
CHAPTER 345**GUARANTEE OF LOANS (SMALL BUSINESSES)****ARRANGEMENT OF SECTIONS**

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CHAPTER 345

GUARANTEE OF LOANS (SMALL BUSINESSES)

An Act to provide for the guarantee by the Government of the Commonwealth of The Bahamas of loans by financial institutions to small business and for purposes connected thereto. *25 of 1998*

*[Assent 24th July, 1998]
[Commencement 14th August, 1998]*

1. This Act may be cited as the Guarantee of Loans (Small Businesses) Act, 1998. Short title

2. In this Act — Interpretation
 - “agriculture” includes fisheries, forestry, horticulture, and use of land for any purpose of husbandry including the keeping or breeding of livestock, poultry and bees and the growing of vegetables or fruits;
 - “agricultural enterprise” means an enterprise in The Bahamas in which is carried on the business of agriculture;
 - “approved lender” means —
 - (a) The Bahamas Development Bank established under section 3 of The Bahamas Development Bank Act; Ch 357
 - (b) a domestic bank licensed under the Banks and Trust Companies Regulations Act; Ch 316
 - (c) an insurance company registered under the Insurance Act; or Ch 347
 - (d) any other financial institution approved by the Minister in accordance with the provisions of section 5;
 - “borrower” has the meaning assigned to it in section 8(b);
 - “company” includes any body of persons whether corporate or unincorporate;
 - “Fund” means the Loan Guarantee Fund established under section 10;

“guaranteed loan” has the meaning assigned to it in section 3(1);

“industrial enterprise” means an enterprise in The Bahamas in which is carried on —

- (a) the business of mining, manufacturing, processing, transforming, assembling, installing, overhauling, reconditioning, altering, repairing, cleaning, packaging, transporting or warehousing of goods;
- (b) the operation of an air, sea or land public transport service; or
- (c) any service-oriented business;

“interest” means simple interest calculated on the declining balance;

“Minister” means the Minister responsible for Loan Guarantee Schemes;

“property” means real and personal property;

“small business” means an agricultural enterprise, an industrial enterprise, a tourist industry enterprise where the owner of such enterprise participates or assists in the day to day management of the enterprise, which has the following characteristics —

- (a) employs less than twenty-five persons; or
- (b) the annual gross revenue does not exceed one million dollars;

“security” or “collateral” means any personal guarantee or property pledged by a borrower to protect the interest of the approved lender;

“tourist industry enterprise” means an enterprise in The Bahamas in which is carried on the business of —

- (a) supplying hotel accommodation or other tourist facilities; or
- (b) supplying premises or equipment for any business referred to in paragraph (a) of this definition under a lease contract or other arrangement whereby title to the premises or equipment is retained by the supplier.

3. (1) The Government may in such manner and on such terms and subject to such conditions as may be agreed between it and an approved lender —

Power of Government to guarantee loans for small businesses

- (a) guarantee the discharge by a borrower of its obligations under any agreement (in this Act referred to as a “guaranteed loan”) which may be entered into by the borrower with an approved lender in respect of any borrowing or under any bond, promissory note or other instrument issued pursuant to any such agreement; and
- (b) assume such other obligation as may be agreed between the Minister and an approved lender in relation to or pursuant to any such agreement, bond, promissory note or other instrument.

(2) A guarantee or undertaking given under this section shall be given in writing in the name of the Government of the Commonwealth of The Bahamas and any guarantee or undertaking or any endorsement or any bond, promissory note or other instrument of guarantee or undertaking given under this section may be signed on behalf of the Government of the Commonwealth of The Bahamas by the Minister or by any person authorised in writing by the Minister on that behalf.

(3) Section 17 of the Financial Administration and Audit Act shall not apply to any guarantee made by the Minister under subsection (1).

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4. The Minister shall, as respects the functions assign to him by or under this Act, be a corporation sole, with power to acquire, hold, lease and dispose of property, to enter into contracts, to sue and be sued and to do all things necessary for the purposes of this Act.

Minister to be a corporation sole

5. (1) The Minister may, subject to such conditions as he sees fit, approve any financial institution as a lender for the purposes of this Act.

Approval of lender

(2) The Minister may at any time terminate the approval given to a lender under this section by not less than six months’ notice in writing.

