

BANK'S GENERAL COLLATERAL WARRANTY REQUIREMENTS

1. This note sets out the Bank's standard requirements in respect of Warranties being obtained in its favour:-
 - 1.1 the Bank must be advised as soon as possible of all the parties to be involved in the construction of the works at the development and provided with a schedule of the Warranties which the Bank is to receive;
 - 1.2 current brokers certificates/letters must be provided to the Bank disclosing the PII cover of each of the construction parties;
 - 1.3 if Warranties in favour of the Bank are not available for any reason the Bank is to be advised whether there are any Warranties granted previously which are capable of being assigned to the Bank;
 - 1.4 the Bank should be advised if Warranties in favour of the Bank are not available and no Warranties are capable of assignment to the Bank;
 - 1.5 a Warranty in favour of the Bank must comply with the following requirements:-
 - (a) it must contain an obligation on the giver of the Warranty to exercise the reasonable skill, care and diligence in performing its obligations pursuant to the Building Contract or Appointment to be expected of a Consultant/Contractor providing equivalent services for an equivalent type of project;
 - (b) it must contain confirmation from the party giving the Warranty that it cannot determine the Building Contract or Appointment without giving the Bank prior notice of at least 21 days and entitling the Bank to step into the employer's role on giving notice within that period;
 - (c) it must contain provisions entitling the Bank to step into the employer's role under the Building Contract or Appointment on notice in the case of the default of the Borrower to the Bank;
 - (d) any time limitation period for the Warranty must not be for less than 12 years from the date of practical completion of the works at the development;
 - (e) the Warranty must be capable of being assigned by the Bank to any third party and assignability must not be limited to parties providing finance. The Warranty should be capable of assignment at least twice without prior consent;
 - (f) it must contain an obligation on the giver of the Warranty to maintain adequate PII cover for a period of 12 years from practical completion and be on a "per event" and not aggregate claims basis.
 - (g) it must contain an obligation not to specify the use of or use prohibited materials. The clause must match the relevant provision in the Building Contract/Appointment and be approved by the Bank's technical adviser (monitoring surveyor/legal adviser);
 - (h) it must incorporate a copyright/intellectual property licence permitting the use of the plans, drawings or other documentation prepared by the giver regardless of whether or not the Contractor or other professional has received all sums due to them. In addition the Bank require the Contractor or other professional to be under an obligation to provide copies of any documents, subject to payment of a reasonable administrative charge for copying;
 - (i) the Warranty must not include any "net contribution" clauses;

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- (j) the Warranty must not contain any exclusion of economic or consequential loss or any overall cap on liability;
 - (k) the Warranty must not impose any obligations on the Bank to step in or complete the development nor must it make the Bank become liable for the obligations of the Borrower due to the Bank taking an assignment by way of security; and
 - (l) the Warranty must not contain "equivalent rights in defence of liability"/"no loss" clauses which limits Contractor/Consultant liability to the liability it owes to the employer under the Building Contract/Appointment. The Warranty may limit the Contractor's/Consultant's duty or obligations to the Bank as if the Bank had been the original employer; and
 - (m) the Warranty must not contain "shall owe no greater duties or liabilities" wording without adding the qualification "shall owe no greater duties or liabilities ignoring any right of set-off or deduction; and
- 1.6 please ensure that the Bank is provided with a certified copy of the Building Contract together with certified copies of the Appointments of all professionals and certified copies of the sub-contracts of all Sub-Contractors granting Warranties to the Bank.