

ENF 8 Deposits and Guarantees

1	What this chapter is about	3
2	Program objectives	3
3	The Act and Regulations	3
4	Definitions	6
5	Forms	7
6	Delegation and Designation Instruments	8
7	Departmental Policy	9
	7.1 Deposits and guarantees.....	9
	7.2 General requirements.....	10
8	Procedures	12
	8.1 General.....	12
	8.2 Receiving Orders for Release from the Immigration Division or delegated officer.....	14
	8.3 Modifications of conditions of release.....	15
	8.4 Surrendered passports and other documents.....	15
	8.5 Deposits – General.....	15
	8.6 Ability to ensure person concerned will comply with deposit conditions.....	16
	8.7 Establish identity of depositor.....	17
	8.8 Acceptable forms of payment for deposits.....	17
	8.9 Taking the deposit.....	18
	8.10 Altering or amending a deposit.....	20
	8.11 Guarantees – General.....	21
	8.12 Ability to ensure the person concerned will comply with conditions of guarantee.....	22
	8.13 Establish identity of guarantor.....	23
	8.14 Determining solvency for guarantors.....	23
	8.15 Taking a guarantee.....	26
	8.16 Altering or amending a guarantee.....	27
	8.17 Rejecting a deposit or guarantee.....	28
	8.18 Stay of removal order.....	29
	8.19 Withdrawal, refund and forfeiture of a deposit or enforcement of a guarantee.....	29
	8.20 Requests for information.....	33

ENF 8 Deposits and Guarantees

Updates to chapter

Listing by date:

2017-05-15

Substantive and minor changes, as well as clarifications, have been provided throughout the chapter.

2007-02-01

Changes have been made to Section 7.8 and a paragraph has been deleted. In addition, the title of the Minister of Public Safety and Emergency Preparedness has been changed to Minister of Public Safety.

2005-11-08

Changes have been made throughout chapter ENF 8 to reflect the change in responsibilities as a result of the CIC/CBSA transition. All previous versions should be discarded.

Of particular note are the following modifications:

- changes have been made throughout this chapter to reflect accurate officer titles within the CBSA and CIC.
- section 4, Instruments and delegations, outlines specific roles and authorities of CIC and CBSA personnel.

2004-11-04

Editorial modifications have been made throughout this chapter. All previous versions should be discarded.

2004-01-15

The chapter's name has been changed to "Deposits and Guarantees" to better reflect the terminology of IRPA and its Regulations.

ENF 8 Deposits and Guarantees

1 What this chapter is about

This chapter provides functional guidance to the Canada Border Services Agency (CBSA), both at the Port of Entry and Inland, as well as Immigration, Refugees and Citizenship Canada (IRCC) officers, managers and others with the delegated and designated authority to impose the payment of deposits and the posting of guarantees in respect of persons seeking entry to Canada, and permanent residents and foreign nationals who are the subject of an inadmissibility report, an admissibility hearing, or a removal order.

2 Program objectives

The use of deposits and guarantees, also referred to as “bonds”, in the Canadian immigration program is intended to:

- ensure that persons seeking temporary entry comply with any terms and conditions that may be imposed on them under the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR);
- ensure that persons subject to an inadmissibility report, an admissibility hearing or a removal order comply with any conditions that may be imposed under the IRPA and IRPR; and
- allow the release of a person held in immigration detention, based on that person's agreement to abide by any conditions of release, to ensure compliance with the IRPA and IRPR.

3 The Act and Regulations

This part of the chapter provides a guide to the IRPA and IRPR provisions concerning deposits and guarantees, for officers' reference.

IRPA – Deposits and guarantees	Section
The authority to make Regulations regarding conditions that may be imposed on permanent residents and foreign nationals and Regulations governing deposits or guarantees for the performance of obligations imposed	A14(2) A14(2)(d) A14(2)(f)
Authority for a CBSA or IRCC officer or the Immigration Division to impose conditions including the payment of a deposit or posting of a guarantee for compliance with conditions imposed by a CBSA or IRCC officer or the Immigration Division on a permanent resident or foreign national who is the subject of a report, an admissibility hearing or, being in Canada, a removal order	A44(3)
Authority for a CBSA officer to order the release from detention before the first detention review of a permanent resident or foreign national on payment of a deposit or posting of a guarantee, if required, for compliance with the conditions imposed	A56
Authority for the Minister to order the release on request of a Designated Foreign National aged 16 or older from detention and to impose any conditions, including the payment of a	A58.1

