FINANCE DEPARTMENT
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RESOLUTION

No. 52214/F., Dated. 12.11.02
SG – 3/ 2002

Sub:- Criteria and Guidelines to be followed for Govt. Guarantees for loans by public sector undertakings/Urban Local Bodies/Co-operative Institution and Companies etc.

Scope of Guarantee

The State Govt. are often required to provide guarantees for borrowings by public sector undertakings, co-operative institutions, urban local bodies and State owned companies etc. under Article 293(1) of the constitution of India within such limit as may be prescribed for facilitating flow of funds to the priority sectors. Although the guarantees do not form part of the debt burden, but in the event of default by the borrowing agencies, the Govt. have to repay the debt as the guarantee becomes the liability of the State. This also has an adverse impact on the State finances. For ensuring fiscal sustainability and ensuring more discretion and selectivity in the matter of taking and giving of guarantees, and to regulate sanction, extension of guarantees and their continuance, it is considered necessary to lay down certain guidelines and to modify the earlier guidelines issued in the past as outlined hereunder.

Justification for Guarantee

2. The proposal for guarantee by Govt. must be justified on the grounds of the public interest. The concept of the public interest has wide ranging connotations and does not admit of a precise definition. However cases cited below will illustrate some of the examples of public interest. These are illustrative only.

(i) Loans to be made available at concessional rate of interest meant for the development of the S.T., S.C. and Other Backward people through the schemes approved by Govt. of India or State Government.

(ii) The loan will ensure reduction of debt servicing liabilities of the concerned organisation by way of repaying the earlier costly loans.

(iii) The loans which will leverage more Central Assistance in the shape of grant or subsidy.

(iv) There in no risk of contingent liabilities accruing for the State Govt. because of better performance in the past.

(v) The loan will lead to restructuring and right sizing of the concerned organisation and reduce the burden on the State Govt.

(vi) There is no default on the part of the concerned organisation in paying the dues of State Govt. and financial institutions for which State Govt. guarantees were provided in the past.

(vii) Any other reason to be recorded in writing as to how it is in public interest to be given guarantee and if not given how it will affect the public interest.

Examination of Guarantee Proposal, by the Administrative Departments

3. The proposal for guarantee should be examined by the Administrative Department as a proposal for loan with reference to: -

(a) Public interest which the proposed guarantee will serve.

(b) Credit-worthiness of the borrower to see that no undue risk is involved in giving the guarantee.

(c) Terms and the conditions of the borrowings in case of market borrowings and negotiated loans from financial institutions to see that they are in conformity with those approved by the Reserve Bank of India;

(d) Other conditions, if any, which should also be imposed by Govt. while giving guarantee i.e period of guarantee, levy of guarantee fee to cover the risk, representation of Government on the Board of Management, mortgage or lien on assets, submission of periodical reports and accounts to Government and verification of continued credit-worthiness of the borrower etc.

Criteria for giving Govt. Guarantee

4. The guarantee shall be given only in the public interest as outlined in para-2, for a specified period, renewable in case considered fit. The borrower availing of loan on the cover of the Govt. guarantee shall not raise any further loan or alienate its assets without prior approval of the Finance Department.

(i) No Govt. guarantee shall be given to any private individual or institution or company unless share capital contribution of Government or any other public sector unit is more than 50%.

(ii) No Govt. guarantee shall be given unless accounts of the borrowing organisation have been finalized and audited for last two years.

(iii) The Govt. may continue to give performance guarantee in the interest of development of infrastructure projects.

(iv) Govt. will charge guarantee commission subject to maximum of one percent. However, depending on the default and risk of the project, the Govt. may enhance the rate of commission.

Examination of Guarantee proposal by Finance Department

5. The Finance Department while examining the guarantee proposal will ensure that the total outstanding Government guarantees as on 1st day of April every year shall not exceed 100% of the State Revenue Receipts of the 2nd preceding year, as reflected in the books of accounts maintained by the Accountant General. Attempts should be made to bring this gradually to the level of 80% over the next five years. For this purpose, the State's revenue receipts would include as follows: -

(a) State's Own Tax Revenue.
(b) States Own Non-Tax Revenue.
(c) Devolution of shared tax under the award of the Finance Commission.

