

# **Appendix K**

## **Central Re-Guaranty Association** **Model Legislation**

## APPENDIX K

### Model Legislation for Central Re-Guaranty Loan Program

**Note:** For the purposes of this model legislation, we have used the following titles as they relate to the formation of a national re-guaranty corporation.

1. National Peoples Congress – the legislative body passing the legislation.
2. President of the Peoples Republic of China as the appointing official
3. Central Re-Guaranty Association is being used in this text as the name of the organization managing and implementing the Central Re-Guaranty program.
4. Director – The managing head of the Central Re-Guaranty Association.
5. Deputy Director – The Deputy to the Director of the Central Re-Guaranty Association.

The following model legislation was drafted using the following assumptions:

1. That the Central Re-Guaranty Association would be a private sector entity with board participation by appointed individual(s) by the State Government at least during the early years of operation, and Association members made up of Provincial Re-Guaranty authorities, City guaranty authorities where Provincial Re-Guaranty programs do not exist and private sector guaranty companies.
2. That the initial funding for administrative and a reserve for losses would be provided by the State Government through a grant or other direct funding allocation.
3. That the Program would be operated as a re-guarantor of individual loans.
4. That the on-going costs of the Program, (after initial start-up costs and early year support) would be provided through a fee structure to be paid by the guarantors, lenders and borrowers based on the risk being taken by the Central Re-Guaranty Association.
5. That the Re-Guaranty Association would have authority to re-guaranty the loans of Provincial Re-Guaranty programs, City Guaranty programs where Provincial Re-Guaranty programs are not available and private sector guaranty companies when not covered by Provincial programs.

### Central Re-Guaranty Loan Program

- § 1. **Act:** This Act may be cited as the “Central Re-Guaranty Loan Program Act”.
- § 2. **Purpose:** The purpose of this Act is to establish a country-wide program of Re-Guaranty on loans made to eligible Small and Medium size businesses as defined and in accordance with all requirements of the SME Promotion Law, the various Opinions issued by the National Economic and Trade Working Conference, or its designee and relevant provisions of the Contract Law and Guaranty Law.

- § 4. **Program Limitations:** The Central Re-Guaranty Program shall be developed and operated within the following limitations:
- a. That the Program will only be used to place a central guaranty on existing loans that have been evaluated and have been determined by the Association to have met the credit criteria acceptable to the Association.
  - b. That the Central re-guaranty fee on existing loans will be based on the risk as assessed by the association after a total review of the portfolio.
  - c. That National Re-Guaranty Program's participating entities shall adhere to loan regulations and policies as issued by the Association for all loans re-guaranteed after the date of acceptance into the Association.
  - d. That each Program participant's re-guaranty fee will be based on the projected risk of the participant's loans, prior experience and projected losses.
  - e. That the reserve for losses to be maintain by the participating entity on loans that is supported by the Central Re-Guaranty Program shall be established prior to the issuance of a Central Re-Guaranty and shall be deposited into a controlled account for future disbursement against losses.
  - f. That the Central Re-Guaranty Program will make payment in full of principal owing on defaulted loans, only when the loan is in excess of 60 days in arrears of scheduled payments and upon the written request of the guarantor and the fulfillment of all conditions specified in the Associations By-Laws, Regulations and policies.
- § 3. **Association:** An Association is hereby authorized for the specific purpose of operating a Central Re-Guaranty Loan Program. The Association shall have representative members from all Provincial Re-Guaranty entities, City Guaranty entities where no Provincial Re-Guaranty programs exist and private sector guaranty companies. The Association will be initially formed by (Governmental Agency) and will come under the continuing oversight and management guidance of (Governmental Agency).
- § 4. **Board of Directors:** The Association will have a Board of Directors and organizational staff as may be deemed necessary to operate the Central Re-Guaranty Program and shall be responsible for the implementation of this Law and all Regulations, Policies and Procedures and program standards.
- § 5. **Regulations:** The Association shall issue appropriate By-Laws and Program Regulations governing its program operations within \_\_\_\_\_ months from the approval of this Act. Such Program Regulations shall include but need not be limited to the following:

- g. The criteria to be used in determining the loan pools or portfolios that will be re-guaranteed by the Central Re-Guaranty program.
- h. Ethical requirements of all members of the association.
- i. The Loan Policies and Procedures that all beneficiaries of the re-guaranty program will need to adhere to for their portfolios to be accepted by the Re-Guaranty Program and their continued participation in the program.
- j. The pricing structure and evaluation process that will be used for establishing the re-guaranty fees.
- k. Specific Reporting requirements that will be installed to protect the integrity of the program.
- l. Any other requirements that need to be established to ensure the operating success of the program.

§ 6. **Revolving Fund:** A revolving fund in the amount of \_\_\_\_\_ is hereby established within the Treasury of the Peoples Republic of China for the specific purpose to assist in the establishment of the Association and the Re-Guaranty Program. Such fund is to be invested in National obligations with the earnings on such investments being used to assist in the operations and underwriting of risks of the Re-Guaranty Program. All fees collected from lenders, guarantors and/or borrowers for the service provided by the Central Re-Guaranty Program shall be deposited in the revolving fund and all claims shall be disbursed from the revolving fund. Re-Guaranty fees shall be set at a level so that the principal portion of the revolving loan fund need not be used for the payment of losses except under catastrophic conditions.

§ 7. **Organizational Expenses:** An appropriation is hereby made in the amount of \$ \_\_\_\_\_, that is to be used by the Association for organizational and operating expenses during the first 3 years of operation. The Association may use 50% of the funding in the first year of operation, 25% in the second year and 25% in the third year of operation. All expenses over the above allocation must be covered through association dues and assessments on the members of the association.

§ 8. **Risk Management Database:** The Association shall establish a management information system that will generate a database capable of providing timely and accurate information in order to identify risk elements and results within the Central Re-Guaranty Program. These elements and results shall include, but is not limited to the following:

- a. The identity of the institution that is the beneficiary of the Central Re-Guaranty program.
- b. The identity of all loans making up the portfolio that is covered by the Central Re-Guaranty.
- c. The geographic distribution of all loans that are covered by the Central Re-Guaranty Program.
- d. The Standard Industrial Code of each of the loans covered.

- e. The total amount of exposure that the Re-Guaranty Program has undertaken.
- f. The periodic reporting of delinquency rates of the loans within the portfolios being Re-guaranteed by the Association's program.
- g. The historical loss information of each participating entity in the Central Re-Guaranty Program.
- h. Other elements that may be needed, as determined by the Association, to properly assess the condition of the Central Re-Guaranty Program and the progress that is being made in implementing the public policy goals of the government.

§ 9 **Pilot Projects:** The Association is hereby authorized to operate pilot projects from time to time to test new and innovative processes that have the potential of improving the SME guaranty and re-guaranty programs of the PRC. Such pilot programs must be operated within the budgets of the Association and must be publicly announced.

§ 10. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected.

Passed this \_\_\_\_ day of \_\_\_\_\_ 2001 by the National Peoples Congress.