ENF 8 Deposits and Guarantees

deposit or the posting of a guarantee for compliance with the conditions deemed necessary. Note: This authority is not currently delegated, but is held by the Minister of Public Safety.	
Authority for the Immigration Division to impose conditions of release on a permanent resident or foreign national, including the payment of a deposit or the posting of a guarantee for compliance with the conditions	A58(3)
Authority to collect monies that a person has agreed to pay as a deposit or guarantee of performance is a debt due to the Crown	A145(1) A145(1)(b)
Authority to certify debts due that have not been paid, if either the Minister of Immigration, Refugees and Citizenship (IRCC) or the Minister of Public Safety is of the opinion that the person liable for the amount is attempting to avoid payment, or on the expiration of 30 days after the default	A146(1) A146(1)(a) A146(1)(b)
The certificate, when filed and registered in the Federal Court, has the same force and effect, and all proceedings may be taken, as if the certificate were a judgment obtained for a debt of the amount specified in the certificate plus interest to the day of payment	A146(2)
Authority to recover costs of registering the certificate	A146(3)
Authority for the Minister to garnish all or part of a debt due to the Crown, if the Minister is of the opinion that a third person is or is about to become liable to make a payment to a person liable to make a payment under IRPA	A147
IRPR – Deposits and guarantees	Section
Authority for an officer to require a deposit or guarantee in respect of a person or group of persons seeking entry to Canada for compliance with conditions imposed	R45(1)
Officers are to fix the amount of the deposit or guarantee on the basis of the following factors: <ul style="list-style-type: none"> • the financial resources of the person or group; • the obligations that result from the conditions imposed; • the costs likely to be incurred to locate and arrest the person or group, detain them, hold an admissibility hearing and remove them from Canada; and • the costs likely to be incurred to enforce a guarantee 	R45(2) R45(2)(a) R45(2)(b) R45(2)(c) R45(2)(d)
A person who pays a deposit or posts a guarantee:	R47(1)

ENF 8 Deposits and Guarantees

<ul style="list-style-type: none"> • must not have signed or co-signed another guarantee that is in default; and • must have the capacity to contract in the province where the deposit is paid or the guarantee is posted 	<p>R47(1)(a)</p> <p>R47(1)(b)</p>
<p>A person who posts a guarantee must:</p> <ul style="list-style-type: none"> • be a Canadian citizen or a permanent resident, physically present and residing in Canada; • be able to ensure that the person or group of persons in respect of whom the guarantee is required will comply with the conditions imposed; and • present to an IRCC or CBSA officer evidence of their ability to fulfill the obligation arising from the guarantee 	<p>R47(2)</p> <p>R47(2)(a)</p> <p>R47(2)(b)</p> <p>R47(2)(c)</p>
<p>Money illegally obtained:</p> <p>If a CIC or CBSA officer believes a sum of money offered as a deposit, or a sum of money that a person may be obliged to pay under a guarantee was, or would not be legally obtained, the CIC or CBSA officer shall not allow that person to pay a deposit or post a guarantee</p>	<p>R47(3)</p>
<p>Mandatory conditions to be imposed on the person or group of persons in respect of which a guarantee is required:</p> <ul style="list-style-type: none"> • provide the IRCC or CBSA with the address of the guarantor and advise the IRCC or CBSA before any change in that address; and • appear at time and place required by an IRCC or CBSA officer or the ID to comply with any obligation imposed under IRPA 	<p>R48(1)</p> <p>R48(1)(a)</p> <p>R48(1)(b)</p>
<p>Mandatory conditions to be imposed on the person or group of persons in respect of which a deposit is required:</p> <ul style="list-style-type: none"> • provide address and change of address • appear at time and place required to comply with an obligation imposed 	<p>R48(2)</p> <p>R48(2)(a)</p> <p>R48(2)(b)</p>
<p>Mandatory written acknowledgment required from the person who pays a deposit or posts a guarantee:</p> <ul style="list-style-type: none"> • that they have been informed of the conditions imposed; and • That they have been informed that non-compliance with any conditions imposed will result in forfeiture of the deposit or enforcement of the guarantee 	<p>R49(1)</p> <p>R49(1)(a)</p> <p>R49(1)(b)</p>

