



BANK OF MAURITIUS

Guideline on Disclosure of Information to Guarantors

**September 2013
Revised October 2021**

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INTRODUCTION

The Guideline on Disclosure of Information to Guarantors (Guideline) lays down the responsibilities of institutions towards guarantors and sets out the framework and prescribes the instances for issuing statements of accounts in written or electronic form to guarantors of credit facilities.

Purpose

The purpose of this Guideline is to provide for, *inter alia*,

- (i) the responsibilities of institutions towards guarantors;
- (ii) the classes or categories of credit facilities for which a statement of account shall be sent or made available to guarantors; and
- (iii) the circumstances under which the statement of accounts shall be sent or made available to guarantors.

Authority

This Guideline is issued under the authority of section 100 of the Banking Act 2004 and section 50 of the Bank of Mauritius Act 2004, and in accordance with section 37(7)(a) of the Banking Act 2004.

Scope of application

This Guideline applies to all banks and non-bank deposit taking institutions licensed under the Banking Act 2004.

Effective Date

This revised Guideline shall come into effect on 04 October 2021.

Interpretation

In this Guideline,

“Bank” means the Bank of Mauritius established under the Bank of Mauritius Act 2004;

“complaint” refers to a complaint made in writing by a guarantor under section 96A of the Banking Act 2004;

“borrower” means any person who is granted a credit facility;

“credit facility” includes loans, overdrafts, leasing facilities or any other facilities, whether fund based or non-fund based, which an institution grants or extends to a customer;

“guarantor” is a person who gives his movable and immovable property as security and/or a person who signs a contract of guarantee and/or promises to pay any outstanding debts if the principal debtor/s or borrower/s is/are unable to honour his/her/their obligations;

“institution” means a bank or non-bank deposit taking institution licensed under the Banking Act 2004;

“MCIB” means the Mauritius Credit Information Bureau owned and operated by the Bank.

SECTION I: STATUTORY REQUIREMENTS

1. In terms of section 37(7) of the Banking Act 2004, the Bank may require every institution to send or make available to the guarantor of a credit facility extended by it, a statement of account in written or electronic form, in accordance with guidelines or instructions issued by the Bank, which shall provide for:
 - i. the classes or categories of credit facilities for which a statement of account shall be sent or made available to guarantors;
 - ii. the circumstances under which the statement shall be sent or made available to guarantors; and
 - iii. such other information as the central bank considers appropriate and necessary.
2. Section 64(3)(m) of the Banking Act 2004 further stipulates that the duty of confidentiality imposed on institutions under that section does not apply where credit information is required for transmission to the guarantor of a credit facility contracted by the borrower.
3. Section 9(2) of the Borrower Protection Act 2007 provides that where a lender grants a credit facility¹ to a person, he shall, during the period of the credit agreement, not later than the end of the month immediately following each period of 6 months, send or make available to the borrower and to the guarantor, if any, a statement of account, in written or electronic form, showing -
 - i. the amounts outstanding, in principal and interest, at the beginning and the end of the 6 month-period;
 - ii. the payments received, in principal and interest, during the 6-month period; and
 - iii. the annual rate of interest applicable during the 6 month-period.

¹ As defined under the Borrower Protection Act 2007.

SECTION II: INFORMING GUARANTORS OF THEIR RIGHTS

4. The institution shall inform the prospective guarantors that they may, amongst others, before and after the signature of the contract of guarantee:
 - i. request for a copy of the contract signed by them;
 - ii. make enquiries from the MCIB on information which has been registered in their name by the institution;
 - iii. make a complaint if they feel aggrieved by the acts or omissions of the institution and the institution shall inform them of its complaint procedures; and
 - iv. seek legal advice before signing the contract of guarantee to ensure that they understand the commitment and the potential consequences of acting as a guarantor, the costs of which will have to be borne by the guarantor.

SECTION III: INFORMING GUARANTORS OF THEIR LIABILITIES

5. The institution shall explain to the prospective guarantors, the responsibilities that may devolve on them in case of default of the borrower as well as the type of guarantee they are contracting. The institution shall also recommend the prospective guarantor to read and understand the contract of guarantee before executing the guarantee documents.
6. Among others, the institution shall inform the guarantor that -
 - i. he is binding himself for another person's debt and that he is undertaking to honour the credit obligations of the borrower in case of impaired credits;
 - ii. the extent of his liability, which may include accrued interest, will be as specified in the guarantee document;
 - iii. he may be held liable for the liabilities of the borrower in accordance with the terms of the guarantee document; and
 - iv. he will be rendered liable under a guarantee only if the borrower is in default of any payment to the institution and the institution makes a demand on the guarantor.

SECTION IV: INSTANCES WHERE STATEMENT OF ACCOUNTS SHALL BE PROVIDED TO THE GUARANTOR

7. For credit facilities below the amount specified in the First Schedule of the Borrower Protection Act 2007, institutions are bound by the provisions of section 9(2) of the aforementioned Act².
8. Without prejudice to paragraphs 7 and 13, an institution shall, during the period of the credit agreement, send or make available to the guarantor, a statement of account in written or electronic form, in respect of any credit facility guaranteed by him, in the following circumstances:
 - i. Where the capital and/or interest on credit facilities is in arrears for a continuous period of at least 60 days.
 - ii. Where overdraft facilities have been granted and the account is in excess of the authorized limit, for a continuous period of at least 60 days.
 - iii. Where the institution has reasonable grounds to believe that the outstanding credit facility of a borrower will become impaired, irrespective of whether any instalment has been missed out.
 - iv. Where there is objective evidence or other reasons to believe that the credit facility is impaired under the Guideline on Credit Impairment Measurement and Income Recognition.
 - v. Where there is any other breach of the terms and conditions governing the credit facility.
 - vi. Where the institution proposes to terminate the relationship with a customer and call back all credit facilities within a specified time.
9. The statement of account shall show –
 - i. the amounts outstanding, as principal and interest where applicable, under the credit agreement;
 - ii. the payments received, as principal and interest, under the credit agreement; and
 - iii. the annual rate of interest applicable during the credit facility period.

² Amended on 04 October 2021 to reflect the amendment brought to the First Schedule of the Borrower Protection Act 2007.

10. With regard to paragraph 8(ii), in lieu of a statement of account, an institution may opt to provide or make available to the guarantor, a summary sheet disclosing, at a minimum the following information regarding overdraft facilities:
 - i. the limits applicable;
 - ii. the outstanding balances;
 - iii. the excesses over limit;
 - iv. the amounts of unpaid capital and/or interest;
 - v. the number of days in excess and/or in arrears; and
 - vi. any other breach of the terms and conditions of the facilities.
11. The statement of account, in written or electronic form, shall be sent or be made available to the guarantor not later than the end of the next month whenever any of the instances at paragraph 8(i) to (vi) occurs and subsequently on a quarterly basis.
12. The institution may stop providing or make available the statement of account to the guarantor on a quarterly basis –
 - i. where the account has been regularised and the borrower has met his financial obligations under the credit facility for a continuous period of four months; and
 - ii. where the account is restructured and the borrower has met his financial obligations under the new terms and conditions of the credit facility for a continuous period of six months.
13. The institution shall inform the guarantor that he may, at any time during the credit facility period, submit a request for a statement of account and the institution shall promptly provide him with a copy of the statement.

Bank of Mauritius
04 October 2021