section 15.01 of the Manual.

The procedures element of this subsection is divided into two parts; one part sets out the procedures for dealing with requests and loan guarantees to internal organizations and the other part deals with external organizations.

This subsection relates to loan guarantees under Section 32 of the *Financial Administration Act* and is not intended to address guarantees issued by Crown Corporations.

(2) APPLICATION

The application of this policy is referenced to the schedules of the *Financial Administration Act* (FAA) for which funds are appropriated directly or within a department unit and applies as follows:

- Schedule “A” - Departments
- Schedule “B” - Crown corporations
- Schedule “C” - Education Authorities
- Schedule “D” - Commissions

(3) POLICY

- (a) Administration Fee: All loan guarantees to **external** organizations may be assessed an administration fee of up to one percent (1%) **per annum** to offset provincial administration costs which will be paid by the Borrower. The administration fee is based on the **full** principal amount of the guarantee authorized.
- (b) Loans guaranteed under this policy will not exceed the prime rate, without first obtaining authorization from Treasury Board.
- (c) Legal expenses will be the responsibility of the Borrower.
- (d) The general intent and criteria for consideration of requests for financial support in the form of loan guarantees are as follows:
 - (i) In the case of external organizations, loan guarantees will only be considered as a **last resort** in that adequate financial support is not available through other

government programs or from conventional Lenders without the assistance of the guarantee.

- (ii) **Applications will not be entertained** from individuals or corporations who have defaulted and are still obligated to the Province, or its Crown corporations, as a result of previous transactions on their behalf unless compensatory arrangements suitable to the Minister of Finance have been made. A “Loans in Default Central Registry” is maintained at Finance PEI, as referenced in Section 15.04 of this Manual.
- (iii) A request may be considered by Treasury Board in certain situations where there is evidence of significant economic development and/or social impact in the form of new jobs created and/or maintained, new technology introduced or similar considerations.
- (iv) Normal lending criteria relevant to the type of request will form part of the consideration for approval. This may include management ability, equity investment, security availability, ability to repay, an assessment of marketing plans, operation and capital cost estimates, production projections and financial plans.

(4) PROCEDURES - INTERNAL ORGANIZATIONS

(a) Review Process:

- (i) The Borrower requesting a loan guarantee should approach a Sponsoring Agency. If the initial contact is Treasury Board or the Department of Finance, the request will be forwarded to the appropriate Sponsoring Agency. In a situation where a crown corporation is the Borrower, this procedure should be read so that Sponsoring Agency and “Borrower” are synonymous.
- (ii) If the Borrower is an educational institution, the request should be forwarded to the Ministry responsible for post-secondary institutions, who is responsible for analysing the request, and submitting it with recommendations to Treasury Board.
- (iii) Crown corporations/Sponsoring Agencies shall address all the relevant points and provide specific recommendations in the Treasury Board submission. Attachment 15.03-I identifies some common guidelines/information requirements for use in preparing the Treasury Board submission.
- (iv) Treasury Board Secretariat staff will review the submission and provide further observations as necessary to Treasury Board.
- (v) Treasury Board will consider the submission and, if accepted, will recommend approval to Lieutenant-Governor-in-Council.

- (b) Document Execution:
- (i) If approved by the Lieutenant-Governor-in-Council, an Order-in-Council will be issued stating the terms and conditions.
 - (ii) The Minister of Finance may add further terms and conditions as deemed appropriate, provided that such further terms and conditions shall be in place prior to the advancement of any monies by the Lender.
 - (iii) A letter of instruction will be forwarded to the Lender by the Minister of Finance setting out any specific conditions and the reporting requirements. A sealed copy of the Order-in-Council will be forwarded to the Lender.
- (c) Monitoring:
- (i) The loan will be monitored by Treasury Board Secretariat staff in conjunction with the Sponsoring Agency consistent with the terms and conditions as set out in the Order-in-Council and by the Minister of Finance.
 - (ii) The frequency of monitoring and the level of detail obtained will vary depending on the type and term of the loan guarantee, the security pledged in support of the loan guarantee and the extent of monitoring being undertaken by the Lender. Normally the periodical status report and analysis of annual financial statements of the Borrower will be sufficient to identify problems that may require some action to be taken.
 - (iii) Treasury Board Secretariat staff will maintain a register for all loan guarantees as well as copies of all documents held in support of the guarantees issued under this policy.

(5) PROCEDURES - EXTERNAL ORGANIZATIONS

- (a) Review Process:
- (i) The Borrower requesting the loan guarantee should approach a Sponsoring Agency.

If the initial contact is Treasury Board or the Department of Finance, the request will be forwarded to the appropriate Sponsoring Agency.
 - (ii) The Sponsoring Agency is responsible for analysing the request and submitting it, with a recommendation, to Treasury Board. The submission to Treasury Board should include supporting information as outlined in Attachment 15.03-I.
 - (iii) Treasury Board Secretariat staff will review the submission and provide further observations as necessary to Treasury Board.

(iv) Treasury Board will consider the submission and, if accepted, will make recommendation to the Lieutenant-Governor-in-Council.

(b) Document Execution:

(i) If approved by the Lieutenant-Governor-in-Council, an Order-in-Council will be available for issuing stating the terms and conditions of the guarantee.

