Master Circular on Guarantees and Co-acceptances

DBOD No.Dir. BC. 16 /13.03.00/2003-2004

August 22, 2003
Shravana 31,1925(S)

Chief Executives of all Scheduled Commercial Banks
(Excluding RRBs & LABs)

Dear Sir,

Master Circular on Guarantees and Co-acceptances

Please refer to the Master Circular DBOD.No.Dir.BC.07/13.03.00/2002-2003 dated 26 July 2002 consolidating instructions/guidelines issued to banks till 30 June 2002 on matters relating to issue of Guarantees and Co acceptances by banks. The Master Circular has been suitably updated by incorporating instructions issued upto 30 June 2003 and has also been placed on the RBI website (http://www.rbi.org.in).

2. It may be noted that all the instructions contained in circulars listed in the Appendix have been consolidated.

Yours faithfully

(M.R. Srinivasan)
Chief General Manager-in-Charge

1 GENERAL

An important criterion for judging the soundness of a banking institution is the size and character, not only of its assets portfolio but also, of its contingent liability commitments such as guarantees, letters of credit etc. As a part of business, banks issue guarantees on behalf of their customers for various purposes. The guarantees executed by banks comprise both performance guarantees and financial guarantees. The guarantees are structured according to the terms of agreement, viz., **security**, **maturity** and **purpose**.

With the introduction of risk weights for both on-Balance Sheet and off-Balance Sheet exposures the banks have become more risk sensitive resulting in structuring of their business exposures in a more prudent manner.

2. GUIDELINES RELATING TO THE CONDUCT OF GUARANTEE BUSINESS

2.1 General Guidelines

The banks should comply with the following general guidelines in the conduct of their guarantee business:

As regards the purpose of the guarantee, as a general rule, the banks should confine themselves to the provision of financial guarantees and exercise due caution with regard to performance guarantee business.

As regards maturity, as a rule, banks should guarantee shorter maturities and leave longer maturities to be guaranteed by other institutions. No bank guarantee should normally have a maturity of more than 10 years.

2.2 Norms for unsecured advances & guarantees

As regards security, banks should limit their commitments by way of unsecured guarantees in such a manner that 20 percent of a bank's outstanding unsecured guarantees plus the total of its outstanding unsecured advances should not exceed 15 percent of its total outstanding advances. For the purpose of conforming to this norm, the following types of guarantees **need not** be taken into account:

(i) guarantees counter-guaranteed by another bank;

(ii) Bid bonds and guarantees executed by banks in respect of contracts secured by Indian firms in foreign countries and guarantees relating to exports;

(iii) guarantees in respect of which ECGC would be issuing its Export Performance Guarantee;

(iv) performance guarantees executed by banks on behalf of small scale industries;

(v) guarantees issued in lieu of earnest money on behalf of contractors at the time of submission of tenders, provided the tenders have been rejected and the rejection is supported by a note issued by the Government Department concerned;

(vi) performance guarantees issued on behalf of contractors, provided the contractors produce a certificate from the appropriate authority that the contracts have been fulfilled by them satisfactorily;

(vii) guarantees issued by the branches of foreign banks in India on behalf of their Head Offices;

(viii) guarantees covered by counter-guarantees of the Central Government or the State Governments, public sector financial institutions and insurance companies which are to be regarded as secured guarantees;

(ix) deferred payment guarantees backed by adequate tangible security or by counter-guarantees of the Central Government or the State Governments or public sector financial institutions, or by counter-guarantees of insurance companies or other banks, provided the counter-guarantees of insurance companies or other banks are themselves backed by adequate tangible security. Where the counter-guarantees by commercial banks are backed by adequate tangible securities, then all guarantees, including deferred payment guarantees, will be treated as secured guarantees.

2.3 Exclusions from the Norms

Similarly, various types of unsecured advances listed in *Annexure 1* need not be included in the total of unsecured advances while applying the norms relating to unsecured advances and guarantees indicated above.

(i) As a rule, banks should avoid giving unsecured guarantees in large amounts and for medium and long term period. They should avoid undue concentration of such unsecured guarantee commitments to particular groups of customers and/or trades.

(ii) Unsecured guarantees on account of any individual constituent should be limited to a reasonable proportion of the bank's total unsecured guarantees. Guarantees on behalf of individual should also bear a reasonable proportion to constituent's equity.

(iii) In exceptional cases, banks may give deferred payment guarantees on an unsecured basis for modest amounts to first class customers who have entered into deferred payment arrangements in consonance with Government policy. But such unsecured guarantees should be accommodated within the limits indicated above.

(iv) Guarantees executed on behalf of any individual constituent, or a group of constituents, should be subject to prescribed exposure norms.

(v) When any bank reaches a stage where it is likely to exceed the norm, it should not undertake any further commitment on account of guarantees.

(vi) Suitable arrangements may be made to keep a watch from time to time about the outstanding guarantees of the bank so as to ensure that it does not exceed the norm.

It is essential to realise that guarantees contain inherent risks and that it would not be in the bank's interest or in the public interest generally to encourage parties to over-extend their commitments and embark upon enterprises solely relying on the easy availability of guarantee facilities.

2.4 Precautions for Averting Frauds

While issuing guarantees on behalf of customers, the following safeguards should be observed by the banks:

(i) At the time of issuing **financial** guarantees, banks should be satisfied that the customer would be in a position to reimburse the bank in case the bank is required to make the payment under the guarantee.

(ii) In the case of **performance** guarantee, banks should exercise due caution and have sufficient experience with the customer to satisfy themselves that the customer has the necessary experience, capacity and means to perform the obligations under the contract and is not likely to commit any default.

(iii) Banks should normally refrain from issuing guarantees on behalf of customers who do not enjoy credit facilities with them.

2.5 Ghosh Committee Recommendations

Banks should implement the following recommendations made by the High Level Committee (Chaired by Shri A. Ghosh, the then Dy. Governor of RBI):

(i) In order to prevent unaccounted issue of guarantees, as well as fake guarantees, as suggested by IBA, bank guarantees may be issued in serially numbered security forms.