Cabinet approval for Guarantee

6. Ordinarily , all cases of initial sanction and also for renewal and extension of guarantee should be submitted by the Administrative Department to the Cabinet in shape of Memorandum with prior consultation with Finance Department for obtaining approval. While submitting Cabinet Memorandum for scrutiny and concurrence by Finance Department, the Administrative Department should clearly indicate the detailed status of the organisation, Share Capital investment by Govt. and Non-Govt. sources, profit / loss position, Govt. loan incurred (repaid and balance outstanding), earlier Govt. guarantee, if any given and outstanding, Ways & Means advance, if any sanctioned and outstanding, staff position (sanctioned strength and present strength), engagement/ disengagement of DLR/NMR employees, justification of Govt. guarantee for the public interest as defined at Para- 2 & 3 above, viability of the organisation for repayment of loan and consent for payment of guarantee commission to Govt. in the prescribed rate etc. Along with the Cabinet Memorandum the Administrative Department should also submit the clear position of the organisation in brief in the prescribed checklist annexed in Annexure – I for better appreciation of the proposal. But in urgent cases, the guarantee may be given with the approval of the Finance Minister and Chief

Minister and all such cases must be submitted to the Cabinet for ratification and post-facto approval.

Guarantee Commission

7. The guarantee commission in any case of guarantee shall be recovered on the maximum amount of guarantee sanctioned irrespective of the amount availed or outstanding on 1st April each year till liquidation of loan. Any fraction period for sanction of guarantee and liquidation of loan shall be treated as one year for calculation of guarantee commission. The borrowing organisations are also required to pay guarantee commission for one year in the prescribed rate in case of adhoc borrowing from the financial institutions including Reserve Bank of India if the loan is obtained and repaid in the same year. The rate of guarantee commission to be charged on various borrowers in respect of the guarantees sanctioned and to be sanctioned by Govt. is indicated in the enclosed Appendix-I. Any loss of revenue in this regard will be recovered from the person who is responsible for collecting the guarantee commission. No waiver / reduction of guarantee commission will be entertained.

The guarantee commission shall be deposited in the Treasury under the Head "0075-Miscellaneous General Services-108-Guaranteee Fee" and the copy of the Treasury Challan is to be made available to Administrative Department and Finance Department as well.

Sanction of Guarantee

8. At the time of sanctioning a fresh guarantee, the previous cases of guarantee, if any, given in favour of the borrowing institution should be examined in detail and the position of the outstanding dues against those guaranteed loans should be reflected in the guarantee sanction order for obtaining the concurrence of Finance Department. A standard format for the purpose is annexed in Annexure – II which should be used hence-forward for sanction of guarantee and the copies of the guarantee sanction orders should be made available to the A.G. (Audit) Orissa, Finance Department (C & I Branch) and Reserve Bank of India as well.

Execution of Agreement

9. (i) After guarantee is sanctioned, the borrower shall execute an agreement with Government in the form prescribed and annexed in Annexure-III for payment

of principal, interest, guarantee commission and due performance of other obligations. The agreement shall have to be vetted by F.D. with reference to the terms and conditions imposed while agreeing for guarantee.

(ii) In case the borrower has not executed agreement to avail loan from the financing institution on the basis of the guarantee sanctioned by Administrative Department, the Administrative Department shall take immediate step to cancel the guarantee with prior concurrence of Finance Department so that guarantee fee will not be charged by Finance Department.

Reduction of Guarantee

10. Reduction/ rephrasing of guarantee on account of repayment by the borrowing institution will be considered on merit with the consent/ clearance of the lending institution and prior concurrence of the Finance Department, so that the guarantee commission will be charged on the reduced amount only.

Liquidation of Loan and Cancellation of Guarantee Documents

11. Whenever any guaranteed loan has been liquidated fully, the borrowing institution should obtain clearance certificate from the financial institution and move Finance Department through the Administrative Department for closure of the Government guarantee and for cancellation of original guarantee documents so that further guarantee Fee will not be charged by Finance Department on account of liquidation of loan. In the absence of such cancellation, the borrowing institution shall continue to pay the guarantee commission until such cancellation is made.