ENF 8 Deposits and Guarantees

Requirement on officer to issue a receipt to the depositor and guarantor for the deposit or a copy of the guarantee, and a copy of the conditions imposed	R49(2)
Requirement of the IRCC or CBSA to return the deposit paid after an officer notifies the IRCC or CBSA of compliance with conditions imposed	R49(3)
Sum of money deposited is forfeited, and guarantee becomes enforceable on the failure of the person or any member of group to comply with any condition imposed	R49(4)

4. Definitions

Bond	Deposits and guarantees paid or posted to ensure compliance of the person concerned with IRPA conditions.
Bondsperson	The depositor or guarantor who paid or posed a deposit or guarantee to ensure compliance of the person concerned with IRPA conditions. This term is generic and refers to both depositors and guarantors.
Cash Bond	A cash bond is a deposit.
Depositor	The person who pays a deposit to ensure compliance by the person concerned or the group with conditions imposed under IRPA or IRPR.
Deposit	The payment of a sum of money by a person to the Receiver General for Canada for compliance with the conditions imposed on the person concerned's release from detention.
Forfeiture / Forfeit	The relinquishment of the deposit as a consequence of a breach of conditions.
Guarantee	A guarantee is an written enforceable undertaking by a third party (the guarantor) that the person concerned will abide by the conditions imposed by a CBSA or IRCC officer or the Immigration Division and to forfeit or pay a sum of money to the Crown if the person concerned breaches any conditions. The guarantor and the person concerned must both agree to the conditions. They are also called "performance bonds".
Guarantee in default	A guarantee is in default when a formal demand for payment of the amount guaranteed has been made to the guarantor and the amount has not yet been paid or otherwise extinguished.
Guarantor	The person who posts a guarantee with IRCC or the CBSA to ensure compliance with conditions imposed under IRPA or IRPR on the person concerned.
Performance Bond	A performance bond has the same meaning as the term "guarantee".

ENF 8 Deposits and Guarantees

Person concerned	The foreign national or permanent resident or the group of persons on whom conditions are imposed by an IRCC or CBSA officer or the Immigration Division and who is the subject of the deposit or guarantee.
Power of Attorney	A legal document signed by a person to authorize another person (the “attorney”) to act on their behalf in respect of all or some of their finances and property. The “attorney” does not need to be a lawyer. The document must have been issued in accordance with the laws of the province where it was signed.
Liquid funds	Cash or any investment that can easily and quickly be converted to cash (e.g. money in personal accounts; stocks and bonds).
Reasonable grounds to believe	Credible evidence that would produce in a normally prudent and informed person bona fide belief in a serious possibility. They are not mere suspicions.
Security deposit	This term has the same meaning as that for “deposit”.

5. Forms

All forms required for the processing of a deposit or guarantee are listed below and are accessible on IRCC Connexion under *Forms* or on CBSA Atlas under *Forms and Templates*.

Forms used for deposits and guarantees are generally IMM forms for historical reasons as the authority to perform most functions relating to deposits and guarantees is delegated to both IRCC and CBSA officers. However, some IMM forms now have BSF equivalents. Where an IMM form has a BSF equivalent, CBSA officers shall use the BSF form for the action.

Title	Number
Acknowledgement of Conditions - The <i>Immigration and Refugee Protection Act</i>	IMM 1262E
Amendment to Guarantee for Compliance Issued	IMM 5071B
Guarantee of Compliance Enforcement Notice	IMM 5072B
Guarantee Bond – The <i>Immigration and Refugee Protection Act</i> (Where there are Co-Signers)	BSF507E
Performance Bond – The <i>Immigration and Refugee Protection Act</i> (Where there are Co-Signers)	IMM 1259E
Guarantee Log	IMM 5073B
Performance Bond – The <i>Immigration and Refugee Protection Act</i> (Guarantee)	IMM 1230E
Request for a Security Deposit pursuant to R45(1) (at the port of entry only)	BSF 517E

ENF 8 Deposits and Guarantees

Requisition for Enforcement of Guarantee <i>Immigration and Refugee Protection Act and Regulations</i>	IMM 5345B
Requisition for Refund / Forfeiture of Security Deposit	IMM 0709B
Security Deposit (this form is also the official receipt for deposits)	BSF579
Solemn Declaration of Solvency by Guarantor	BSF564
Financial information related to deposits or guarantees assessed during the detention review process	<u>BSF 211</u>

6 Delegation and Designation Instruments

Officers should refer to the most recent version of the Delegation of Authority and Designation of Officers by the Minister of Public Safety and Emergency Preparedness under the *Immigration and Refugee Protection Act* (IRPA) and the *Immigration and Refugee Protection Regulations* (IRPR) on CBSA Atlas and IRCC Connexion to ensure that only delegated and designated officers exercise the authority associated to the functions related to deposits and guarantees.