(ii) Guarantees above a particular cut-off point decided by the bank should be issued under two signatures, in triplicate, one copy each for the branch, beneficiary and controlling office/head office.

(iii) It should be binding on the part of the beneficiary to seek confirmation of the controlling office/head office as well, for which a specific stipulation be incorporated in the guarantee itself.

2.6 Internal Control Systems

Bank guarantees issued for Rs. 10,000/- and above should be signed by two officials jointly. A lower cut-off point depending upon the size and category of branches may be prescribed by banks, where considered necessary. Such a system will reduce the scope for malpractices/losses arising from the wrong perception/judgement or lack of honesty/ integrity on the part of a single signatory. Banks should evolve suitable systems and procedures, keeping in view the spirit of these instructions and allow deviation from the two signatures discipline only in exceptional circumstances. The responsibility for ensuring the adequacy and effectiveness of the systems and procedures for preventing perpetration of frauds and malpractices by their officials would, in such cases, rest on the top managements of the banks. In case, exceptions are made for affixing of only one signature on the instruments, banks should devise a system for subjecting such instruments to special scrutiny by the auditors or inspectors at the time of internal inspection of branches.

2.7 Guarantees on behalf of Banks' Directors

Section 20 of the Banking Regulation Act, 1949 prohibits banks from granting loans or advances to any of their directors or any firm or company in which any of their directors is a partner or guarantor.

However, certain facilities which, *inter alia*, include issue of guarantees are not regarded as 'loan and advances' within the meaning of Section 20 of the Act, ibid.

In this regard, it is pertinent to note with particular reference to banks giving guarantees on behalf of their directors, that in the event of the principal debtor committing default in discharging his liability and the bank being called upon to honour its obligation under the guarantee, the relationship between the bank and the director could become one of creditor and debtor. Further, directors would also be able to evade the provisions of Section 20 by borrowing from a third party against the guarantee given by the bank. These types of transactions are likely to defeat the very purpose of enacting Section 20, if the banks do not take appropriate steps to ensure that the liabilities thereunder do not devolve on them.

In view of the above, banks should, while extending non-fund based facilities such as guarantees, etc. on behalf of directors and the companies/firms in which the director is interested, ensure that -

(i) adequate and effective arrangements have been made to the satisfaction of the bank that the commitments would be met out of their own resources by the party on whose behalf guarantee was issued, and

(ii) the bank will not be called upon to grant any loan or advances to meet the liability consequent upon the invocation of guarantee.

In case, such contingencies arise as at (ii) above, the bank will be deemed to be a party to the violation of the provisions of Section 20 of the Banking Regulation Act, 1949.

2.8 Bank Guarantee Scheme of Government of India

The Bank Guarantee Scheme formulated by the Government of India for the issuance of bank guarantees in favour of Central Government Departments, in lieu of security deposits, etc. by contractors, has been modified from time to time. Under the scheme, it is open to Government Departments to accept freely guarantees, etc. from all scheduled commercial banks.

Banks should adopt the Model Form of Bank Guarantee Bond given in *Annexure 2.*

The Government of India have advised all the Government departments/Public Sector Undertakings, etc. to accept bank guarantees in the Model Bond and to ensure that alterations/additions to the clauses whenever considered necessary are not one-sided and are made in agreement with the guaranteeing bank.

Banks should mention in the guarantee bonds and their correspondence with the various State Governments, the names of the beneficiary departments and the purposes for which the guarantees are executed. This is necessary to facilitate prompt identification of the guarantees with the concerned departments. In regard to the guarantees furnished by the banks in favour of Government Departments in the name of the President of India, any correspondence thereon should be exchanged with the concerned ministries/departments and not with the President of India.

In respect of guarantees issued in favour of Directorate General of Supplies and Disposal, the following aspects should be kept in view:

- In order to speed up the process of verification of the genuineness of the bank guarantee, the name, designation and code numbers of the officer/officers signing the guarantees should be incorporated under the signature(s) of officials signing the bank guarantee.
- The beneficiary of the bank guarantee should also be advised to invariably obtain the confirmation of the concerned banks about the genuineness of the guarantee issued by them as a measure of safety.
- The initial period of the bank guarantee issued by banks as a means of security in Directorate General of Supplies and Disposal contract administration would be for a

period of six months beyond the original delivery period. Banks may incorporate a suitable clause in their bank guarantee providing automatic extension of the validity period of the guarantee by 6 months, and also obtain suitable undertaking from the customer at the time of establishing the guarantee to avoid any possible complication later.

- A clause would be incorporated by Directorate General of Supplies and Disposal in the tender forms of Directorate General of Supplies and Disposal 229 (Instruction to the tenderers) to the effect that whenever a firm fails to supply the stores within the delivery period of the contract wherein bank guarantee has been furnished, the request for extension for delivery period will automatically be taken as an agreement for getting the bank guarantee extended. Banks should make similar provisions in the bank guarantees for automatic extension of the guarantee period.
- The bank guarantee as a means of security in Directorate General of Supplies and Disposal contract administration and extension letters thereof would be on non-judicial stamp papers.

2.9 Guarantees on Behalf of Share and Stock Brokers

Banks may issue guarantees on behalf of share and stock brokers in favour of stock exchanges in lieu of security deposit to the extent it is acceptable in the form of bank guarantee as laid down by stock exchanges. Banks may also issue guarantees in lieu of margin requirements as per stock exchange regulations. The banks have further been advised that they should obtain a minimum margin of 40 percent while issuing such guarantees. A minimum cash margin of 20 per cent (within the above margin of 40 per cent) should be maintained in respect of such guarantees issued by banks. The above margin of 40 per cent will apply to all fresh guarantees issued. The existing guarantees issued may continue at the earlier margins until they come up for renewal.

The banks should assess the requirement of each applicant borrower; observe usual and necessary safeguards including the exposure ceilings.

