



**BANK OF SOUTH SUDAN**

**Guidelines for Issuing and Managing Letters of  
Guarantees, Indemnities, and Letters of Comfort**

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## 1. Introduction

These rules and procedures are established to guide Bank of South Sudan, when considering issuance guarantees, indemnities and letters of comfort. The guidelines also emphasize the risk involved and the importance of awareness regarding the use of such instruments.

In general terms, letters of guarantees, indemnities and letters of comfort do not, immediately, have direct impact on the financial position of an entity until the contingent event occurs. However guarantees, indemnities and, in some cases, letters of comfort are legally binding obligations that can result in significant losses if the contingent event occurs.

As such, they are forms of contingent liabilities that exist at any given point in time that may give rise to a liability on the occurrence of a particular future event. These instruments, therefore, need to be managed carefully, with the exposures they represent being adequately monitored over the life of the instruments.

A guarantee, indemnity or letter of comfort therefore requires that they are appropriately authorised and that they need to be offset by adequate benefits; and they should be limited in some way to minimise the exposure.

## 2. DEFINITIONS

A **Letter of guarantee** is a promise whereby the issuer assumes responsibility for the debt of, or performance obligations of, another party should that party defaults in some way.

An **indemnity** is a legally binding promise whereby the issuer undertakes to accept the risk of loss or damage that another party may suffer.

A **letter of comfort** is essentially an instrument that is used to facilitate an action or transaction but is constructed with the intention of not giving rise to a legal obligation. In certain cases a letter of comfort may lead to an actual liability, either through a court finding that the party receiving the letter was entitled to rely upon its contents, or through a moral obligation for the Bank to make good on its assurances.





### **3. GUIDELINES FOR ISSUANCE OF GUARANTEES, INDEMNITY & LETTER OF COMFORT**

A Bank guarantee, indemnity or letter of comfort is ultimately a risk transference mechanism, which results in the Bank accepting risks and the other party experiencing reduced risks. The Bank's policy on issuing guarantees, indemnities and letters of comfort is to accept such risks only when the expected benefits, financial or otherwise, are sufficient to outweigh the level and cost of the risk which the Bank would be assuming. As a matter of principle, risks should be borne by those best placed to manage them – that is the Bank should generally not accept risks which another party is better placed to manage.

Guarantees, indemnities and letters of comfort should not be given except where there is an explicitly identified risk. That is, these instruments should not be issued simply to provide comfort against general, unspecified events. This will ensure that the Bank is exposed to the minimum risk necessary to achieve the particular objective.

Further, officials should have regard to whether the proposed guarantee, indemnity or letter of comfort will set a precedent that may be undesirable.

The issuance of these instruments is not cost-free for either the Government or the Bank. Accordingly, they should be taken into account when assessing value for money. Should an amount become payable under a guarantee, indemnity or letter of comfort, the Government would be required to fund it immediately.

A Bank guarantee, indemnity or letter of comfort should not be issued until it has been determined that all other options available have been exhausted. The specific rationale behind entering into such an arrangement should be adequately documented to ensure:

- transparency in the decision making process;
- the instrument is issued for sound reasons; and
- the original justification for the issue of the instrument will be available for review and evaluation.

The Bank, when approached by the government to issue any of the instruments, should seek legal advice to address the following key concerns:

- whether any applicable legislation restricts the scope of executive power of the Government to enter into such arrangement;



- whether the party to be provided with the guarantee, indemnity or letter of comfort is exposed to the purported risks and what the potential liabilities could be;
- The extent to which the proposed guarantee, indemnity or letter of comfort protects another party against liabilities imposed on them by common law or legislation. If so, these should be excluded unless there is a clear justification for doing so;
- Whether the proposed guarantee, indemnity or letter of comfort only seeks to replicate liabilities imposed on the Bank by common law or Bank legislation. If so, these provisions are redundant and should be excluded unless there is a clear justification for doing so; and

There may also be other relevant issues, depending upon the arrangement, upon which it may be prudent to seek legal advice.

