

GUARANTEE OF LOANS (COMPANIES) ACT

CHAPTER 71:82

Act
21 of 1969
Amended by
52 of 1970
1 of 1980

Current Authorised Pages

<i>Pages</i> <i>(inclusive)</i>	<i>Authorised</i> <i>by L.R.O.</i>
1-8	..

Index of Subsidiary Legislation

	<i>Page</i>
Resolutions 	8

CHAPTER 71:82

GUARANTEE OF LOANS (COMPANIES) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
 2. Interpretation.
 3. Power of Minister to guarantee loans by Lending Agencies to Public Companies.
 4. Limit on amount of guarantees.
 5. Restriction on borrowing powers of Company so far as guarantee outstanding.
 6. Powers exercisable by Minister in event or prospect of default by Company.
 7. Company to repay to Government sums paid under guarantee.
 8. Regulations.
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CHAPTER 71:82

GUARANTEE OF LOANS (COMPANIES) ACT

21 of 1969. **An Act to provide for the guarantee by the Government of Trinidad and Tobago of loans by Lending Agencies to Companies in which the Government holds at least fifty per cent of the ordinary share capital.**

Commencement. [1ST JULY 1969]

Short title. **1.** This Act may be cited as the Guarantee of Loans (Companies) Act.

Interpretation. [52 of 1970
1 of 1980]. **2.** In this Act—
“borrowing” includes the obtaining of any credit or the undertaking to pay any debt or to discharge any pecuniary obligation;
“Company” means any company incorporated in Trinidad and Tobago or incorporated elsewhere and registered under the Companies Act that is controlled by the Government or by any body corporate controlled by the Government “controlled” here meaning that the Government or the body corporate, as the case may be—

Ch. 81:01. (a) exercises or is entitled to exercise control directly or indirectly over the affairs of the company or body corporate;
(b) is entitled to appoint a majority of the directors of the Board of Directors of the company or body corporate; or
(c) holds at least fifty per cent of the ordinary share capital of the company or the body corporate,
as the case may be;

“Lending Agency” means an International Financial Organisation or any bank, insurance company or other source of financing and sources of suppliers credit;

“ordinary share capital” means all the issued share capital by whatever name called, other than capital the holders whereof have a right to a dividend at a fixed rate, but have no other rights to share in the profit of the company.

3. (1) Subject to this Act, the Government may in such manner and on such terms and subject to such conditions as may be agreed between it and a Lending Agency—

Power of Minister to guarantee loans by Lending Agencies to Public Companies. [52 of 1970].

- (a) guarantee the discharge by a Company of its obligations under any agreement which may be entered into by the Company with a Lending Agency in respect of any borrowing by that Company that is authorised by the Government;
- (b) undertake such other obligation as may be agreed between the Government and a Lending Agency in relation to or pursuant to any such agreement.

(2) A guarantee or undertaking given under this section shall be given in writing in the name of Trinidad and Tobago and any guarantee or undertaking given under this section may be signed on behalf of Trinidad and Tobago by the Minister or by any person authorised in writing by the Minister in that behalf.

4. (1) Subject to this section, the aggregate amount of all borrowings by Companies that are guaranteed by the Government under this Act shall not exceed fifty million dollars (without taking into account any amount in respect of interest, commissions and any other expenses secured by the guarantees) or such greater sum as may from time to time be specified by resolution of the Senate and the House of Representatives.

Limit on amount of guarantees. [52 of 1970].

(2) For the purpose of subsection (1), before any further guarantee is entered into or any undertaking is assumed—

- (a) the amount of all borrowings by Companies secured by guarantees by the Government shall be computed on the date of any such further guarantee in accordance with subsection (1) and the aggregate amount of all such borrowings in foreign currency shall be computed so as to take into account the prevailing rates of exchange on the date of such further guarantee;
- (b) the Minister shall certify in each such new guarantee that the aggregate amount of all borrowings guaranteed by the Government does not exceed the limits imposed for the time being by or under subsection (1); and

(c) such certificate shall be conclusive evidence of the facts stated therein.

(3) Where any sum is issued for fulfilling such a guarantee, the Minister shall, as soon as possible after the end of each financial year beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest thereon is finally discharged, lay before Parliament a statement relating to that sum.

Restriction on borrowing powers of Company so far as guarantee outstanding. [52 of 1970].

5. So long as the Government is liable under any guarantee or other undertaking given in exercise of the powers conferred by section 3(1) in respect of any borrowing by a Company, the Company shall not, without the consent of the Minister, exercise any power to borrow possessed by it except in the ordinary course of business for a period not exceeding twelve months.

Powers exercisable by Minister in event or prospect of default by Company. [52 of 1970].

6. (1) Where in the opinion of the Minister there is reasonable cause to believe—

- (a) that a Company is likely to fail or be unable to discharge any of its obligations under any agreement concluded by it with the Lending Agency in respect of any borrowing; and
- (b) that the Government is or may become liable under any guarantee or other undertaking given by it in respect of such obligation,

the Minister may, from time to time—

- (i) by instrument in writing (notice of which shall be published in the *Gazette*) appoint, for such period as is specified in the instrument, a Manager of the Company, and the powers of management shall thereupon vest in the Manager for the specified period to the exclusion of the Board of Directors of the Company or of any other person or body of persons; and
- (ii) give, or authorise any other person to give, such directions in writing to such Manager as may be necessary or desirable in order

to ensure that such arrangements are made by the Company as will enable it to discharge its obligations in respect of all its borrowings guaranteed by the Government and to satisfy any other liabilities under this Act,

and the Company shall accept such appointment of a Manager and be bound by all lawful acts of the Manager.

(2) Nothing in subsection (1) shall be read and construed so as to treat a Manager appointed by instrument under subsection (1)(i) as the agent or servant of Government or of any person while acting in exercise of the powers or in performance of the functions conferred on him by that subsection and, notwithstanding any other written law or rule of law to the contrary, such a Manager shall, for all purposes relating to the management of the affairs of the Company, be deemed to be, and to act as, the lawfully constituted Board of Directors of the Company.

(3) Where any sum becomes payable by the Government pursuant to a guarantee or undertaking given in exercise of the powers conferred by section 3, that sum shall be charged on the Consolidated Fund and the Minister shall direct payment to issue out of the Consolidated Fund.

7. Where any sum is paid out of the Consolidated Fund 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) in respect of any borrowing by a Company, the Company shall repay such sum (together with interest thereon at such rate as the Minister may prescribe) to the Consolidated Fund in such manner and at such time as the Minister may direct.

Company to repay to Government sums paid under guarantee.

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

Regulations.

SUBSIDIARY LEGISLATION

RESOLUTIONS

made under section 4(1)

The aggregate amount of borrowings by companies that are guaranteed by Government was increased from time to time by resolutions of the Senate and of the House of Representatives pursuant to section 4(1) of the Act as follows:

<i>Government Notice</i>	<i>Date</i>	<i>Amount Authorised</i>
GN 194/1970	21st December 1970	70 million dollars
GN 178/1972	5th December 1972	120 million dollars
GN 30/1974	29th January 1974	200 million dollars
GN 74/1976	1st June 1976	400 million dollars
GN 58/1978	4th April 1978	1,000 million dollars
GN 71/1979	22nd May 1979	5,000 million dollars
GN 28/2003	28th January 2003	9,000 million dollars