2.10 Guidelines relating to obtaining of personal guarantees of directors and other managerial personnel of borrowing concerns

Personal guarantees of directors

The banks could take personal guarantees of directors for the credit facilities, etc. granted to the corporates, public or private, only, when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, the banks could follow the following broad considerations:

A Where guarantees need not be considered necessary

Ordinarily, in the case of public limited companies, when the lending institutions are satisfied about the management, its stake in the concern, economic viability of the proposal and the financial position and capacity for cash generation, no personal guarantee need be insisted upon. In fact, in the case of widely owned public limited companies, which may be rated as first class and satisfying the above conditions, guarantees may not be necessary even if the advances are unsecured. Also, in the case of companies, whether private or public, which are under professional management, guarantees may not be insisted upon from persons who are connected with the management solely by virtue of their professional/technical qualifications and not consequent upon any significant share holding in the company concerned.

Where the lending institutions are not so convinced about the aspects of loan proposals mentioned above, they should seek to stipulate conditions to make the proposals acceptable without such guarantees. In some cases, more stringent forms of financial discipline like restrictions on distribution of dividends, further expansion, aggregate borrowings, creation of further charge on assets and stipulation of maintenance of minimum net working capital may be necessary. Also, the parity between owned funds and capital investment and the overall debt-equity ratio may have to be taken into account.

B. Where guarantees may be considered helpful

Personal guarantees of directors may be helpful in respect of companies, whether private or public, where shares are held closely by a person or connected persons or a group (not being professionals or Government), irrespective of other factors, such as financial condition, security available, etc. The exception being in respect of companies where, by court or statutory order, the management of the company is vested in a person or persons, whether called directors or by any other name, who are not required to be elected by the shareholders. Where personal guarantee is considered necessary, the guarantee should preferably be that of the principal members of the group holding shares in the borrowing company rather than that of the director/managerial personnel functioning as director or in any managerial capacity.

Even if a company is not closely held there may be justification for a personal guarantee of directors to ensure continuity of management. Thus, a lending institution could make a loan to a company whose management is considered good. Subsequently, a different group, could acquire control of the company, which could lead the lending institution to have well-founded fears that the management has changed for the worse and that the funds lent to the company are in jeopardy. One way by which lending institutions could protect themselves in such circumstances is to obtain guarantees of the directors and thus to ensure either the continuity of the management or that the changes in management take place with their knowledge. Even where personal guarantees are waived it may be necessary to obtain an undertaking from the borrowing company that no change in the management would be made without the consent of the lending institution. Similarly, during the formative stages of a company, it may be in the interest of the company, as well as the lending institution, to obtain guarantees to ensure continuity of management.

Personal guarantees of directors may be helpful with regard to public limited companies other than those which may be rated as first class, where the advance is on an unsecured basis.

There may be public limited companies, whose financial position and/or capacity for cash generation is not satisfactory even though the relevant advances are secured. In such cases personal guarantees are useful.

Cases where there is likely to be considerable delay in the creation of a charge on assets, guarantee may be taken, where deemed necessary, to cover the interim period between the disbursement of loan and the creation of the charge on assets.

The guarantee of parent companies may be obtained in the case of subsidiaries whose own financial condition is not considered satisfactory.

Personal guarantees are relevant where the balance sheet or financial statement of a company disclosed interlocking of funds between the company and other concerns owned or managed by a group.

C. Worth of the guarantors, payment of guarantee, commission, etc.

Where personal guarantees of directors are warranted they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. The banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form would be paid by the former or received by the latter directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate and payment of remuneration to guarantors by way of guarantee commission, allowed.

D Personal guarantees in the case of sick units

As the personal guarantees of promoters/directors generally instil greater accountability and responsibility on their part and prompt the managements to conduct the running of the assisted units on sound and healthy lines and to ensure financial discipline, the banks, may in their discretion, obtain guarantees from directors (excluding the nominee directors) and other managerial personnel in their individual capacities. In case, for any reasons, a guarantee is not considered expedient by the bank at the time of sanctioning the advance, an undertaking should be obtained from the individual directors and a covenant should invariably be incorporated in the loan agreement that in case the borrowing unit show cash losses or adverse current ratio or diversion of fund, the directors should be under an obligation to execute guarantees in their individual capacities, if required by the banks. The banks may also obtain guarantees at their discretion from parent/holding company when credit facilities are extended to borrowing units in the same Group.

2.11 Guarantees of State Government

The guidelines laid down in paragraph 2.10 above for taking personal guarantees of directors and other managerial personnel should also be followed in respect of proposal of State Government undertakings/projects and guarantees may not be insisted upon unless absolutely warranted. In other words, banks could obtain guarantees of State Governments on merits and only in circumstances absolutely necessary after thorough examination of the circumstances of each case and not as matter of course.

3. BID BONDS AND PERFORMANCE BONDS OR GUARANTEES FOR EXPORTS

3.1 Exchange Control Stipulations

In terms of Notification No.FEMA/8/2000-RB dated 3rd May 2000, authorised dealers have the permission to give performance bond or guarantee in favour of overseas buyers on account of *bona fide* exports from India.

Prior approval of RBI should be obtained by the authorised dealers for issue of performance bonds/guarantees in respect of caution listed exporters.

Before issuing any such guarantees, they should satisfy themselves with the *bona fides* of the applicant and his capacity to perform the contract and also that the value of the bid/guarantee as a percentage of the value of the contract/tender is reasonable and according to the normal practice in international trade and that the terms of the contract are in accordance with the Exchange Control regulations.

Authorised dealers, may also, subject to what has been stated above, issue counter-guarantees in favour of their branches/ correspondents abroad in cover of guarantees required to be issued by the latter on behalf of Indian exporters in cases where guarantees of only resident banks are acceptable to overseas buyers in accordance with local laws/regulations.

If and when the bond/guarantee is invoked, authorised dealers may make payments due thereunder to non-resident beneficiaries but a report should be sent to RBI where the amount of the remittance exceeds US$ 5,000 or its equivalent.