Immigration and Refugee Protection Act (IRPA)	
	Delegated authority
CBSA and IRCC officers designated as per instruments of delegation	<ul style="list-style-type: none"> May require a deposit or a guarantee, or both, for compliance with conditions imposed on the release from detention of a foreign national or permanent resident who is the subject of a report, an admissibility hearing, or, in Canada, a removal order. [A44(3)]
CBSA officers designated as per the instruments of delegation	May order, before the first detention review by the Immigration Division, the release from detention of a person and impose conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions [A56].
CBSA, IRCC and Canada Revenue Agency headquarters officials as per the instruments of delegation	<ul style="list-style-type: none"> May certify an amount or part of an amount payable under IRPA as debts due to Her Majesty; may order payment to the Receiver General [A146].
CBSA headquarters staff as per the instruments of delegation	<ul style="list-style-type: none"> May garnish all or part of a debt due to the Crown, if the Minister is of the opinion that a third person is or is about to become liable to make a payment to a person liable to make a payment under IRPA [A147].
Immigration and Refugee Protection Regulations (IRPR)	

ENF 8 Deposits and Guarantees

CBSA and IRCC officers as per instruments of delegation	<ul style="list-style-type: none">• May require a deposit or guarantee in respect of a person or group seeking to enter Canada for compliance with conditions imposed [R45(1)].• May fix the amount of the deposit or guarantee [R45(2)].• May refuse to allow a person to pay a deposit or post a guarantee [R47(3)].• Shall impose mandatory conditions when deposit or guarantee required [R48].• Shall issue a receipt for the payment of a deposit or a copy of the guarantee, and a copy of the conditions imposed [R49(2)].
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7 Departmental policy

7.1 Deposits and guarantees

The purpose of requiring deposits and guarantees (collectively referred to as bonds) under the IRPA or IRPR is to motivate the person concerned or group to comply with the conditions imposed which are intended to ensure that they will appear at the next required IRPA proceeding. They also serve as an incentive for the bondsperson to ensure compliance.

CBSA or IRCC officers may request the payment of a deposit or the posting of a guarantee, or both, under the following circumstances:

- At a port of entry, a CBSA officer may require a person or group of persons seeking to enter Canada to pay a deposit or post a guarantee, or both, for compliance with any conditions imposed [R45(1)]. (For the purpose of this section a group of persons refers to a group of persons such as an entertainment group coming to Canada for the same purpose. This section is not meant to apply to several different individuals believed to be part of an organized smuggling ring. In scenarios such as this, the requirement for a security deposit or guarantee should be assessed on an individual basis.)
- At a port of entry or inland office, a CBSA or IRCC officer may impose conditions and require a permanent resident or foreign national who is the subject of an inadmissibility report, admissibility hearing or a removal order to pay a deposit or post a guarantee. [A44(3)].
- *Note: the delegated authority to impose conditions on permanent residents is at supervisory level or higher.*
- Where a permanent resident or foreign national has been detained pursuant to the IRPA or IRPR and a CBSA officer orders their release before the first detention review by the Immigration Division, the CBSA officer may impose conditions and require that they pay a deposit or that a guarantee be posted [A56].
- At a detention review or admissibility hearing, a CBSA Hearings Officer may request the Immigration Division to impose conditions, including the requirement to pay a deposit or post a guarantee, on a foreign national or permanent resident prior to ordering they be released from detention [A58(3)].

ENF 8 Deposits and Guarantees

7.2 General requirements

Note: for procedures, refer to Part 8.