(3) No notice of termination under subsection (2) shall affect the rights or obligations of any person under any guarantee which is made or entered into before the date on which such termination takes effect.

Application for
guaranteed loan

6. (1) An approved lender desirous of obtaining a guarantee for a loan under this Act shall apply to the Minister in the prescribed form.

(2) Before an approved lender makes an application under subsection (1), it shall evaluate the loan proposal of the borrower and indicate to the Minister, the terms and conditions of its participation in granting the borrower a loan.

Functions of
approved lender

7. (1) An approved lender shall —

- (a) obtain proof of the eligibility of the borrower for the grant of a guaranteed loan;
- (b) at all times exercise due diligence to ensure that the proceeds of the guaranteed loan are being applied to the purposes for which the loan was made;
- (c) obtain the approval of the Minister before modifying any guaranteed loan under this Act; and
- (d) scrutinize and check the application for the loan and the statements contained therein with the care required by the approved lender in the conduct of its ordinary business.

(2) An approved lender shall submit quarterly declarations to the Minister commencing from the date on which such loan would have been approved, in such form as may be prescribed and otherwise required under this Act, listing all guaranteed loans administered by it and which are in arrears at the end of that quarter and advising the Minister of the steps taken to recover such arrears.

Conditions of a
guaranteed loan

8. A loan may be guaranteed under this Act if all the following conditions are satisfied, that is to say —

- (a) the loan is made by an approved lender;
- (b) the loan is made to an individual or company (in this Act referred to as the “borrower”) who provides evidence satisfactory to the Minister that such individual or persons forming the company are —
 - (i) not less than eighteen years of age;
 - (ii) not under any liability to an approved lender under any other loan previously made by an approved lender and guaranteed under section 3;

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- (c) the purpose of such loan is to establish a small business or to undertake any project relating to such business;
 - (d) the loan does not exceed two hundred and fifty thousand dollars;
 - (e) the loan is made on terms that all moneys borrowed under the loan shall be repaid within a period of ten years following the date on which the first advance is made under the loan or such other date as may be determined by the Minister;
 - (f) the loan is made —
 - (i) to an individual who provides evidence satisfactory to the Minister that there is a valid policy of insurance on his life with an insurance company registered under the Insurance Act for such an amount as is sufficient to cover the full amount of the loan or to an individual who takes out a mortgage redemption policy with an insurance company registered under the Insurance Act and undertakes to maintain the policy by regular payment of premiums and assigns the benefits of the policy to the approved lender and deposits it with the approved lender;
 - (ii) to a company which provides evidence satisfactory to the Minister that there is a valid policy of insurance on the lives of the principal owners and manager of the company, with an insurance company registered under the Insurance Act, the aggregate of which is sufficient to cover the full amount of the loan or to a company that has taken out a mortgage redemption policy with an insurance company registered under the Insurance Act and undertakes to maintain the policy by regular payment of premiums and assigns the benefit of the policy to the approved lender and deposits it with the approved lender; and
 - (g) the aggregate amount guaranteed shall not exceed eighty per centum of the loan amount;

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- (h) the loan is secured by a first legal mortgage on property or by a debenture in favour of the approved lender and, where there is no property available, by any other collateral or security which may be approved by the Minister; and
- (i) any premises which is security for the loan is insured against all insurable risks as defined in the Second Schedule to the Guarantee of Loans (Small Businesses) Regulations for the full amount of the value of the property at the date of the making of the loan, or for such greater or lesser amount, as the Minister may, from time to time, having regard to any fluctuations in the cost of building, require by notice in writing to the approved lender.

Loan guarantee
premium fee

9. (1) The approved lender shall pay a loan guarantee premium fee to the Minister in respect of each loan guaranteed under this Act.

(2) The loan guarantee premium fee mentioned in subsection (1) shall be in a sum equal to two per centum of the amount guaranteed.

Loan Guarantee
Fund

10. (1) For the purposes of section 3, the Minister shall establish a fund to be known as the Loan Guarantee Fund (in this Act referred to as “the Fund”) out of which all payments required to be made by the Government pursuant to section 3 shall be made and into which all loan guarantee premium fees received under this Act shall be paid.