3.2 Other Stipulations

With a view to boost exports, banks should adopt a flexible approach in the matter of obtaining cover and earmarking of assets/credit limits, drawing power, while issuing bid bonds and performance guarantees for export purposes. Banks may, however, safeguard their interests by obtaining an Export Performance Guarantee of ECGC, wherever considered necessary.

Export Credit & Guarantee Corporation (ECGC) would provide 90 percent cover for bid bonds, provided the banks give an undertaking not to insist on cash margins.

The banks may not, therefore, ask for any cash margin in respect of bid bonds and guarantees which are counter-guaranteed by ECGC.

In other cases, where such counter-guarantees of ECGC are not available, for whatever reasons, the banks may stipulate a reasonable cash margin only where it is considered absolutely necessary, as they satisfy themselves generally about the capacity and financial position of the exporter while issuing such bid bonds/guarantees.

Banks may consider sanctioning separate limits for issue of bid bonds. Within the limits so sanctioned, bid bonds against individual contracts may be issued, subject to usual considerations.

As per FEDAI Rules, the banks may refund 50 percent of the commission received by them on the bid bonds which are cancelled due to non-acceptance of tender.

3.3 Unconditional Guarantees in favour of Overseas Employers/ Importers on behalf of Indian Exporters

While agreeing to give unconditional guarantee in favour of overseas employers/importers on behalf of Indian Exporters, the banks should obtain an undertaking from the exporter to the effect that when the guarantee is invoked, the bank would be entitled to make payment notwithstanding any dispute between the exporter and the importer. Although, such an undertaking may not prevent the exporter from approaching the Court for an injunction order, it might weigh with the Court in taking a view whether injunction order should be issued.

Banks may, while issuing guarantees in future, keep the above points in view and incorporate suitable clauses in the agreement in consultation with their legal advisers. This is considered desirable as non-honouring of guarantees on invocation might prompt overseas banks not to accept guarantees of Indian banks, thus hampering the country's export promotion effort.

3.4 Certain Precautions in case of Project Exports

Banks are aware that the Working Group mechanism has been evolved for the purpose of giving package approvals in principle at pre-bid/post-bid stages for high value overseas project exports. The role of the Working Group is mainly regulatory in nature, but the responsibility of project appraisal and that of monitoring the project lies solely on the sponsor bank.

As the Working Group approvals are based on the recommendations of the sponsor banks, the latter should examine the project proposals thoroughly with regard to the capacity of the contractor/ sub-contractors, protective clauses in the contracts, adequacy of security, credit ratings of the overseas sub-contractors, if any, etc.

Therefore, the need for a careful assessment of financial and technical demands involved in the proposals vis-à-vis the capability of the contractors (including sub-contractors) as well as the overseas employers can hardly be under-rated to the financing of any domestic projects. In fact, the export projects should be given more attention in view of their high values and the possibilities of foreign exchange losses in case of failure apart from damage to the image of Indian entrepreneurs.

While bid bonds and performance guarantees cannot be avoided, it is to be considered whether guarantees should be given by the banks in all cases of overseas borrowings for financing overseas projects. Such guarantees should not be executed as a matter of course merely because of the participation of Exim Bank and availability of counter-guarantee of ECGC. Appropriate arrangements should also be made for post-award follow-up and monitoring of the contracts.

3.5 Review of Banks Procedures

Banks may review the position regarding delegation of powers and their procedures, and take such action as may be necessary with a view to expediting decision on export proposals. They may also consider designating a specified branch, equipped with adequately qualified and trained staff, in each important Centre to deal expeditiously with all export credit proposals at the Centre.

3.6 Other Guarantees Regulated by Exchange Control Rules

Issue of following types of guarantees are governed by the Exchange Control Regulations:

(i) Minor Guarantees

(ii) Bank Guarantees - Import under Foreign Loans/Credits

(iii) Guarantees for Non-Residents

For operative instructions, a reference may be made to notification issued under FEMA/8/ 2000 dated 3rd May 2000 cited above as well as to the directions issued vide AP(DIR) circulars Nos. 9 and 12 dated 24th Aug 2000 and 9th September 2000 respectively relating to Imports/Exports. However, for ease of reference, instructions/guidelines in regard to issue of these guarantees are reproduced hereunder:

3.6.1 Minor guarantees

Authorised dealers may freely give on behalf of their customers and overseas branches and correspondents, guarantees in the ordinary course of business in respect of missing or defective documents, authenticity of signatures and for other similar purposes.

3.6.2 Bank guarantees - Import under foreign loans/credits

Issue of guarantees in favour of foreign lenders or suppliers (in the case of Supplier's Credits) requires approval of RBI. While granting approval for raising the foreign currency loan/credit, RBI will grant the required permission to the concerned authorised dealer. In the event of invocation of the guarantee, the concerned authorised dealer may make the necessary remittance without reference to RBI. A report should, however, be sent to RBI giving full details citing reference to the approval for furnishing the guarantee. A copy of the claim received from the overseas party should be enclosed with such report.

3.6.3 Loans abroad against securities provided in India

Giving of guarantees by banks in India to banks and others outside India for the purpose of grant of loans or overdrafts abroad is prohibited.

3.6.4 Guarantees for non-residents

Reserve Bank has granted general permission to authorised dealers vide its Notification No. FEMA/8/ 2000 dated 3rd May 2000 to give guarantees in favour of persons resident in India in respect of any debt or other obligation or liability of a person resident outside India, subject to such instructions as may be issued by RBI from time to time.

Authorised dealers may accordingly give on behalf of their overseas branches/correspondents or a bank of international repute guarantees/performance bonds in favour of residents of India in connection with genuine transactions involving debt, liability or obligation of non-residents, provided the bond/ guarantee is covered by a counter-guarantee of the overseas Head Office/branch/ correspondent or a bank of international repute.

Authorised dealers should ensure that counter-guarantees are properly evaluated and their own guarantees against such guarantees are not issued in routine manner. Before issuing a guarantee against the counter-guarantee from an overseas Head Office/branch/ correspondent/bank of international repute, authorised dealers should satisfy themselves that the obligations under the counter-guarantee, when invoked, would be honoured by the overseas bank promptly. If the authorised dealer desires to issue guarantee with the condition that payment will be made, provided reimbursement has been received from the overseas bank which had issued the counter-guarantee, this fact should be made clearly known to the beneficiary in the guarantee document itself.