Maintenance of Ledger and Submission of Periodical Report

12. Administrative Department will maintain the guarantee ledger specifying the amount of guarantee sanctioned, actual amount of loan availed, name of the financing institution, loan repaid (principal & interest), balance outstanding, rate of guarantee commission, guarantee commission due, guarantee commission paid, guarantee commission outstanding G.O.-wise which is subject to Audit by A.G, (Audit) Orissa and send periodical report (in every six months i.e. 1st week of July and 1st week of January) to Finance Department so as to enable the Finance Department to prepare a comprehensive report in shape of Explanatory Memorandum to be placed before the State legislature on the liabilities that state may incur in future. This ledger shall be maintained in format enclosed at Annexure –IV.

Review of Guarantee

13. Each case of guarantee should be periodically reviewed at least twice in a year by the Administrative Department to see that the need for guarantee continues and that Government interest continues to be safeguarded. For this purpose, published account of the borrower should be scrutinised and periodical reports etc. called for from the borrower as also from the Government representative on the Board of Management, if any. Whenever justified, action to withdraw the guarantee should be taken by the Administrative Department. The borrowing institution shall have to furnish half-yearly return to Administrative Department and P.E Department.

Default in repayment and liability of Government

14. (i) For default on the part of the borrower in repayment of loan / repayment of interest, sums paid by Government to the lending institution in discharge of guarantee shall be treated as sum due from the borrower to the Government. These sums together with interest thereon at such rate as may be determined by Government from time to time, will be recoverable from the grants, subsidy, if any, payable by Govt. to the borrower, whenever possible. The said sums may also be recovered as arrear land revenue under OPDR Act 1962.

(ii) Any claim arising out of a guarantee should be lodged with Government within one month from the expiry of the period of guarantee, failing which the liability of the Government will cease towards any loss or damage caused to a lending institution because of default of the borrower in discharging its obligation to the lending agency during the period of validity of the guarantee.

Revocation of Guarantee

15. If at any time during the continuance of the guarantee, Government feel that the activity of the borrower/lending institution is detrimental to the interest of the State Government, the latter shall have the option, subject to the condition stipulated in the agreement, if any, with the lending institution and after giving 30 (thirty) days notice to the lending institution and the borrower, to revoke the guarantee so far as it relates to future transaction covered thereby. Administrative Departments are competent to revoke guarantee whenever justified under intimation to Finance Department.

Placing before the State Legislature

16. At present, the Finance Department is placing before the Orissa Legislative Assembly the guarantee position in an Appendix in the Explanatory Memorandum.

Besides this, the guarantee position is also being indicated in the "Budget At a Glance", which is being placed in the Orissa Legislative Assembly. But these information so placed are not adequate to indicate the quantum of liabilities the State Government have already incurred. It is, therefore, necessary that the guarantee position should be placed before the Orissa Legislative Assembly separately and this would include interalia the following.

(i) The institution-wise total guarantee given, guarantee outstanding, guarantee fees payable, guarantee fees paid and the guarantee fees outstanding.

(ii) The details of the institutions from which the guaranteed loan availed and the position of the guaranteed loan and interest thereon paid or defaulted.

(iii) The notice received by the Finance Department to discharge the contingent liabilities arising out of default of the concerned organisations in not discharging the same in time.

(iv) The particulars of the contingent liabilities already discharged and likely to be discharged.

(v) The loan and guarantee position and other liabilities, if any.

(vi) Any other relevant information affecting the State finances arising out of the guarantees given by the State Government.

17. This supersedes all the previous instructions/clarifications issued on regulating Govt. guarantee.

By Order of the Governor

Sd/-

(A.K. Tripathy)

Principal Secretary to Govt.

