

## **Aboriginal Loan Guarantee Program Outline of Loan Guarantee Agreement**

The following is an outline of the terms that may be included in an agreement for a loan guarantee provided by the Province under the ALGP. These terms are general in nature and subject to modification by the Province depending upon the structure and details of the specific project. The Province must be satisfied by the final terms and conditions and the guarantee agreement must be in a form satisfactory to the Province. The Ontario Financing Authority (OFA) administers the ALGP on behalf of the Province.

- (i) **Guaranteed Amounts:** During the term of the guarantee, the Province will guarantee to the lender the applicant's repayment of a maximum specified principal amount of an eligible loan and any accrued but unpaid interest as calculated under the loan agreement. The Province will not guarantee the payment of any fees, penalties, make whole amounts or other such amounts that may become due under the loan agreement.

Note that the loan agreement must also be in a form satisfactory to the Province. The Province may have comments on any specific loan agreement and may require changes to the structure or terms of a loan agreement guaranteed under the ALGP.

- (ii) **Guarantee Fee:** The applicant will be required to pay an annual guarantee fee to the Province. The Province will determine the amount of the guarantee fee for each transaction. For some transactions, the Province has set the guarantee fee in the amount of 15 basis points (0.15%) to be paid on the amount of the loan at the time the guarantee is entered into, and thereafter annually based on the outstanding balance of the loan, including accrued but unpaid interest. Any upfront guarantee fee must be paid prior to the guarantee being effective.

- (iii) **Applicant's Obligations:** The applicant will be required to fulfil certain conditions related to the loan and transaction prior to the guarantee becoming effective, and meet certain requirements throughout the life of the guarantee. The Province will determine the appropriate conditions for each transaction, including the following (note that the Province may add or delete any conditions at its discretion depending on the specific transaction):

- a. The applicant must be a corporation wholly-owned by one or more First Nation, Métis, or other Aboriginal communities.
- b. The applicant will be required to provide satisfactory evidence of its authority to enter into the loan and loan guarantee agreement and other project agreements as applicable and must provide evidence of Band Council resolutions as appropriate.
- c. The applicant will be required to provide confirmation that the material agreements that are required to carry out the project are in place and provide copies of the agreements.
- d. The applicant will be required to provide satisfactory security to the lender for the loan in accordance with the terms of the loan agreement. The form of security must be satisfactory to the Province. The security will usually consist of the applicant's interest in the project, and may need to be negotiated in cooperation with any other secured lenders.
- e. The applicant will be required to open bank accounts that are subject to withdrawal and use restrictions. For example, the applicant will be required to establish and maintain a proceeds account into which all its Project revenues are paid and which will be used to fund its loan repayments and guarantee fee payments. The applicant will also be required

to establish and maintain a reserve account with a minimum balance which can be used to fund loan repayments and guarantee fee payments if there are insufficient Project revenues. The applicant will be required to agree to restrictions on its use of funds related to the Project, such as:

- i. Making loan payments, guarantee fee payments, and maintaining a certain minimum balance in the reserve account before other withdrawals are permitted, such as for dividend payments;
  - ii. Ensuring that a portion of available funds will be used to make prepayments under the loan agreement; and
  - iii. Further restrictions on withdrawals if the debt service coverage ratio is below a defined threshold or if the applicant is in violation of the loan or guarantee agreements.
- f. The applicant may be required to obtain insurance satisfactory to the Province.
- g. The applicant will be required to fulfill ongoing covenants while the loan guarantee is in place, including allowing the Province to review documents and information relating to the loan and project, providing information and reports to the Province, complying with restrictions on its operations and management, and other matters as the Province requires.
- h. The applicant will be required to obtain the Province's consent prior to taking certain actions that may impact its ability to repay the loan, such as:
  - i. Creating additional security interests in its assets or borrowing additional funds.
  - ii. Selling or otherwise making a disposition of any of its assets.
  - iii. Engaging in additional operations or businesses.
  - iv. Amending or terminating relevant agreements or constating documents.
  - v. Changes in ownership.
- (iv) **Lender's Obligations:** The Province will require the lender to agree to conditions as part of the guarantee agreement, which shall be subject to the discretion of the Province based on the particular transaction and which can include the following:
  - a. The lender will be required to follow its usual practices in entering into the loan agreement, making advances and administering the loan agreement.
  - b. The lender will be required to create and maintain a security interest appropriate to the transaction and will need to provide confirmation to the Province of its receipt of satisfactory security. The form of the security must be satisfactory to the Province and the lender will be required to obtain the province's consent before realizing on the security. The lender will be required to apply any proceeds of realization of the security to the loan before applying it to any other indebtedness. The lender will not be required to attempt to realize on the security prior to making a claim under the guarantee but the lender will be required to obtain the written consent of the Province before realizing on the security. The lender will be required to assign the loan agreement and security to the Province upon payment of a claim under the guarantee.

- c. The lender will be required to notify the Province if the applicant is in default of the loan agreement or if it becomes aware of any material deterioration in the financial condition of the applicant or the value of the security. The Province may require the lender to cease advances under the loan in the event of a material adverse change.
  - d. The lender will not be permitted to amend the loan agreement without the Province's prior written consent.
  - e. The lender will be required to provide information to the Province with respect to the administration of the loan, including information on advances.
- (v) **Effective Date of Guarantee:** As noted, there will be certain conditions precedent to the effectiveness of the guarantee and the loan guarantee agreement will provide for satisfactory evidence to be provided to the province that the conditions precedent have been fulfilled including but not limited to copies of agreements, closing certificates, legal opinions and other documents satisfactory to the Province.
- (vi) **Payment of Claims:** The loan guarantee agreement will contain specific requirements and terms respecting the process for making a demand on the guarantee. The lender can call on the guarantee only if the applicant fails to pay principal and interest under the loan agreement. The Province will make all reasonable efforts to pay any valid claim within ninety days of its receipt of supporting documentation. The lender will be required to assign the loan agreement and security to the Province upon payment of a claim under the guarantee.