Authorised dealers may make rupee payments to the resident beneficiaries immediately when the guarantee is invoked and simultaneously arrange to obtain the reimbursement from the overseas bank concerned, which had issued the counter-guarantee.

Cases where payments are not received by the authorised dealers when the guarantees of overseas banks are invoked, should be reported to RBI indicating the steps being taken by the bank to recover the amount due under the guarantee.

Authorised dealers may issue guarantees in favour of overseas organisations issuing travellers cheques in respect of blank travellers cheques stocked for sale by them or on behalf of their constituents who are full-fledged money changers holding valid licences from Reserve Bank, subject to suitable counter-guarantee being obtained from the latter. In the event of the guarantee being invoked, authorised dealers may effect remittance but should send a separate report thereon furnishing full details to the Chief General Manager, Exchange Control Department, (Forex Markets Division), Reserve Bank of India, Central Office, Mumbai - 400 001.

4. Restrictions on guarantees of inter-company deposits/loans

Banks should not execute guarantees covering inter-company deposits/loans thereby guaranteeing refund of deposits/loans accepted by NBFC/firms from other NBFC/firms.

4.1 Restriction on guarantees for placement of funds with NBFCs

These instructions would cover all types of deposits/loans irrespective of their source, including deposits/loans received by NBFCs from trusts and other institutions.

Guarantees should not be issued for the purpose of indirectly enabling the placement of deposits with NBFCs.

4.2 Restrictions on Inter-Institutional Guarantees

4.2.1 The banks should not execute guarantees covering inter-company deposits/loans. Guarantees should not also be issued for the purpose of indirectly enabling the placement of deposits with non-banking institutions. This stipulation will apply to all types of deposits/loans irrespective of their source, e.g. deposits/loans received by non-banking companies from trusts and other institutions.

4.2.2 The transactions of the following type are in the nature of guarantees executed by banks in respect of funds made available by one non-banking to another non-banking company and the banks should therefore, desist from such practices: -

A seller drew bills, normally of 120 to 180 days usance, on the buyer which were accepted by the buyer and co-accepted by his banker. The bills were discounted by the seller with the accommodating company which retained the bills till the due date. The bank which gave co-acceptance invariably earmarked funds for the liability under the bills against the drawing power in respect of stocks held in the cash credit account of its client, the buyer, or

*The accommodating company kept deposits for a specific period with the bank's borrowers under a guarantee executed by the bank. In such a case also the bank earmarked the amount a*gainst drawing power available in the cash credit account.

4.2.3 Banks may issue guarantees favouring other banks/FIs/other lending agencies for the loans extended by the latter, subject to strict compliance with the following conditions.

(i) The Board of Directors should reckon the integrity/robustness of the of the bank's risk management systems and accordingly put in place a well-laid out policy in this regard.

The Board approved policy should, among others, address the following issues:

a) Prudential limits, linked to bank's Tier I capital, up to which guarantees favouring other banks/FIs/other lending agencies may be issued.

b) Nature and extent of security and margins

c) Delegation of powers

d) Reporting system

e) Periodical reviews

(ii) The guarantee shall be extended only in respect of borrower constituents and to enable them to avail of additional credit facility from other banks/FIs/lending agencies

(iii) The guaranteeing bank shall assume a funded exposure of at least 10% of the exposure guaranteed.

(iv) Banks should not extend guarantees or letters of comfort in favour of overseas lenders including those assignable to overseas lenders, except for the relaxations permitted under FEMA.

(v) The guarantee issued by the bank will be an exposure on the borrowing entity on whose behalf the guarantee has been issued and will attract appropriate risk weight as per the extant guidelines.

(vi) Banks should ensure compliance with the recommendations of the Ghosh Committee and other internal requirements relating to issue of guarantees to obviate the possibility of frauds in this area.

Lending banks

Banks extending credit facilities against the guarantees issued by other banks/FIs should ensure strict compliance with the following conditions:

(i) The exposure assumed by the bank against the guarantee of another bank/FI will be deemed as an exposure on the guaranteeing bank/FI and will attract appropriate risk weight as per the extant guidelines.

(ii) Exposures assumed by way of credit facilities extended against the guarantees issued by other banks should be reckoned within the inter bank exposure limits prescribed by the Board of Directors. Since the exposure assumed by the bank against the guarantee of another bank/FI will be for a fairly longer term than those assumed on account of inter bank dealings in the money market, foreign exchange market and securities market, Board of Directors should fix an appropriate sub-limit for the longer term exposures since these exposures attract greater risk.

(iii) Banks should monitor the exposure assumed on the guaranteeing bank/FI, on a continuous basis and ensure strict compliance with the prudential limits/sub limits prescribed by the Board for banks and the prudential single borrower limits prescribed by RBI for FIs.

(iv) Banks should comply with the recommendations of the Ghosh Committee and other internal requirements relating to acceptance of guarantees of other banks to obviate the possibility of frauds in this area.

4.2.4 Exceptions

In regard to rehabilitation of sick/weak industrial units, in exceptional cases, where banks are unable to participate in rehabilitation packages on account of temporary liquidity constraints, the concerned banks could provide guarantees in favour of the banks which take up their additional share. Such guarantees will remain extant until such time the banks providing additional finance against guarantees are re-compensated.

In respect of infrastructure projects, banks may issue guarantees favouring other lending institutions, provided the bank issuing the guarantee takes a funded share in the project at least to the extent of 5 percent of the project cost and undertakes normal credit appraisal, monitoring and follow up of the project.

Banks may issue guarantees in favour of Industrial Development Bank of India (IDBI) in the case of import of technical know-how by way of drawings and designs under the Technical Development Scheme of the IDBI, under certain circumstances and where no tangible security is available to IDBI.

