

SME Loan Guarantee Scheme (SGS) General Guidelines on Submission of Default Claim

To facilitate the participating lending institutions (PLIs) in lodging a default claim under the SME Loan Guarantee Scheme (SGS), the guidelines provide some general guiding principles adopted by the Trade and Industry Department (TID) in processing default claims, the claim procedures and the supporting documents required.

I. Principles adopted in Processing Default Claims

2. The Government places complete reliance on the PLIs in their professional skill, judgment and care as prudent lenders in assessing loan applications from borrowers. In order to expedite the approval process for loan guarantee applications, TID will not normally request the PLIs to provide all the supporting documents for verification during the application stage. However, when a PLI submits a claim to TID after the loan is defaulted, the PLI is required to provide supporting documents to demonstrate that it had followed all the necessary procedures and complied with all the terms and conditions of the SGS Deed ^(Note 1) when assessing the loan application.

3. Before effecting compensation payment for a default claim, TID has the duty to (i) ensure that the PLI had followed due procedure and complied with the terms and conditions of the SGS Deed in processing the loan applications; (ii) ascertain the factual accuracy of the information provided; and (iii) ensure that recovery actions have been duly considered and conducted, and recovery proceeds properly applied towards repayment of indebtedness of the facility.

(i) Due Procedure

TID will –

- ascertain whether the PLI has exercised professional skill, judgment and care before granting approval to the loan application and in the subsequent monitoring of the facility;
- ascertain whether the PLI has exercised due diligence to ensure that the borrower has substantive business in Hong Kong;
- ascertain whether the PLI has complied with all the requirements as stipulated under the SGS Deed;
- assess the consistency between the information and documents provided by the PLI at the time of application and after the default claim is lodged; and
- ensure that the PLI has taken practicable steps and actions for the purpose of recovering the outstanding indebtedness, and any

amount recovered has been applied towards repayment of the indebtedness.

(ii) Eligibility and Factual Accuracy

Before submitting the claim, the PLI should ensure that -

- the default date falls within the guarantee period;
- the Payment Request Form is submitted within the period as specified in the SGS Deed (Please refer to Part II below);
- the amount to be claimed excludes all outstanding interest, penalties, charges, capitalisation of interest and charges;
- in the event that the SGS facility was drawn down in foreign currencies, the compensation amount is determined by the exchange rate which contributes the smallest compensation sum among the following four reference points -
 - (a) exchange rate as at the drawdown date in the currency quoted by the Hong Kong Association of Banks (HKAB) and the PLI respectively; and
 - (b) exchange rate as at the date of default quoted by HKAB and the PLI respectively.
- the particulars and current status of the following aspects are properly verified -
 - (a) the borrower (e.g. whether the borrower has liquidated, recovery actions on the borrower);
 - (b) the guarantor(s) (corporate/personal, if applicable) (e.g. recovery actions on the guarantors);
 - (c) the guarantee/facility (e.g. amount of outstanding indebtedness and amount to be shared by the Government); and
 - (d) the collateral (e.g. proceeds realised from the collateral).

(iii) Recovery Proceeds

General principles are as follows -

- Proceeds realised from the collateral pledged / repayments designated to the SGS facilities should be applied to settle the outstanding indebtedness of the defaulted SGS facilities. Such

proceeds may include but are not limited to proceeds upon realisation of property/fixed deposits/business installations and equipment, payments received from the borrower and guarantor(s) as recorded in the designated accounts after the date of default of the SGS facilities, etc.

- If the collateral is pledged to other non-SGS facilities held by the borrower, any residual amounts (after settlement of the relevant non-SGS facilities) are required to be shared with the defaulted SGS facilities.
- Collateral pledged to both SGS and non-SGS facilities held by the borrower, and general proceeds (including cash deposits, credit balances, payments/dividends, etc. received from the borrower and guarantor(s) after the date of default of the SGS facilities) received which are not specifically pledged/designated to any facilities are required to be shared between SGS and non-SGS facilities on a pro-rata basis, normally based on the respective outstanding indebtedness of the SGS and non-SGS facilities as at the default date of the SGS facilities after netting off subsequent repayments. The outstanding indebtedness could either be the outstanding principal or outstanding principal plus interest of the concerned facility. Irrespective of which option is chosen, the same should apply to all SGS and non-SGS facilities of the borrower involved in a default claim for the sake of fairness and consistency.