(2) The fulfilment of all the obligations of the Government under section 3 shall be guaranteed out of the Consolidated Fund and accordingly, there shall be paid into the Fund from time to time out of the Consolidated Fund by warrant under the hand of the Minister of Finance such sums as may be necessary to increase the Fund to an amount which will enable the Minister to discharge these obligations.

(3) Whenever any sum is paid out of the Consolidated Fund under subsection (2) of this section, the Minister shall prepare a statement and lay it before the House of Assembly.

(4) Without prejudice to the provisions of subsection (2) of this section, where the Fund at the end of any financial year exceeds ten per cent of the total amount of guaranteed loans in force, the Minister shall apply the surplus towards repaying to the Consolidated Fund all sums paid therefrom into the Fund in accordance with subsection (2) of this section.

(5) The Minister may from time to time invest any of the liquid assets of the Fund in securities which are obligations of the Government, as well as securities approved by the Governor-General.

(6) No payment shall be made out of the Fund except such payments as are authorized to be made by this Act.

11. The Minister may give directions in writing to the approved lender as may from time to time be necessary or desirable for the purpose of administering the Fund and the approved lender shall comply with the directions.

Minister to give directions to approved lender.

12. So long as the Government shall continue to be liable is under any guarantee or other undertaking given in exercise of the powers under section 3(1) in respect of any borrowing, the borrower shall not, without the consent of the approved lender and the Minister, exercise any other power to borrow additional funds for the project except the power to borrow by way of overdraft for a period not exceeding twelve months.

Restriction on borrowing powers of the borrower if guarantee outstanding.

13. The aggregate amount of all borrowings by small businesses that are guaranteed by the Government under this Act shall not exceed ten million dollars or such greater sum as may from time to time be specified by resolution of the House of Assembly.

Limit on amount of guarantees to small businesses.

14. (1) The Minister shall cause to be kept proper accounts and other records relating to the Fund and shall prepare in respect of each financial year a statement of the accounts of the Fund in compliance with generally accepted accounting principles.

Audit and accounts.

(2) The accounts of the Fund shall be audited annually under such arrangements and in such manner as may be approved by the Minister.

(3) The Minister shall cause a copy of the annual statement of accounts and the auditor's report thereon to be laid on the table of both Houses of Parliament not later than six months after the end of each financial year.

(4) Copies of the annual statements of accounts and the auditor's report on those statements of accounts of the Fund shall be published in such manner as the Minister may direct and shall be made available to the public at a reasonable price.

Borrower to
repay to
Government
sums paid under
guarantee

15. If any sum is paid out of the Consolidated Fund or other Fund referred to in section 10(1) in respect of any liability incurred by the Government under a guarantee or other undertaking given in exercise of the powers conferred by section 3(1), the borrower shall repay such sum (together with interest whereon at such rate as the Minister may prescribe) to the Consolidated Fund or to the Fund referred to in section 10(1), as the case may be, in such manner and at such time as the Minister may direct.

Misrepresenta-
tion

16. Where an approved lender discovers that any statement in an application for a loan is false in any material respect or that a borrower has used or is using the proceeds of a loan otherwise than for a purpose specified in the application of a loan, the approved lender may take any action it considers proper in the circumstances and shall immediately make a full report in respect of the matter to the Minister.

Discharge of
Government's
liability as a
guarantor

17. Without prejudice to any other rights or remedies of the Government as a guarantor, the Government shall be discharged from all liability in respect of a guaranteed loan under this Act —

- (a) if the approved lender fails to disclose any fact known to the approved lender which may reasonably have affected the decision of the Minister in granting the guaranteed loan;
- (b) if the approved lender fails to disclose to the Minister any defect in the title of the borrower to collateral or security for the loan; being a defect which the approved lender has discovered or ought with reasonable diligence to have discovered, and if the defect is one which might reasonably have affected the decision of the Minister in granting the guaranteed loan;
- (c) if the approved lender assigns or conveys, otherwise than with the approval of the Minister to another approved lender, any of the rights of the approved lender under the loan or any other charge or lien by which the loan is secured;

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- (d) if the approved lender varies or waives any of the obligations of the borrower under the loan without the approval of the Minister;
 - (e) if the approved lender, otherwise than in accordance with the terms of the loan, releases any security or collateral taken as a security for the loan without the approval of the Minister; or
 - (f) if the approved lender has failed to comply with any provision of section 7.