In cases of Sellers Line of Credit Scheme (SLCS) operated by other all India financial institutions like IDBI, SIDBI, PFC, etc for sale of machinery, the primary credit is provided by the seller's bank to the seller through bills drawn on the buyer and seller's bank has no access to the security covered by the transaction which remains with the buyer. As such, buyer's banks are permitted to extend guarantee/co-acceptance facility for the bills drawn under seller's line of credit.

Similarly guarantees can be issued in favour of HUDCO/State Housing Boards and similar bodies/ organisations for the loans granted by them to private borrowers who are unable to offer clear and marketable title to property, provided banks are otherwise satisfied with the capacity of the borrowers to adequately service such loans.

Banks may sanction issuance of guarantees on behalf of their constituents, favouring Development Agencies/Boards like Indian Renewable Energy Development Agency, National Horticulture Board, etc., for obtaining soft loans and/or other forms of development assistance.

4.2.5 Infrastructure projects

Keeping in view the special features of lending to infrastructure projects viz., high degree of appraisal skills on the part of lenders and availability of resources of a maturity matching with the project period, banks have been given discretion in the matter of issuance of guarantees favouring other lending agencies, in respect of infrastructure projects alone, subject to the following conditions:

The bank issuing the guarantee takes a funded share in the project at least to the extent of 5 percent of the project cost and undertakes normal credit appraisal, monitoring and follow-up of the project.

the guarantor bank has a satisfactory record in compliance with the prudential regulations, such as, capital adequacy, credit exposure, norms relating to income recognition, asset classification and provisioning, etc.

5. PAYMENT OF INVOKED GUARANTEES

5.1 Where guarantees are invoked, payment should be made to the beneficiaries without delay and demur. An appropriate procedure for ensuring such immediate honouring of guarantees should be laid down so that there is no delay on the pretext that legal advice or approval of higher authorities is being obtained.

5.2 Delays on the part of banks in honouring the guarantees when invoked tend to erode the value of the bank guarantees, the sanctity of the scheme of guarantees and image of banks. It also provides an opportunity to the parties to take recourse to courts and obtain injunction orders. In the case of guarantees in favour of Government departments, this not only delays the revenue collection efforts but also give an erroneous impression that banks are actively in collusion with the parties, which tarnish the image of the banking system.

There should be an effective system to process the guarantee business to ensure that the persons on whose behalf the guarantees are issued will be in a position to perform their obligations in the case of performance guarantees and honour their commitments out of their own resources as and when needed in the case of financial guarantees.

5.3 The top management of the banks should bestow their personal attention to the need to put in place a proper mechanism for making payments in respect of invoked guarantees promptly so that no room is given for such complaints. When complaints are made, particularly by the Government departments for not honouring the guarantees issued, the top management of the bank, including its Chief Executive Officer, should personally look into such complaints.

In this regard, the Delhi High Court has made adverse remarks against certain banks in not promptly honouring the commitment of guarantees when invoked. It has been observed that a bank guarantee is a contract between the beneficiary and the bank. When the beneficiary invokes the bank guarantee and a letter invoking the same is sent in terms of the bank guarantee, it is obligatory on the bank to make payment to the beneficiary.

5.4 The Supreme Court had observed [U.P. Co-operative Federation Private Ltd. versus Singh Consultants and Engineers Private Ltd. (1988 IC SSC 174)] that the commitments of the banks must be honoured free from interference by the courts.

The relevant extract from the judgement of the Supreme Court in a case is as under: -

"We are, therefore, of the opinion that the correct position of law is that commitment of banks must be honoured free from interference by the courts and it is only in exceptional cases, that is, to say, in case of fraud or any case where irretrievable injustice would be done if bank guarantee is allowed to be encashed the court should interfere".

5.5 In order to avoid such situations, it is absolutely essential for banks to appraise the proposals for guarantees also with the same diligence as in the case of fund based limits and obtain adequate cover by way of margin so as to prevent the constituents to develop a tendency of defaulting in payments when invoked guarantees are honoured by the banks.

5.6 In the interest of the smooth working of the Bank Guarantee Scheme, it is essential to ensure that there is no discontentment on the part of the Government departments regarding its working. Banks are required to ensure that the guarantees issued by them are honoured without delay and hesitation when they are invoked by the Government departments in accordance with the terms and conditions of the guarantee deed, unless there is a Court order restraining the banks.

Any decision not to honour the obligation under the guarantee invoked may be taken after careful consideration at a fairly senior level and only in the circumstances where the bank is satisfied that any such payment to the beneficiary would not be deemed a rightful payment in accordance with the terms and conditions of the guarantee under the Indian Contract Act.

The Chief Executive Officers of banks should assume personal responsibility for such complaints received from Government departments. Sufficient powers should be delegated to the line functionaries so that delay on account of reference to higher authorities for payment under the guarantee does not occur.

Banks should also introduce an appropriate procedure for ensuring immediate honouring of guarantees so that there is no delay on the pretext that legal advice or approval of higher authorities is being obtained.

For any non-payment of guarantee in time, staff accountability should be fixed and stern disciplinary action including award of major penalty such as dismissal, should be taken against the delinquent officials at all levels.

Where banks have executed bank guarantees in favour of Customs and Central Excise authorities to cover differential duty amounts in connection with interim orders issued by High Courts, the guarantee amount should be released immediately when they are invoked on vacation of the stay orders by Courts. Banks should not hold back the amount on the pretext that it would affect their liquidity position.

5.7 There have also been complaints by Ministry of Finance that some of the departments such as Department of Revenue, Government of India are finding it difficult to execute judgements delivered by various Courts in their favour as banks do not honour their guarantees, unless certified copies of the Court judgements are made available to them. In this regard, the banks may follow the following procedure:

Where the bank is a party to the proceedings initiated by Government for enforcement of the bank guarantee and the case is decided in favour of the Government by the Court, banks should not insist on production of certified copy of the judgement as the judgement/order is pronounced in open Court in presence of the parties/their counsels and the judgement is known to the bank.