APPENDIX – I

SCHEDULE OF GUARANTEE COMMISSION

Sl. No.	Types of Institutions	Form of Credit	Rate of guarantee fees
(1)	(2)	(3)	(4)
1.	Apex Co-operative Credit institutions like State Co-operative Bank, State Co-operative Land Development Bank and other credit Co-operatives etc.	Bonds / Debentures Other forms of credit	0.02 % only once at the time of issue. 0.01% payable on 1st April each year on the maximum amount guaranteed.
2.	Co-operatives other than Apex Co-Operatives credit institution and Credit Co-operatives.	All forms of credit	0.25% payable on 1st April each year on the maximum amount guaranteed.
3.	Local Bodies including Improvement trusts, Housing Board.	Bonds/ Debentures Other forms of credit including adhoc borrowings	0.25% only once at the time of issue. 0.25% payable on 1st April each year on the maximum amount guaranteed.
4.	Public Sector undertakings and enterprises including Statutory bodies like GRID Corporation, OHPC, OPGC, Orissa State Financial Corporation, Orissa State Warehousing Corporation etc.	Bonds Other forms of credit including Adhoc Borrowings.	1% only once at the time of issue 0.50% payable on 1st April each year on the maximum amount guaranteed.
5.	All other Institutions (not included in item 1 to 4 above).	All forms of credit	1% payable on 1st April each year on the maximum amount guaranteed.

Note (A) : The following are exempted from levy of guarantee Commission.

(i) R.B.I concessional finance for short-term and medium term loans for agricultural purpose secured by the State Co-operative Bank.

(ii) Loans from the Rural Electrification Corporation secured by the GRID Corporation of Orissa Ltd. for Rural Electrification Schemes.

(iii) All projects refinanced by the NABARD .

(iv) Guarantee for payment of dividend to IDBI on the Share Capital investment in Orissa State Financial Corporation.

Note (B) :- ***The guarantee commission is to be charged from the date of the guarantee sanctioned on the maximum amount guaranteed irrespective of the amount availed or outstanding on 1st April each year till liquidation of the loan. Any fraction period for sanction of guarantee and liquidation of loan shall be treated as one year for calculation of guarantee commission.***

ANNEXURE – **I**

Check list for processing Guarantee proposal by the Administrative Department

1. Name of the organisation in whose favour guarantee is proposed.

2. Status of the organisation (in one paragraph)

3. **Share Capital invested so far from different sources.**
   (i) By Government
   (ii) Non-Government
   (iii) Others, if any

4. (i) Profit/Loss of the organisation for the last three years as per the Audit.
   (ii) Dividend declared so far.

5. (i) Progressive amount of Government loan sanctioned up to the end of the previous financial year.
   (ii) Loan repaid up to the end of the previous financial year
   (iii) Balance loan outstanding up to the end of the previous financial year
      (a) Principal .
      (b) Interest .
   (iv) Whether the Government loans are serviced regularly, if not the brief reasons there-of.

6. (i) Progressive amount of guarantee sanctioned.
   (ii) Guaranteed loan outstanding
      a) Principal
      b) Interest
   (iii) Whether guaranteed loans (Principal + Interest) are serviced regularly, if not, the brief reasons there of.
   (iv) Guarantee fee due as on 1st April of the year
   (v) Guarantee fee paid as on date

(vi) Guarantee fee outstanding as on date
(vii) Reasons for default in payment of guarantee fee, if any.

7. Ways and Means Advance
(i) Sanctioned amount and date of sanction.
(ii) Outstanding as on date
a) Principal
b) Interest
(iii) Whether Ways and Means Advance are serviced regularly; if not, the brief reasons there of.

8. Staff Position
(i) Sanctioned Strength
(ii) Present Strength (in position)
(iii) DLR/NMR employee in position, if any
(iv) Steps taken to disengage the DLR/NMR employees

9. Amount of present guarantee sought for

10. Justification of the proposed Government guarantee for the public interest including repayment of proposed guaranteed loan by the borrowing organisation, if allowed, along with payment of guarantee fee to be levied by Government.