(ii) The Provincial Treasurer may add further terms and conditions as deemed appropriate, provided that such further terms and conditions shall be in place prior to the advancement of any monies by the Lender.

(iii) When required, Treasury Board Secretariat staff will prepare, in consultation with the Office of the Attorney General and the Sponsoring Agency, a formal Offer of Assistance for review and execution by the Minister of Finance.

(iv) Security for the guarantee shall include, when deemed appropriate by the Provincial Treasurer, all or some combination of the following:

(A) A charge by way of debenture or other acceptable documents on the assets of the Borrower(s);

(B) Assignment (as its interest may appear) of adequate insurance on all assets including life insurance on the key principals of the organization;

(C) Assignment of accounts receivable and/or specified contracts;

(D) Personal guarantee of the owners of private businesses or the major shareholders of closely-held corporations;

(E) Such other security as may be required.

(v) If the offer is accepted by the Borrower in writing, Treasury Board Secretariat staff will:

(A) Forward instructions to the designated legal counsel requesting the legal work be performed by counsel on behalf of the Province. The transmittal should include a copy of the accepted offer and the Order-in-Council;

(B) Upon completion of the security requirements and contingent conditions, forward a letter of instruction to the Lender including a copy of the accepted offer and a sealed copy of the Order-in-Council. These instructions should identify any conditions the Lender is expected to fulfil such as additional security, monitoring and reporting procedures;

- (vi) If the Lender agrees to the terms and conditions of the guarantee, the Lender is required to provide such acceptance in writing to the Minister of Finance.
 - (vii) Drawdown of funds will not be permitted until all security and conditions required in support of the loan guarantee are put in place, unless otherwise approved by the Minister of Finance;
 - (viii) **Legal expenses will be the responsibility of the Borrower.**
 - (ix) The applicable administration fee shall be paid to the Minister of Finance or Sponsoring Agency before or at the time of the first draw under the loan guarantee.
- (c) Monitoring:
- (i) The loan guarantee will be monitored by Treasury Board Secretariat staff in conjunction with the Sponsoring Agency consistent with the terms and conditions as set out in the Order-in-Council and the Offer of Assistance.
 - (ii) The frequency of monitoring and the level of detail required will vary depending on the type and term of the loan guarantee, the security pledged in support of the loan guarantee, the risk factor involved, the peak activity levels of the Borrower, and the extent of monitoring being undertaken by the Lender.
 - (A) Long-Term Capital Loans: Normally the periodical status report from the Lender and analysis of annual financial statements of the Borrower will be sufficient to identify problems that may require some action to be taken.
 - (B) Short-Term Working Capital: Lines of credit usually up to one year will normally be monitored more frequently, sometimes weekly in peak activity periods. Information that will normally be required from the Borrower and will inter alia be the basis for monitoring the loan guarantee are as follows:
 - Detailed record of expenses and revenue, payables and receivables.
 - Cash flow requirements forecasted on a regular basis as required;
 - Continuous record on status or inventory by product etc. (Purchases and sales);
 - Continuous record of cheques issued (by date, amount, payee, purpose) and receipts;
 - Monthly financial statements and balance sheet;
 - Such other information as may be required from time to time.
 - (iii) In addition to the above, discussions will be held with the Borrower regarding the present and future plans of the organization and any problems it may be experiencing.

- (iv) Treasury Board Secretariat staff will maintain a loan register for all loan guarantees as well as copies of all documents held in support of the guarantees issued under this policy.

(d) Default

Subsection 32(2) of the FAA provides that when a guarantee has been given by the Province for the payment of any debt or obligation and default in payment on the due date is made by the primary debtor, the Minister of Finance may pay the amount that has been guaranteed out of the Operating Fund.

- (i) In the case of default by the Borrower, the approval of the Minister of Finance in writing will be required before any legal action is instituted to realize on the securities held in support of the loan.
- (ii) When a default has been made by the Borrower and the Lender has demanded the Province to honour its guarantee, the Sponsoring Agency will be responsible for making a submission to Treasury Board outlining:
 - (A) the history respecting the guarantee, including the purpose and use of the loan guarantee, performance of the Borrower and causes of the default;
 - (B) the present financial position of the Borrower including the current financial statements, the type, rank and value of security held in support of the guarantee;
 - (C) a recommendation of action to be taken including the impact of implementing the recommendation.
- (iii) The Sponsoring Agency, in conjunction with Treasury Board Secretariat staff, will be responsible to implement the necessary recovery action to collect the outstanding account as directed by the Minister of Finance, Treasury Board or the Lieutenant-Governor-in-Council.
- (iv) **When the Province is required to make payment of the loan, such costs will be charged to the budget appropriation of the Sponsoring Agency.**
- (v) When it is deemed that further collection activities on the account will not be cost-effective or would create an unreasonable hardship to the Borrower, a recommendation may be made by Treasury Board to the Lieutenant-Governor-in-Council that the debt to the Province by the Borrower be cancelled or written off under either section 26 or 26.1 of the FAA.

(6) INTERPRETATION

In cases where an interpretation is required, such should be referred to the Secretary to Treasury Board, or their delegated officer, who will make the interpretation or refer the matter to Treasury Board, if a Board decision is deemed necessary.