In case the bank is not a party to the proceedings, a signed copy of the minutes of the order certified by the Registrar/Deputy or Assistant Registrar of the High Court or the ordinary copy of the judgement/order of the High Court duly attested to be true copy by Government Counsel should be sufficient for honouring the obligation under guarantee, unless the guarantor bank decides to file any appeal against the order of the High Court.

Banks should honour the guarantees issued by them as and when they are invoked in accordance with the terms and conditions of the guarantee deeds. In case of any disputes such honouring can be done under protest, if necessary, and the matters of dispute pursued separately.

The Government, on their part, have advised the various Government departments, etc. that the invocation of guarantees should be done after careful consideration at a senior-level that a default has occurred in accordance with the terms and conditions of the guarantees and as provided in the guarantee deed.

Non-compliance of the instructions in regard to honouring commitments under invoked guarantees will be viewed by Reserve Bank very seriously and Reserve Bank will be constrained to take deterrent action against the banks.

6. CO-ACCEPTANCE OF BILLS

6.1 General

Reserve Bank has observed that some banks co-accept bills of their customers and also discount bills co-accepted by other banks in a casual manner. These bills subsequently turn out to be accommodation bills drawn by groups of sister concerns on each other where no genuine trade transaction takes place. Banks, while discounting such bills, appear to ignore this important aspect presumably because of the co-acceptance given by other banks. The bills on maturity are not honoured by the drawees and the banks which co-accept the bills have to make payment of these bills and they find it difficult to recover the amount from the drawers/drawees of bills. The banks also discount bills for sizeable amounts which are co-accepted by certain Urban Co-operative Banks. On maturity, the bills are not honoured and the co-operative banks, which co-accept the bills, also find it difficult to make the payment. The financial position and capacity of the co-accepting bank to honour the bills, in the event of need, is not being gone into.

Cases have also been observed where the particulars regarding co-acceptance of bills are not recorded in the bank's books with the result the extent thereof cannot be verified during inspections and the Head Office becomes aware of the co-acceptance only when a claim is received from the discounting bank.

6.2 Safeguards

Banks should keep in view the following safeguards:

While sanctioning co-acceptance limits to their customers, the need therefor should be ascertained and such limits should be extended only to those customers who enjoyed other limits with the bank.

Only genuine trade bills should be co-accepted and the banks should ensure that the goods covered by bills co-accepted are actually received in the stock accounts of the borrowers.

The valuation of the goods as mentioned in the accompanying invoice should be verified to see that there is no over-valuation of stocks.

The banks should not extend their co-acceptance to house bills/accommodation bills drawn by group concerns on one another.

The banks discounting such bills co-accepted by other banks should also ensure that the bills are not accommodation bills and that the co-accepting bank has the capacity to redeem the obligation in case of need.

Bank-wise limits should be fixed, taking into consideration the size of each bank for discounting bills co-accepted by other banks and the relative powers of the officials of the other banks should be got registered with the discounting banks.

Care should be taken to see that the co-acceptance liability of any bank is not disproportionate to its known resources position.

A system of obtaining periodical confirmation of the liability of co-accepting banks in regard to the outstanding bills should be introduced.

Proper records of the bills co-accepted for each customer should be maintained so that the commitments for each customer and the total commitments at a branch can be readily ascertained and these should be scrutinised by Internal Inspectors and commented upon in their reports.

It is also desirable for the discounting bank to advise the Head Office/Controlling Office of the bank, which has co-accepted the bills, whenever such transactions appear to be disproportionate or large.

Proper periodical returns may be prescribed so that the Branch Managers report such co-acceptance commitments entered into by them to the Controlling Offices. Such returns should also reveal the position of bills that have become overdue and which the bank had to meet under the co-acceptance obligation. This will enable the Controlling Offices to monitor such co-acceptances furnished by the branches and take suitable action in time, in difficult cases.

Co-acceptances in respect of bills for Rs. 10,000/- and above should be signed by two officials jointly, deviation being allowed only in exceptional cases, e.g. non-availability of two officials at a branch.

Before discounting/purchasing bills co-accepted by other banks for Rs. 2 lakh and above from a single party the bank should obtain written confirmation of the concerned Controlling (Regional/ Divisional/ Zonal) Office of the accepting bank and a record of the same should be kept.

When the value of total bills discounted/purchased (which have been co-accepted by other banks) exceed Rs. 20 lakh for a single borrower/group of borrowers, prior approval of the Head Office of the co-accepting bank must be obtained by the discounting bank in writing.

6.3 In addition to the above safeguards to be observed by banks in co-accepting the bills, it must be noted that the banks are precluded from co-accepting bills drawn under Buyers Line of Credit Schemes introduced by the financial institutions like IDBI, SIDBI, Power Finance Corporation Ltd. (PFC), etc. Similarly, banks should not co-accept bills drawn by NBFCs.

In addition, banks are advised not to extend co-acceptance on behalf of their buyers/constituents under the SIDBI Scheme.

6.4 However, banks may co-accept bills drawn under the Sellers Line of Credit Schemes for Bill Discounting operated by the financial institutions like IDBI, SIDBI, PFC, etc. without any limit, subject to buyer’s capability to pay and the compliance with the exposure norms prescribed by the bank for individual/ group borrowers.

6.5 There have been instances where branches of banks open L/Cs on behalf of their constituents and also co-accept the bills drawn under such L/Cs. Legally, if a bank co-accepts a bill drawn under its own L/C, the bill so co-accepted becomes an independent document and the special rules applicable to commercial credits do not apply to such bill and the bill is exclusively governed by the law relating to Bills of

Exchange i.e. Negotiable Instruments Act. The negotiating bank of such a bill is not under any obligation to check the particulars of the bill with reference to the terms of the L/C. This practice is, therefore, superfluous and defeats the purpose of issuing L/C. The discounting banks should first ascertain from co-accepting banks, the reason for such co-acceptance of bills drawn under its own L/C and only after satisfying themselves of genuineness of such transaction, they may consider discounting such bills.