Signature and Seal of the
Head of the borrowing organistion

Countersignature of the
Secretary of the Department

A N N E X U R E – II
FORMAT FOR SANCTION OF GOVERNMENT GUARANTEE

To

The Managing Director/ Chairman

Sub :- Sanction of State Govt. guarantee in favour of …………………………….. …………. to borrow loan of Rs……………………………….. from ……………………………… for the purpose of …………………………………

Sir,

I am directed to convey the sanction of Government guarantee for loan of Rs…………………….. (Rupees……………………………………………………………………………...) only in favour of ………………………………………………………………………..(borrowing institution) to borrow loan of Rs………… (Rupees……………………) from the ……………………………. (Financial Institution) @…………% interest per annum which will be repaid within …………. years for implementation of……………………….. programme.

The guarantee commission @ ……% will be charged once / every year till final liquidation of the loan.

The detailed particulars of the previous loan alongwith the present loan and the mode of repayment etc of the borrowing institution is enclosed in the proforma annexed here with.

The Accountant General (Audit) Orissa is being informed.

This has been concurred in by Finance Department vide their UOR No………… dated …………..

Sanctioning Authority

Memo No._________________. Dt._____________

Copy alongwith the proforma forwarded to ……………………………….. (lending financing institution) for information and necessary action.

Sanctioning Authority

Memo No._________________. Dt._____________

Copy alongwith the proforma forwarded to Accountant General (Audit)Orissa, BBSR for information and necessary action.

Sanctioning Authority

Memo No._________________. Dt._____________

Copy alongwith the proforma forwarded to ……………………………….. (other concerned authorities) for information and necessary action.

Sanctioning Authority

Memo No._________________. Dt._____________

Copy alongwith the proforma forwarded to Finance Department (C & I Branch) for information and necessary action.

Sanctioning Authority

Memo No. _________________. Dt. ___________________________

Copy alongwith the proforma forwarded to Reserve Bank of India (DEAP Cell), 2nd Floor, Bhubaneswar for information and necessary action.

Sanctioning Authority

P R O F O R M A FOR SANCTION OF GOVERNMENT GUARANTEE

1. Name of the Borrowing Institution :-

2. Name of the Creditor (Financing Institution) :-

3. Amount of guarantee sanctioned :-

4. Purpose of Loan :-

5. Period of Loan :-

6. Rate of interest :-

7. Mode of repayment :-

8. Other conditions attached to the loan, if any :-

9. Rate of guarantee fee: -
10. Progressive total sum guaranteed (including the present one) till date: -

11. Total amount of loan availed against the previous guarantee

12. Amount outstanding against the availed loans shown above

	Defaulted instalment amount as on	Balance not due as on	Total Balance as on
(1)	(2)	(3)	(4)
(a) Principal			
(b) Interest			

13. Action taken to clear the defaulted Principal and Interest

Sanctioning Authority

A N N E X U R E - I I I

FORMAT FOR EXECUTION OF AGREEMENT

This agreement is made on ______________day _________________200 between ____________________having his office at ___________________ hereinafter referred to as "Principal Debtor" (Which expression shall unless excluded by or it be repugnant to the context be deemed to include its successors and assignees) of the one part and the GOVERNOR OF ORISSA hereinafter referred to as "Government" (Which expression shall unless excluded by or it be repugnant to the context or meaning there-of be deemed to include his successors in Office and assignees) of the other part.

Whereas the principal debtor has requested the Government to guarantee due repayment by the principal debtor to the ____________________(hereinafter referred to as the lender) of the loan of Rs.___________________ agreed to be lent and advanced by the lender to the principal debtor as per the terms and conditions appearing in the schedule to this agreement together with interest thereon which the Government has agreed to do on the terms and conditions hereinafter appearing and sanctioned guarantee of Rs.____________ in favour of the principal debtor in _______________ Deptt. G.O. No _______________ dt._______________ (Copy enclosed).

Now this Deed witness AND it is hereby agreed by and between the parties hereto as follows:-

1. The principal debtor agrees to pay to the Government of Orissa a guarantee fee at the rate of __________% per annum on the maximum amount of guarantee sanctioned till liquidation of the loan as prescribed under the guarantee rule issued by Finance Deptt. in Resolution No.____________ dt.____________.

