

TORONTO PORT AUTHORITY

BY-LAW NO. 4

A by-law relating to borrowing and the giving of indemnities, guarantees and financial assistance by the Toronto Port Authority.

WHEREAS:

A. The borrowing powers of the Toronto Port Authority (the "Authority") are set out generally in section 31 of the *Canada Marine Act* (the "Act") and specifically in sections 7.1(f) and 7.2(a) and Article 9 of the letters patent (the "Letters Patent") of the Authority;

B. Section 7(3) of the Act provides that neither the Authority nor a wholly-owned subsidiary of the Authority may borrow money as an agent of Her Majesty in right of Canada ("Her Majesty"); and

C. Section 9.1 of the Letters Patent provides that every contract for the borrowing of money by either the Authority or any of its subsidiaries ("Subsidiaries") shall contain an acknowledgement of the lender that it shall have no recourse against Her Majesty or any assets of Her Majesty;

BE IT RESOLVED THAT:

1. Definitions

In this by-law, a reference to a "recital" or "section" means a reference to a recital or section, as the case may be, of this by-law unless otherwise specified, capitalized terms shall have the meaning ascribed to them in the recital or section in which they first appear, and the following terms shall have the following meanings:

"Borrowing" means the following items for the Authority (excluding any amounts pertaining to Subsidiaries carrying on activities contemplated by section 28(2)(b) of the Act), without duplication, as follows:

- (a) all obligations for borrowed money and all obligations evidenced by bonds, debentures, notes, or other similar instruments on which interest charges are customarily paid, recorded in accordance with GAAP;
- (b) all obligations, contingent or otherwise, relative to the face amount of all letters of credit, whether or not drawn, and bankers' acceptances issued;
- (c) any obligation as lessee under leases which have been or should be, in accordance with GAAP, recorded as Capitalized Lease Liabilities;
- (d) all obligations to pay the deferred purchase price of property or services, and indebtedness (excluding pre-paid interest thereon) secured by a lien on property owned or being purchased by the Authority (including

indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by the Authority or is limited in recourse and recorded in the financial statements of the Authority and Subsidiaries for the most recently completed Fiscal Year;

- (e) accrued contingent losses reflected as a charge to income in accordance with GAAP and recorded in the financial statements of the Authority and Subsidiaries for the most recently completed Fiscal Year;
- (f) all Contingent Liabilities of the Authority in respect of any of the foregoing; or
- (g) the amount of the aggregate potential liability of the Authority pursuant to the terms of a Permitted Indemnity or Guarantee.

[sections 9.3 and 9.4 of Letters Patent]

“Capitalized Lease Liabilities” means all monetary obligations of the Authority under any leasing or similar arrangements which, in accordance with GAAP, would be classified as capitalized leases and the amount of such obligations for the purposes of calculating Borrowing shall be the capitalized amount thereof, determined in accordance with GAAP; **[section 1.2 of Letters Patent]**

“Contingent Liability” means any agreement, undertaking or arrangement by which the Authority guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other person or entity (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions. The amount of any obligation under any Contingent Liability shall (subject to any limitation set forth therein) be deemed to be the outstanding principal amount (or maximum principal amount, if larger) of the debt, obligation or other liability guaranteed thereby; **[section 1.2 of Letters Patent]**

“Fiscal Year” means the fiscal year of the Authority, as established by the Authority from time to time; **[section 1.2 of Letters Patent]**

“GAAP” means generally accepted accounting principles in Canada; **[section 1.2 of Letters Patent]**

“Management Regulations” means the Port Authorities Management Regulations made under the Act;

“Permitted Indemnity or Guarantee” means financial assistance given by the Authority for the benefit of any Subsidiary, whether by way of indemnity, guarantee or otherwise which financial assistance must state the aggregate potential liability of the Authority in dollar terms; **[section 1.2 of Letters Patent]**

2. **Power to Borrow**

The board of directors (the "**Board**") of the Authority may, from time to time, by resolution and subject to the restrictions set out in section 3:

- (a) borrow money on the credit of the Authority for port purposes; [section 31(1) of Act]
- (b) limit or increase the amount to be borrowed;
- (c) issue, sell or pledge bonds, debentures or other securities of the Authority (the "**Debt Obligations**") for such sums and at such prices as may be deemed expedient;
- (d) secure any Debt Obligations or any present or future borrowing or liability of the Authority by mortgage, charge, pledge or other security interest relating to all or any currently owned or subsequently acquired real and personal, moveable and immovable, property and leasehold interests and reversionary interests of the Authority, and the undertaking and rights of the Authority;
- (e) delegate the powers to borrow conferred on the Board under the Act to a committee of directors of the Authority established by the Board and to such extent and in such manner as the Board shall determine; [section 31(2) of Act]
- (f) issue a Permitted Indemnity or Guarantee;
- (g) authorize any director or officer of the Authority to:
 - (i) make arrangements with reference to moneys borrowed or to be borrowed and the terms and conditions of any loan and any debt obligations to be given, with power to change such arrangements, terms and conditions;
 - (ii) give additional debt obligations for any moneys borrowed or remaining due by the Authority; and
 - (iii) manage, transact and settle generally the borrowing of money by the Authority.

3. **Restrictions on Powers to Borrow**

The restrictions on the Authority's power to borrow and the Board's authority under section 2 are as follows:

- (a) Neither the Authority nor any of its Subsidiaries may borrow money as an agent of Her Majesty; [section 7(3) of Act]

- (b) Subject to section 3(c), the Authority may not mortgage, hypothecate, pledge or otherwise create a security interest in the federal real property it manages in any way other than to pledge the revenues of that property; [section 31(3) of Act]
- (c) The Authority may create a mortgage, pledge or other security interest in fixtures on federal real property it manages and may, instead of Her Majesty, execute and deliver the documents required for that purpose, provided that:
- (i) such mortgage, pledge or other security interest charges only the fixture or fixtures which is or are acquired, built, restored, enhanced, or replaced with proceeds received by the Authority and secured by such mortgage, pledge or other security interest; and
 - (ii) the party receiving such mortgage, pledge or other security interest agrees that upon the exercise of the right to remove such fixtures from the federal real property such exercise shall be conducted in a manner that causes no greater damage or injury to such federal real property and to the other property situated on it or that puts the occupier of the federal real property or the Authority to no greater inconvenience than is necessarily incidental to the removal of the fixtures;

[section 31(4) of Act and section 7.1(f) of Letters Patent]

- (d) The Authority shall not incur any item of Borrowing so that the aggregate Borrowing of the Authority would exceed \$2,000,000;

[section 8(2)(1) of Act and section 9.2 of Letters Patent]

- (e) Any bond, debenture or other security of the Authority or any contract or financial assistance referred to in section 2 shall:
- (i) expressly state that the Authority is contracting on its own behalf and not as agent of Her Majesty; and
 - (ii) contain an acknowledgement from the lender or counterparty that the lender or counterparty shall have no recourse against Her Majesty or any assets of Her Majesty;

[section 7(3) of Act and section 9.1 of Letters Patent];

- (f) Notwithstanding any provision of the Act, the Letters Patent or this by-law, if the Authority fails to comply with section 3(e), the Minister of Finance, on the recommendation of the Minister of Transport, may impose any limitations that the Minister of Finance considers to be in the public interest on the power of the Authority or any of its Subsidiaries to borrow

money, including limitations on the time and terms and conditions of any borrowing; [section 28(7) of Act]

- (g) Other than Permitted Guarantees or Indemnities, no guarantee, indemnity or other agreement or commitment may be given by or on behalf of the Authority for the discharge of an obligation or liability of a Subsidiary, whether such obligation or liability be contingent or otherwise; [section 10.5 of Letters Patent]
- (h) For each Permitted Indemnity or Guarantee to a Subsidiary, such Subsidiary shall pay to the Authority and the Authority shall collect from such Subsidiary a one-time guarantee mandatory standby fee, which fee shall be in an amount not less than one-half of one percent of the maximum dollar amount of such Permitted Indemnity or Guarantee given by the Authority; [section 10.4 of Letters Patent]
- (i) The cumulative amount of all Permitted Indemnities or Guarantees shall at no time exceed \$200,000; [sections 7.2(a)(vi) and 9.2 of Letters Patent]
- (j) Neither the Authority nor a body corporate controlled by the Authority (including a Subsidiary) shall, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise to:
 - (i) any of its directors, officers or employees, a shareholder of the body corporate or an associate (as such term is defined in section 2(1) of the *Canada Business Corporations Act*) of any of them; or
 - (ii) any person for the purpose of or in connection with a purchase of a share issued or to be issued by the body corporate.

[section 32 of Management Regulations]

CERTIFIED to be a true copy of a by-law passed at a meeting of the Board on June , 2000.

Chairman

Corporate Secretary