To minimise the Bank's exposure to risk, any arrangement involving the provision of a guarantee, indemnity or letter of comfort by the Bank should not be entered unless:

- A comprehensive due diligence, on the parties involved, have been carried out to enable the Bank make an informed decision. This should include thorough background check and capacity of the parties and any legal background;
- the expected benefits objectively outweigh the level and cost of the risks;
- there is a demonstrable need for the Bank and the Government to accept such risks;
- assessment of the specific risks to be covered;
- potential losses have been rigorously investigated and identified and that the Bank is adequately protected;
- appropriate risk management arrangements are in place;
- the legislative requirements have been met;
- there is a time limit on the operation of the instrument;
- there is a termination clause to ensure the Bank and the Government have the option to terminate the arrangement when it is determined there is no longer a need for the instrument;
- there are maximum financial limits on claims which can be made under the instrument;
- there are subrogation-like clauses (ie, the right to exercise the option of conducting, or participating in, the defence of any claims against the indemnified party, and to require full assistance from that party) and clauses giving the Bank





and the Government the right to take over any litigation related to the contingent liability;

- there is a clause that requires the indemnified party to advise the Bank of relevant events and actions as and when they arise;
- there is a clause to ensure that the instrument (notably indemnities) does not cover damage resulting from acts by the indemnified person which are malicious, fraudulent, wilful, illegal or reckless etc;
- the instrument protects the party against liabilities beyond those afforded by common law and statute;
- there are arrangements for monitoring the risks before and after approval for the duration of the arrangement; and
- Legal advice is sought and contract vetting undertaken to ensure that the Bank is exposed to the minimum risk necessary to achieve the particular objective.

Where the contract conditions listed above are not imposed, the reasons should be recorded in writing.

#### **4. FEES AND COMMISSIONS**

- The Bank will impose all relevant fees and commissions when issuing guarantees, indemnities and letter of comfort in accordance to the Bank Tariffs & charges system below:
  - Issuing charges for guarantees, indemnities and letter of comfort shall be 2.5% of the value of the instrument.
  - Advising charges for guarantees, indemnities and letter of comfort is set at SSP150 or equivalent in foreign currency
  - Charges of verification and authentication of letter of guarantees, indemnities and letter of comfort is set at SSP 1,000 or USD 500.
  - There will be additional charges such as confirmation fee, when a beneficiary requests such service from a third party.

#### **5. REGISTER AND DOCUMENTS SECURITY**

- The Bank is required to maintain register of all guarantees, indemnities and letters of comfort, which capture them off-balance sheet. This will assist in transparent

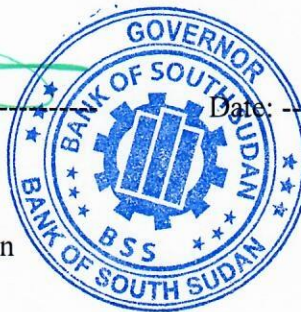


reporting and disclosure. The register must contain the details of the instruments. Prudence and efficient management clearly dictate the need to maintain such registers in order to provide the information required for the purposes of audit and financial reporting.

- an integral part of sound risk management is maintenance of adequate physical security of these instruments and associated documents. This will assist in enhancing Banks' records management of guarantees, indemnities and letters of comfort.
- Loss, misplacement or destruction of these instruments is likely to place the Bank at a disadvantage, and possibly increase the level of risk. Some instruments require retention for evidentiary reasons in case of possible claims and/or future litigation long after the period of indemnification has lapsed.
- The Bank should consider the use of special security storage so as to ensure adequate physical security of such documents, both electronic and paper.

Signed: \_\_\_\_\_

Dier Tong Ngor  
Governor,  
Bank of South Sudan



Date: \_\_\_\_\_

6/12/2018