2. In case of default in due payment of fees by the principal debtor to the Government as aforesaid without prejudice to any other rights and remedies available to the Government, it shall have the right and be entitled to recover from the principal debtor the amount due and payable by the principal debtor as a Public demand under the Orissa

Public Demands Recovery Act, 1962, or any statutory modifications thereof for the time being in force.

3. In case the principal debtor defaults in making repayment of principal and/or payment of interest on due dates and the Government is required to pay the same to the lender under the terms of the guarantee, the amount so paid (principal and interest) by the Government to the Lender shall be treated as loan and shall be recoverable from the principal debtor carrying interest at a rate not less than that charged by the lender. Such interest shall be calculated from the date of payment made by Government to the lender. Other terms of repayment like period of repayment will be suitably fixed.

Provided that in case the principal debtor does not pay the amount according to terms and conditions stipulated, it shall be open to the Government to recover the entire amount from the principal debtor, without prejudice to any other remedies available, as a public demand under the Orissa Public Demands Recovery Act, 1962 or any statutory modification thereof for the time being in force.

4. Within nine months from the end of the Accounting Year of the principal debtor, the principal debtor shall send every year during the subsistence of the said guarantee to the Government in Finance Department and to the Accountant General, Orissa return/statement certified to be true by a qualified Auditor approved by Government giving full and complete information of his/its assets and liabilities, profit and loss etc. If, however, the accounts could not be audited within the period aforesaid, the principal debtor shall furnish unaudited accounts. As soon as the accounts are audited, the same should be furnished within one month of receipt of such audited accounts. The principal debtor shall, at all times hereafter during the subsistence of the guarantee, produce the records, accounts, stores and stocks etc. to Government and Accountant General, Orissa for audit and inspection, as and when required by the Government or the Accountant General, Orissa.

5. In consideration of the aforesaid, the principal debtor both hereby agrees that in order to secure Government in respect of financial obligations undertaken hereunder by the deed of guarantee executed / to be executed by the Government in favour of the lender,

the principal debtor shall furnish to the Government such security as the Government may require the principal debtor to furnish including a mortgage on his entire assets both movable and immovable subject to then existing charge, if any, thereon.

6. If at any time during the subsistence of the continuing guarantee Government feel that the activity of the Principal Debtor / Lending Institution is detrimental to the interest of the State Government, the State Government shall have the option after giving 30 days notice to the Lending Institution and the debtor to revoke the guarantee as to the future transactions covered thereby.

In witness whereof the principal debtor has set his hand and affixed his/its common seal in the manner as provided by law and the Secretary to Government___________________ Department has for and on behalf of the Governor of Orissa set his hand and affixed the seal of his office thereunto the day and year first above written.

Schedule containing the terms and the conditions of the loan offered by the lender.

1. Amount of Loan_____________________________
2. Term of Loan________________________________
3. Rate of interest_____________________________
4. Repayment term_____________________________
5. Securities offered_____________________________

Signed and sealed and delivered by ________________Sri __________________ Managing Director etc……………………………above-named pursuant to Resolution No………………………dated…………………………..of the Board of Directors (General Body) of the ……………………………………………… in the presence of witnesses-

Name and full address

1.

2.

SECRETARY TO GOVERNMENT OF ORISSA

____________________________DEPARTMENT

For on behalf of the Governor of Orissa in presence of witnesses.

Name and full address

1.

2.

ANNEXURE -IV

PROFORMA FOR GUARANTEE LEDGER TO BE MAINTAINED BY THE ADMINISTRATIVE DEPARTMENTS

Sl. No.	Maximum Amount of Govt. Guarantee sanctioned	Sanction order No & date	Rate of Gurantee Commission	Purpose or nature of Guarantee	Period of Guarantee	Amount of Loan availed from the Financing Institution on the Strength of Govt. Guarantee	Name of the Financing Institution	Rate of Interest	Loan repaid		Outstanding Loan		Gurantee Fee Due	Gurantee Fee paid	Outstanding G/Fee	Date of Liquidation of Loan, if any
									Principal	Interest	Principal	Interest				
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**	**(8)**	**(9)**	**(10)**	**(11)**	**(12)**	**(13)**	**(14)**	**(15)**	**(16)**	**(17)**