The following requirements apply to deposits and guarantees:

7.2.1 Delegated Officers

- When imposing the requirement to pay a deposit or post a guarantee under A44(3) or A56, delegated officers are responsible to ensure that a person who pays a deposit (depositor) or posts a guarantee (guarantor) meets the regulatory requirements. The officers should thoroughly assess any potential bondsperson who offers to pay a deposit or post a guarantee and, where that person does not satisfy the regulatory requirements, they shall not be permitted to pay a deposit or post a guarantee.
- Only delegated officers may make decisions regarding deposits and guarantees, including the assessment of whether the person proposing to post a deposit or guarantee meets any regulatory requirements and is otherwise suitable.

7.2.2 Immigration Division

- The Immigration Division may, at detention review, order the person concerned released pending continuation of an examination, an admissibility hearing, or removal, and may impose conditions, including the payment of a deposit or a guarantee.
- Inland Enforcement Officers may provide valuable input concerning specific requirements under R47 (e.g. the proposed bondsperson is in default of a previous guarantee; money offered as a deposit was not legally obtained, the proposed bondsperson is not a Canadian citizen or permanent resident, not physically present and residing in Canada; the proposed bondsperson is not able to ensure that the person concerned will comply with conditions, etc.) or if a proposed residential address for the release is of concern. In these cases, Inland Enforcement Officers should articulate their concerns to the Hearings Officer who can address them with the Immigration Division.
- During a detention review when counsel presents an alternative to detention involving a bondsperson, the Immigration Division and Hearings Officers will assess the suitability of the bondsperson by questioning them about their relationship with the person concerned, their knowledge of the person concerned's immigration status and if applicable, criminal history, potential bondsperson's income, assets, their ability to pay a cash deposit or fulfill the obligation from the guarantee, their living situation, their willingness to provide shelter to the person concerned and their ability to ensure the person concerned will comply with conditions imposed on their release. If release on conditions including a requirement of a deposit or guarantee is warranted, the Immigration Division will name the bondsperson and set the amount of the deposit or guarantee required.
Note: Generally, ability to pay and solvency are not assessed during detention review as documents from guarantors may not be available and/or there is insufficient time to do so. A bondsperson may sometimes be proposed before a detention review which may lead to the assessment of the ability to pay or solvency being done during the detention review process. If the ability to pay and/or solvency was assessed during the detention review process, Hearings Officers will document the outcome of what was assessed and agreed to by all parties during the detention review using form BSF211.
- If a Hearings Officer has assessed the ability of the bondsperson to pay a cash deposit and/or fulfill his/her obligation from a guarantee, and the Hearings Officer is satisfied that the bondsperson has the ability to pay the cash deposit and/or fulfill the guarantee, the Hearings Officer will document this information on form BSF211. In those instances, Inland Enforcement Officers may not re-assess the ability to pay or the solvency of the named bondsperson when they seek to pay the deposit or post the guarantee (refer to section 8.14 Determining Solvency for Guarantors for further details). This is subject to the following exceptions:

ENF 8 Deposits and Guarantees

- Officers uncover information after the fact that the bondsperson has signed or co-signed another guarantee that is in default;
- Officers uncover after the fact that the bondsperson does not have the capacity to contract in the province where the deposit is paid or the guarantee is posted; or
- Officers uncover information after the fact that there are reasonable grounds to believe that a sum of money offered by the bondsperson to pay a cash deposit was not legally obtained or a sum of money that the bondsperson is obliged to pay under a guarantee was not legally obtained.

The Hearings Officer should communicate these exceptions to the tribunal, detainee and counsel.

- Generally, the suitability of a bondsperson is assessed during the detention review without assessing their ability to pay a cash deposit or to fulfil a guarantee as no evidence or insufficient evidence was presented during the detention review process on the financial situation of the bondsperson and/or there is insufficient time to do so. This may occur for instance in situations where the bondsperson was not proposed in advance of the detention review. In those cases, the Hearings Officer should clearly indicate to the tribunal, the detainee, and counsel (if applicable), that another officer will determine whether the bondsperson has ability to pay the cash deposit and/or fulfil the guarantee before release can occur. Hearings Officers may use BSF211 to provide comments to the officer who will be responsible to take the bond or if they wish to bring specific information to their attention.
- Once the Immigration Division has made a decision to release and specified conditions, an officer processing the bond has no legal authority to reject or change the conditions; however if the officer has specific concerns regarding the deposit or guarantee requirements, the officer should communicate their concerns to the Hearings Officer who can address them, if appropriate, with the Immigration Division.