4. TID will effect payment to a default claim only after all the necessary information and documents are received from the PLI and checked to be in order as set out in paragraph 3 above. In the course of processing the default claim, it is imperative for the PLI to reply to all the questions raised by TID. In case the PLI cannot locate the relevant document or cannot provide the answer to a particular question, it should provide detailed explanation to TID. TID will consider such cases based on their individual merits. In case of doubt, the PLI should seek clarification from or discuss with TID. If a PLI fails to reply to any of TID's questions or requests for supporting documents without satisfactory explanation, TID will not be able to further process the claim, and may even close the case after a prolonged delay.

II. Default Claim Procedures

5. A PLI may lodge a default claim with TID in respect of a facility guaranteed under the SGS if the borrower fails to repay the facility or any part of the facility on a repayment date ^(Note 2) according to the relevant facility letter, and such indebtedness ^(Note 3) remains outstanding **61 days** after the relevant repayment date.

6. The PLI is required to submit the Payment Request Form ^(Note 4), together with the Questionnaire on Default Claim and other supporting documents required (Please refer to Part III below) to TID **within six months** after the earliest relevant repayment date of the defaulted facility. Copies of the Payment Request Forms (together with the specimen of the completed forms) and the Questionnaire on Default Claim are at **Annexes I(a)-(d), II(a)-(d) and III(a)-(d)** respectively.

III. Documents required

7. Documents required to support a default claim are listed below. The list contains documents required in handling default claims, yet is not exhaustive. TID reserves all rights to request further information/documents/evidence/explanation, as and when it is considered necessary for the purpose of processing the default claims.

Documents required	Type of Facility ^(Note 5)		
	BIE/AWC	ARL	WCL
(A) Information on defaulted facility			
1. Facility letter / Hire-purchase agreement ^(Note 6) , as appropriate	√	√	√
2. Statement of the borrower's designated bank account or sub-accounts ^(Note 7) in respect of the subject facility from the date of drawdown up to present	√	√	√
3. Repayment schedule of the defaulted SGS facility setting out the repayment date as well as breakdown of principal and interest	√	Not applicable	√
4. In respect of a limited company, documentary evidence showing that the facility was duly authorised by the borrower Examples: (i) Relevant minutes of meeting of board of directors / shareholders (ii) Director's Certificate (iii) Certified copy of board resolution	√	√	√

Documents required	Type of Facility ^(Note 5)		
	BIE/AWC	ARL	WCL
<p>5. Credit assessment and review report(s) (if review(s) has/have been conducted during the tenor of the facility)</p> <p>The purpose of obtaining the credit assessment report is to ensure that in conducting credit assessment, the PLI had duly considered the following aspects –</p> <ul style="list-style-type: none"> (i) Purpose of the facility (ii) Credit analysis on the repayment ability of the borrower and where applicable, the guarantor(s) and the possible assets for recovery in case of default. The analysis should also show the credit criteria (as set out in the PLI's policy) the borrower has met, and justifications for allowing exceptions if such criteria are not met. (iii) Checking on the borrower to ascertain that no petition for winding-up or bankruptcy has been filed against the borrower (or where applicable, its partners, major shareholders and directors) ^(Note 8) (iv) The borrower's track record, business prospects and financial position (including assets and liabilities) ^(Note 8) (v) Business nature of the borrower (vi) The management abilities and determination of the senior management and shareholders of the borrower to continue the business 	√	√	√

Documents required	Type of Facility (Note 5)		
	BIE/AWC	ARL	WCL
<p>(vii) Company visit report prior to approval of loan application (Note 8), or written explanation in lieu</p> <p>(viii) The borrower's clientele</p> <p>(ix) Credit references from appropriate credit reference agencies (Note 8) or written explanation in lieu</p> <p>The PLI may be required to complete the table (sample at Annex IV) to facilitate TID's verification of the credit assessment report.</p> <p>The purpose of obtaining the review reports is to ensure that the PLI had taken due considerations in reviewing the credit quality of the borrower during the tenor of the facility.</p>			
<p>6. Documentary evidence showing that the facility was solely used for acquiring the concerned business installations and equipment, and the business installations and equipment acquired was not in possession by the borrower or any of its associates at the time on or before the date on which the loan application was received by the PLI</p> <p>Examples:</p> <p>(i) Direct payment by the PLI to the supplier</p> <p>(ii) invoice, receipt or delivery note issued by the supplier after the receipt date of the loan application by the PLI</p>	√	Not applicable	Not applicable