6.6 It should be ensured that the branch officials strictly adhere to the above referred instructions at the time of co-acceptance of bills. It would be advisable to determine clear accountability in this respect and officials found to be not complying with the instructions must be dealt with sternly.

Annexure 1

Master Circular

GUARANTEES & CO-ACCEPTANCES

Types of unsecured advances to be excluded from the total of unsecured advances for the purpose of norms relating to unsecured advances and guarantees

[Vide paragraph 2.3]

1. Advances backed by guarantees of the Central Government, State Government, public sector financial institutions, insurance companies, banks and, in respect of credit to small industries, the Credit Guarantee Organisation.

   However, guarantees furnished by insurance companies in connection with deferred payment arrangements should themselves be backed by adequate tangible security.

2. Advances against supply bills drawn on the Central Government, State Governments and the State-owned undertakings, which are accompanied by duly authorised inspection notes or receipted challans, provided the bank holds an irrevocable power of attorney registered with the concerned authorities.

3. Advances against inland D/A bills drawn under letters of credit.

4. Advances against inland D/A bills (even where such bills are not drawn under letters of credit) having a usance of not exceeding 90 days.

5. Advances against bills drawn for machinery supplied on deferred payment terms which have been accepted by the purchaser's bank and advances to finance sales on hire-purchase or deferred payment terms of machinery and equipment for agriculture, dairy, farming and fishing as well as trucks/commercial vehicles.

6. Advances against truck/lorry receipts issued by operators approved by the Indian Banks' Association.

7. Bills eligible for rediscount with Reserve Bank of India under Bills Rediscounting Scheme under Section 17(2) (a) of the Reserve Bank of India Act, 1934.

8. Advances against book debts which are not outstanding for more than six months and are due by companies.

9. Advances against trust receipts.

10. Cheques and DDs purchased.

11. Advances against deferred receivables such as excise drawbacks, cash subsidies to exporters and dividends receivable from the Coffee Pool, provided the amounts are due from Government under export promotion schemes or commodity marketing schemes approved by Government, and advances to exporters for payment of export duty.

12. Advances against Export D/A bills.

13. Advances in the form of packing credits for exports.

14. Advances to farmers against hypothecation of crops.

15. Bad and doubtful debts fully provided for.

16. The secured portion of a partly secured advance.

17. Unsecured advances made to exporters in respect of exports made on consignment basis, where the consignees given an undertaking to remit the sale proceeds or return the goods direct to the bank.

18. Outstanding credit card dues

19. Unsecured advances granted to Self Help Groups (SHGs) against group guarantee.

20. Unsecured advances granted by the branches of foreign banks in India backed by the guarantees of their Head Offices.

21. Unsecured advances granted by the branched of foreign banks in India backed by the guarantees of their overseas branches.

22. Guarantees issued by the branches of foreign banks in India on behalf of their Head Offices.

23. Guarantees counter-guaranteed by another bank.

24. Performance guarantees executed by banks on behalf of small scale industries.

25. Following types of Guarantees given by banks to Government Departments on behalf of contractors in the construction industry:

    (i) guarantees issued in lieu of earnest money at the time of submission of tenders, provided the tenders are rejected and the rejection is supported by a note issued by Government Department concerned;

    (ii) performance guarantees issued on behalf of contracts, provided the contractors produce a certificate from the appropriate authority that the contracts have been fulfilled by them satisfactorily.

26. Bid bonds and guarantees executed by banks in respect of contracts secured by Indian firms in foreign countries.

27. Guarantees relating to exports.

28. Guarantees in respect of which Export Credit Guarantee Corporation would be issuing its Export Performance Guarantee.

Annexure 2

Master Circular
GUARANTEES & CO-ACCEPTANCES
Revised Model Form of Bank Guarantee Bond
(Vide paragraph 2.8)
GUARANTEE BOND

1. In consideration of the President of India (hereinafter called "the Government") having agreed to exempt ________________________________ [hereinafter called "the said Contractor(s)"] from the demand, under the terms and conditions of an Agreement dated ___________ made between ____ and____________________________________for_____________ (hereinafter called "the said Agreement"), of security deposit for the due fulfilment by the said Contractor(s) of the terms and conditions contained in the said Agreement, on production of a bank Guarantee for Rs. __________ (Rupees____ Only) We, ____, (hereinafter referred (indicate the name of the bank) to as "the Bank") at the request of ____ [contractor(s)] do hereby undertake to pay to the Government an amount not exceeding Rs. _____________ against any loss or damage caused to or suffered or would be caused to or suffered by the Government by reason of any breach by the said Contractor(s) of any of the terms or conditions contained in the said Agreement.

2. We ____ (indicate the name of the bank) do hereby undertake to pay the amounts due and payable under this guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said contractor(s) of any of the terms or conditions contained in the said Agreement or by reason of the contractor(s)' failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs. _______________.

3. We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor(s)/supplier(s) in any suit or proceeding pending before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal.

   The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the contractor(s)/supplier(s) shall have no claim against us for making such payment.

4. We,____ (indicate the name of bank) further agree that the guarantee herein contained shall

remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till_______________________________ Office/ Department/Ministry of_____________________________ certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the _______________________________________ we shall be discharged from all liability under this guarantee thereafter.

5. We, ____ (indicate the name of bank) further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor(s) or for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/Supplier(s).

7. We, ____________________________________ (indicate the name of bank) lastly undertake not to revoke this guarantee during its currency except with the previous consent of the Government in writing.

8. Dated the ___________ day of __________ _____ for ____________________________ (indicate the name of the Bank).

Appendix

Master Circular

GUARANTEES AND CO-ACCEPTANCES

List of Circulars issued subsequent to the previous Master Circular

1.	DBOD No. Dir. BC.	07/13.03.00/2002-03	dated 26.07.2002
2.	DBOD No. BP.BC.	90/21.04.141/2001-02	dated 18.04.2002
3.	-do-	39/21.04.141/2002	dated 06.11.2002
4.	-do-	47/21.04.141/2002	dated 13.12.2002

5. IECD No. 17/08.12.01/2002-03 dated 05.04.2003