18. (1) Subject to the provisions of this section, an approved lender, who is the creditor in respect of a guaranteed loan which is secured by a mortgage on premises or chattels may, where default has occurred under the mortgage, realise its security by selling those premises or chattels in accordance with the provisions of this section.

Guaranteed loan
settlement

(2) A sale of premises or chattels in accordance with the provisions of this subsection shall, whether or not in exercise of the powers of sale conferred on a mortgagee by any written law, be effected by public auction or otherwise, and such sale shall only take place at a price which shall not be less than a sum equal to eighty per cent of the following sums (hereinafter referred to as the “settlement value”) —

- (a) the balance of the principal sum of the loan owing on the date when the security is realised;
- (b) the interest owing on the said date under the loan in respect of the period of twelve months immediately preceding the said date;
- (c) such reasonable costs of realising the security and of selling the premises as are incurred by the approved lender as the Minister may approve or as the Minister may have agreed as a term of the guaranteed loan.

(3) If a sale shall not take place in accordance with subsection (2), the approved lender shall forthwith notify the Minister and the Minister shall either —

- (a) authorise the approved lender to sell the property at the best price reasonably obtainable (whether by public auction or otherwise) and if upon sale such price is less than the settlement

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- value of the loan, the Minister shall pay to the approved lender a sum equal to the settlement value after deducting there-from the price at which the premises or chattels were sold; or
- (b) require the approved lender to transfer to him or his nominee, all rights to and in respect of the guaranteed loan and all collateral or other securities therefor on payment of the settlement value of the property by the Minister to the approved lender calculated in accordance with subsection (2); or
 - (c) require the approved lender to sell the property to the Minister or his nominee at the settlement value and to convey title to the Minister or his nominee free and discharged from all liability to the approved lender or the borrower.
- (4) If the Minister shall authorise the sale of the property under paragraph (a) of subsection (3) and such sale shall not take place in accordance with that paragraph, the Minister shall give further directions in accordance with either paragraph (b) or (c) of subsection (3).
- (5) The payment by the Minister to an approved lender in respect of a guaranteed loan of the sum provided for in subsection (3)(a) shall discharge the Government from all liability to the approved lender in respect of the guaranteed loan.
- (6) In every sale of mortgaged premises or chattels in accordance with the provisions of subsection (2) —
- (a) such premises or chattels shall be sold for the same estate or interest as the mortgagor would have therein but for the mortgage, and subject only to such conditions respecting title or evidence of title, or other matters, as it is necessary or proper to impose on the sale of such premises or chattels as the Minister may permit to be imposed; and
 - (b) in the case of sale by public auction, notice of intention to sell the mortgaged premises or chattels by public auction and of the time, date and place of such auction, shall be published in two issues of any newspaper published and circulating in The Bahamas at intervals of not less than two days.

(7) Where, in addition to being secured by a mortgage on any premises or any chattel, a guaranteed loan is secured by a mortgage or charge on other premises or chattels, subsection (1), shall have effect as if references to a security included references to all securities for the guaranteed loan, and as if references to premises and chattels included references to all premises and chattels on which the loan is secured.

(8) For the purposes of this section default occurs where ninety days has elapsed after the amount of the loan becomes due and payable.

19. (1) Any person who —

- (a) wilfully applies any proceeds of a guaranteed loan to any purpose other than the purpose for which the loan was made; or
- (b) having obtained a guaranteed loan, wilfully destroys or misappropriates any security given in relation to such guaranteed loan,

Offences in
respect of
guarantee

shall be guilty of an offence and shall be liable on summary conviction to a fine of five thousand dollars, or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(2) If any person, in giving any information, making any application or claim for the purposes of this Act, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, that person shall be liable on summary conviction to imprisonment for a term of six months or to a fine of two thousand five hundred dollars or to both such fine and imprisonment.

(3) Where an offence under this section has been committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary of the company or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Regulations

20. The Minister may make regulations for the purpose of giving effect to this Act, and in particular for prescribing anything by this Act required to be prescribed.