

assurance and related services guideline AuG-4 services on matters relating to solvency

This Guideline is to be read in conjunction with the [Preface to the CPA Canada Handbook – Assurance](#).

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INTRODUCTION

1. The purpose of this Guideline is to express the opinion of the Auditing Standards Steering Committee with respect to the nature of services practitioners may provide on matters relating to solvency.
2. There are a number of federal and provincial statutes which contain provisions on matters relating to solvency. For example, Section 44 of the *Canada Business Corporations Act* prohibits the giving of financial assistance where certain tests relating to solvency are not met (see [Appendix](#)). Many of the provincial corporations acts contain similar provisions. It has come to the attention of the Auditing Standards Steering Committee that some practitioners are being requested to provide assurances to lenders (i.e., solvency letters) on a corporation's ability to pay its liabilities and the realizable value of its assets to assist lenders in considering whether the giving of financial assistance might be prohibited under the provisions of the governing statute.

NO BASIS FOR OPINION ON MATTERS RELATING TO SOLVENCY

3. Set out below are a number of factors that practitioners should be aware of when being requested to provide assurances of this nature:
 - (a) Lenders are primarily concerned that the giving of financial assistance does not result in a fraudulent conveyance or transfer. In addition, terms such as "directly or indirectly" and "loan, guarantee or otherwise" are used to determine the applicability of the particular provision. These matters are subject to legal interpretation and, as such, do not fall within the professional expertise of public accountants.
 - (b) The public accountant is asked to provide assurance on the corporation's ability to pay its liabilities as they become due. No timeframe is provided for this assurance and it is unclear whether "liabilities" would include contingent liabilities as may be the case in the giving of a guarantee.
 - (c) The public accountant is asked to provide assurance on the "realizable value" of the corporation's assets. The term "realizable value" is not defined and the value of assets could be determined in a number of different ways.
 - (d) The public accountant is being requested to provide either positive or negative assurance on matters relating to solvency. Since these matters are not clearly defined in an accounting sense, there are no appropriate criteria to establish the framework within which the public accountant can form an opinion.
4. As a result of the factors set out in the preceding paragraph, it is the opinion of the Auditing Standards Steering Committee that practitioners should not provide an opinion (i.e., positive or negative assurance) on matters relating to solvency.

OTHER PROFESSIONAL SERVICES

5. Practitioners may provide other professional services that may be useful to the client and lenders in connection with the giving of financial assistance such as: audit or review of financial statements or other financial information and reporting on the results of applying agreed-upon procedures.
6. While a report on the results of applying agreed-upon procedures would not include any expression of assurance on matters relating to solvency, users, such as lenders, may derive assurance sufficient for their purposes from the procedures which have been performed. Practitioners should follow the guidance set out in [CSRS 4400, Agreed-Upon Procedures Engagements](#). However, as a result of the concerns set out above, there are a number of additional matters which need to be included in the report. Consequently, a report on the results of applying agreed-upon procedures for such an engagement would:
 - state that the service has been requested in connection with a specified transaction relating to the giving of financial assistance;
 - state that the sufficiency of the procedures is the sole responsibility of the client and lender and disclaim responsibility for the sufficiency of those procedures;
 - state that no representations are provided regarding questions of legal interpretation;

- state that no assurance is provided concerning the borrower's ability to pay its liabilities or the realizable value of its assets;
- describe the procedures applied to the financial information and the factual results as a result of applying those procedures;
- state that an audit or review has not been performed on the financial information and disclaim any opinion thereon;
- state that had the public accountant performed additional procedures or performed an audit or review, additional matters might have come to his or her attention that would have been reported;
- state the restrictions on the distribution of the report since it is intended solely for the use of the specified parties; and
- state that the public accountant has no responsibility to update the report.

APPENDIX

Excerpt from Canada Business Corporations Act, Section 44

44. (1) **Prohibited loans and guarantees.** — Subject to subsection (2), a corporation or any corporation with which it is affiliated shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise
- (a) to any shareholder, director, officer or employee of the corporation or of an affiliated corporation or to an associate of any such person for any purpose, or
 - (b) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation or affiliated corporation,
- where there are reasonable grounds for believing that
- (c) the corporation is or, after giving the financial assistance, would be unable to pay its liabilities as they become due, or
 - (d) the realizable value of the corporation's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the corporation's liabilities and stated capital of all classes.
2. **Permitted loans and guarantees.** — A corporation may give financial assistance by means of a loan, guarantee or otherwise
- (a) to any person in the ordinary course of business if the lending of money is part of the ordinary business of the corporation;
 - (b) to any person on account of expenditures incurred or to be incurred on behalf of the corporation;
 - (c) to a holding body corporate if the corporation is a wholly-owned subsidiary of the holding body corporate;
 - (d) to a subsidiary body corporate of the corporation; and
 - (e) to employees of the corporation or any of its affiliates
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation, or
 - (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee.
- (2.1) **Wholly-owned subsidiary.** — A corporation is a wholly-owned subsidiary of another body corporate for the purpose of paragraph (2)(c) if
- (a) all of the issued shares of the corporation are held by
 - (i) that other body corporate,
 - (ii) that other body corporate and one or more bodies corporate all of the issued shares of which are held by that other body corporate, or
 - (iii) two or more bodies corporate all of the issued shares of which are held by that other body corporate; or
 - (b) it is a wholly-owned subsidiary of a body corporate that is a wholly-owned subsidiary of that other body corporate.
3. **Enforceability.** — A contract made by a corporation in contravention of this section may be enforced by the corporation or by a lender for value in good faith without notice of the contravention.

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