Documents required	Type of Facility ^(Note 5)		
	BIE/AWC	ARL	WCL
<p>7. Invoices and proof of delivery of goods/services for each drawdown</p> <p>Elaboration is required should there be any inconsistency in the discounted value, name of approved invoicee(s), information contained in the invoices and relevant proof of delivery of goods / services.</p>	Not applicable	√	Not applicable
(B) Information on the borrower			
8. Background search on the borrower with the Companies Registry / Inland Revenue Department / Land Registry / private company search agency at the time of credit assessment ^(Note 8)	√	√	√
<p>9. For borrower that had been established for 18 months or more as at the date on which its loan application was received by the PLI: -</p> <ul style="list-style-type: none"> ➤ Limited company – audited account of its latest financial year at the time of application ^(Note 8) duly certified by the auditor of the borrower ➤ Unlimited company - (sole-proprietor /partnership) – financial statements of its latest financial year at the time of application ^(Note 8) including a certified balance sheet and profit and loss account 	√	√	√
10. Documentary evidence showing that the borrower has substantive business in Hong Kong (e.g. MPF contribution, tax demand note, etc.)	√	√	√

Documents required	Type of Facility (Note 5)		
	BIE/AWC	ARL	WCL
11. Information on the borrower's current status (e.g. whether the borrower is still in operation or has liquidated, etc.)	√	√	√
12. Records on the company visit conducted (Note 8)	√	√	√
(C) Information on recovery action(s)			
13. If applicable, demand/ termination letters issued to the borrower and guarantor(s)	√	√	√
<p>14. Evidence showing the recovery action(s) taken or to be taken against the borrower and guarantor(s)</p> <p>Examples:</p> <ul style="list-style-type: none"> (i) Company/factory visit report after default (ii) Appointment of debt collection agent (iii) Writ of Summons, Judgment, Bankruptcy Order, Proof of Debt together with receipt, and other legal action(s) taken or to be taken inside and/or outside Hong Kong (where appropriate) etc. (iv) Documents showing the outcome of recovery actions <p>The PLI should provide detailed justifications in case it decides not to take any recovery action against the borrower and/or guarantor(s)</p>	√	√	√

Documents required	Type of Facility (Note 5)		
	BIE/AWC	ARL	WCL
<p>15. If applicable, attempt(s) or action(s) to realise the collateral / business installations and equipment purchased under the subject facility, and details of proceeds</p> <p>Examples:</p> <ul style="list-style-type: none"> (i) Correspondence with the borrower on the realisation of the collateral / business installations and equipment (ii) Legal documents relating to the realisation of the collateral / business installations and equipment (iii) Valuation of the collateral / business installations and equipment (iv) Documents on the resale of the collateral / business installations and equipment and the proceeds generated <p>The PLI should provide detailed justifications in case it decides not to take any action to realise the collateral / business installations and equipment</p>	√	√	√
<p>16. If applicable, details with justifications on payment(s) received / security(ies) realised by the PLI from the borrower and guarantors (where appropriate) after the date of default but not applied to reduce the outstanding indebtedness in respect of the subject defaulted SGS facility (e.g. in case the payments are used to repay other non-SGS facility). Please refer to Part I paragraph 3(iii) above for the general principles to be adopted by PLIs in handling recovery proceeds.</p>	√	√	√

Documents required	Type of Facility (Note 5)		
	BIE/AWC	ARL	WCL
(D) Information on the Questionnaire on Default Claim			
17. (If the answer to Question 5 of Questionnaire is “yes”) Elaborations on the exception to the relevant guidelines and policies of the PLI’s internal operation manual, the considerations for allowing such exception and whether proper approval had been obtained on the grant of the subject facility.	√	√	√
18. (If the answer to Question 6 of Questionnaire is “yes”) Statement(s) of bank accounts in respect of facilities (other than the defaulted SGS facility) already granted to the borrower or related companies at the time when the borrower submitted the application for the defaulted SGS facility, from two months before the grant of the defaulted SGS facility up to present.	√	√	√
19. (If the answer to Question 7 of Questionnaire is “yes”) Statement(s) of bank accounts in respect of facilities (other than the defaulted SGS facility) granted to the borrower or related companies after the borrower submitted the application for the defaulted SGS facility, from grant of the concerned facilities up to present.	√	√	√
20. If applicable, credit limits and outstanding indebtedness of all facilities (both SGS and non-SGS) granted to the borrower at the time of default, tabulated for easy reference.	√	√	√
21. (If the answer to Questions 10 and/or 11 of Questionnaire is/are “yes”) Credit review report(s) conducted during the tenor of the SGS facility.	√	√	√