7.2.3 Choice of deposit or guarantee:

- When the imposition of a deposit or guarantee is warranted, deposits are always preferred to guarantees, but a combination of both may be acceptable.
- If the person who will be paying a deposit or posting a guarantee has sufficient liquid funds (see Definitions) for the amount of deposit deemed appropriate, a deposit should be required.

7.2.4 Minimum qualifications for bondspersons:

- Bondspersons must not have signed or co-signed another guarantee that is in default [R47(1)(a)]; and
- Bondspersons must have the capacity to contract in the province where the deposit is paid or the guarantee posted [R47(1)(b)]. Bondspersons must not suffer from any serious mental disability that would render them incapable of understanding the bond. In addition, they should be at the age of majority according to the law of the relevant province or older.
Note: A guarantee that is "in default" means that a formal demand for payment of the amount guaranteed has been made to the guarantor and the amount owing has not yet been paid or otherwise extinguished. Where a person concerned under a guarantee has breached conditions and no formal demand for payment of the guarantee has been issued, the guarantee is not in default and the guarantor would not be disqualified under R47(1)(a).
- Guarantors must be Canadian citizens or permanent residents, physically present and residing in Canada [R47(2)(a)]; and

ENF 8 Deposits and Guarantees

Note: The requirement that the guarantor be a Canadian citizen or a permanent resident does not apply to cash bonds.

- Guarantors must be able to ensure that the person concerned will comply with the conditions imposed.

7.2.5 Conditions

- It is imperative that the CBSA and IRCC officers ensure that the person concerned and the bondsperson understand the conditions of the deposit or guarantee and the repercussions for violating the conditions.
- The bondsperson is required to acknowledge in writing (BSF507 or BSF579) that they have been informed of the conditions imposed and that non-compliance with any of the conditions will result in forfeiture of the deposit or enforcement of the guarantee [R49(1)].
- CBSA Inland Enforcement Officers are normally responsible for monitoring of compliance of conditions for deposits and guarantees.
- Where the person concerned fails to comply with any of the conditions imposed, the deposit will be declared forfeited or the guarantee will be enforced.
- When the conditions under which the deposit or guarantee was posted are revoked or met, the obligation under the deposit or guarantee becomes null and void and the deposit shall be refunded.

8 Procedures

8.1 General

8.1.1 Conditions in officer release cases where a bond is required

In addition to any other conditions, the following conditions shall be imposed on a person or a group of persons for whom a deposit or guarantee is required (the person concerned):

- Where a guarantee is being posted:
 - a) to provide IRCC or CBSA with the address of the guarantor; and to advise the appropriate office before any change in that address [R48(1)(a)]; and
 - b) to present themselves at the time and place an IRCC or CBSA officer or the Immigration Division requires them to appear to comply with any obligation imposed on them under the IRPA. [R48(1)(b)].
- Where a deposit is being paid:
 - a) to provide IRCC or CBSA with their address; and to advise the appropriate office before a change in that address [R48(2)(a)]; and
 - b) to present themselves at the time and place an IRCC or CBSA officer or the Immigration Division requires them to appear to comply with any obligation imposed on them under the IRPA. [R48(2)(b)].

ENF 8 Deposits and Guarantees

When a person is released by an officer from detention under a deposit or a guarantee with the condition to appear at an admissibility hearing, the bond will become void after the appearance of the person at the admissibility hearing. To avoid this situation, the conditions of the deposit or guarantee should include the following wording:

- *that (name of person concerned) shall appear at the time and place required for the purpose of scheduling an admissibility hearing under the Immigration and Refugee Protection Act for admissibility hearing, and at each subsequent sitting of such admissibility hearing, for removal, or whenever required.*

An immigration admissibility hearing is not terminated by the effect of a subject of a deposit or guarantee departing and seeking to re-enter Canada [*Ravinder Kaur v. Minister of Employment and Immigration*, FCA, Doc. No. A-295-84, September 25, 1984; *Harnek Singh Grewal v. Minister of Employment and Immigration*, FCA, Doc. No. A-42-80, May 7, 1980]:

- a guarantee is valid if the person who is the subject of the guarantee has not violated any of the conditions;
- should the subject of a guarantee leave Canada and seek to re-enter to attend the continuation of the immigration admissibility hearing, the CBSA officer at the port of entry (POE) should examine the person to determine whether a new report and guarantee would be required;
- a guarantor may be liable for the amount of the guarantee.