8. Some common problems observed in the default claims lodged by PLIs under the SGS are listed at **Annex V**.

IV. Refund to the Government

9. In connection with the compensation payment for a default claim and the contribution to the recovery costs and expenses made by the Government under the SGS, the PLI would be required to refund immediately the relevant amount paid by the Government together with interest on such amount upon demand under the following circumstances in accordance with Clause 8 of the SGS Deed –

- (a) the PLI has provided false, fraudulent or misleading information, or acted in bad faith, in connection with any claim for payment under the SGS Deed or its guarantee;
- (b) the PLI fails to comply with any of its obligations under Clause 6 of the SGS Deed; or
- (c) it is discovered that the PLI is not entitled to any amount paid by the Government under or in connection with the SGS Deed or its guarantee for any other reason.

Interest rate of 1% per calendar month (or such other rate as the PLI and the Government may from time to time agree in writing) would be charged on the amount to be refunded from the date on which the Government pays the relevant amount up to the date immediately preceding the date on which the Government actually receives the refund in full (both dates inclusive). Extracts of Clause 8 of the SGS Deed are at **Annex VI**.

V. Important Note

10. The PLI is required to fill out the Payment Request Form and the Questionnaire on Default Claim, and provide all the necessary supporting documents as set out under Part III above when lodging a default claim with TID. TID will effect payment to a default claim only after all the necessary documents or information are received and checked in order. Special attention should be paid to the text of Declaration of Lender under Part (F)/(G) of the relevant Payment Request Form. Making a false declaration will have legal consequences.

11. The guidelines are prepared for the PLI's internal reference only. It shall not limit TID's right to request any information or raise questions not mentioned in the guidelines. TID reserves the absolute right to approve or reject any default claims in accordance with the provisions of the SGS Deed.

12. The guidelines will be updated from time to time in the light of experience. PLIs are advised to make reference to the latest version of the guidelines on TID's website.

Notes

- (1) The SGS Deed herein refers to the Deed and the Supplemental Deed (where applicable) signed between the Government and individual PLIs of the SGS.
- (2) "Repayment date" is defined in Clause 1.1 of the SGS Deed for the relevant type of facility.
- (3) Indebtedness means, in relation to a facility under SGS, the amount from time to time outstanding from the relevant borrower to the PLI in respect of that facility which constitutes only the outstanding principal of that facility, i.e. all outstanding interest, penalties, charges and capitalisation of interest and charges, if any, shall be excluded.
- (4) PLI is required to use the relevant Payment Request Form as set out below -

Type of Facility	Payment Request Form
Payment Request Form for Business Installations and Equipment Loan Guarantee / Associated Working Capital Loan Guarantee (for applications submitted before March 2008)	TID605
Payment Request Form for Accounts Receivable Loan Guarantee	TID615
Payment Request Form for Business Installations and Equipment Loan Guarantee (for applications submitted from March 2008 onwards)	TID605i
Payment Request Form for Working Capital Loan Guarantee	TID645

- (5) BIE/AWC - Business Installations and Equipment Loan /
Associated Working Capital Loan
- ARL - Accounts Receivable Loan
- WCL - Working Capital Loan

- (6) For Hire-purchase agreement, it should clearly indicate that at the end of the leasing period, the borrower may either return the business installations and equipment acquired under the Scheme to the PLI or purchase the business installations and equipment at a nominal sum. The PLI may provide other supporting documents on this point as appropriate.
- (7) The statement provided should show all account transactions (e.g. partial payment, overdue interest payment, etc) with breakdown of principal and interest of each instalment, date and amount of drawdown and repayment. If the bank statement does not provide a detailed breakdown on the amount of principal and interest for each instalment, the PLI should provide supplementary information to show the breakdown separately. The breakdown is essential for calculating Government's share of payment as Government's guarantee only covers the principal.
- (8) Information as declared by the PLI in the SGS application form.

Trade and Industry Department
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