When officers release a person concerned from detention on payment of a deposit or posting of guarantee they shall use the Acknowledgement of Conditions – the IRCC form [IMM 1262E] to record any additional conditions imposed.

For information on cases where the Immigration Division releases a person concerned and imposes a bond, see Part 7.2.2 above, for policy and Part 8.2 below, for procedures.

8.1.2 Amount of deposit and/or guarantee:

The amount of the deposit or guarantee is fixed by an officer in consideration of:

- the financial resources of the person concerned or group;
- the obligations resulting from the conditions imposed;
- the costs of enforcement should a condition be breached; and
- the costs that would be incurred to enforce a guarantee.

Where risk of non-compliance with conditions is high (e.g. history of non-compliance, serious inadmissibility, etc.), a large deposit or guarantee may be a more appropriate incentive for compliance with conditions.

Where the risk of non-compliance with conditions is low, financial resources may be the main factor in determining amount.

A smaller amount may be appropriate when:

- detention has been for a prolonged period due to circumstances beyond the CBSA's control (e.g. inability to obtain travel document where person concerned has cooperated, or inability to remove to certain countries due to country conditions) and the person concerned has been cooperative; or
- prospects of conclusion of the case are very limited in the short term due to reasons outside of the control of the CBSA or IRCC and not due to the person concerned's failure to cooperate with the CBSA and IRCC.

8.1.3 Illegally obtained money

ENF 8 Deposits and Guarantees

If a CBSA or IRCC officer has reasonable grounds to believe (i.e. a belief based on credible evidence) that a sum of money that a person would be obliged to pay as a deposit or under a guarantee was not or would not be legally obtained, i.e. obtained in a manner in accordance with the law, the officer shall not allow that person to pay a deposit or post a guarantee [R47(3)].

- For the purposes of R47(3), illegally obtained money is money that has been either:
 - a) obtained or derived directly or indirectly as a result of the commission of an offence in Canada; or
 - b) by an act or omission that occurred outside Canada that was an offence in the place that it occurred and if it had occurred in Canada, would have also constituted an offence.

Officers may seek out sources of additional information regarding the source of the money offered for the deposit if further corroboration is needed. For example, a credible explanation from the bondsperson may either negate or justify the need for an officer to obtain further information. Additionally, the officer must use discretion as to the severity of the circumstances and whether further enquires are warranted in the circumstances. An example of this type of situation would be if a bondsperson is paying a \$1,000 deposit or posting a \$1,000 guarantee, the officer might make some enquiries and if reasonable answers are forthcoming, go no further; however if the bond is \$20,000, the officer's enquiries are expected to be more thorough because the amount would reasonably be more of a burden to the bondsperson.

While one possible indicator of illegally obtained money is where the bondsperson indicates that they do not file tax returns, it does not necessarily follow that their income was obtained in an illegal manner. For example, if the bondsperson admits to not paying income tax, that does not necessarily equate to the offence of tax evasion; however if the bondsperson admits to the offence of tax evasion, the officer should not accept the funds. If the bondsperson indicates that they do not pay taxes or file tax returns, officers should engage in a more thorough inquiry to ensure that the money presented was not illegally obtained.

8.1.4 Importance of fully documenting each process, decision and rationale

Officers involved in the determination of whether to require a deposit or guarantee, or both; whether a proposed bondsperson is suitable; whether a breach of a condition has occurred; and whether forfeiture of the deposit or guarantee will be pursued must fully detail the reasons, including the factors considered, for their recommendations and decisions on file. A rigorous approach to documenting actions and decisions will assist others, including Hearings Officers and litigators, to understand and defend those decisions.

8.2 Receiving Orders for Release from the Immigration Division or delegated officer

Upon receipt, the CBSA officer shall review the Order for Release which sets out the terms and conditions of release. The Order for Release can prescribe release on:

- a Cash Bond (deposit);
- a Performance Bond (guarantee);
- an Acknowledgement of Conditions; or
- a combination of any of the above.

Where the Order for Release is to release on the Acknowledgement of Conditions only, officers shall action the Order immediately on receipt, provided there are no outstanding conditions to be satisfied such as the surrender of an identification or travel document.

Officers shall complete the Acknowledgement of Conditions [IMM 1262E] in all cases, with the appropriate conditions, and have the person concerned sign it. The person concerned is given a copy and the original is placed on the client file with all associated release paperwork (copies of all bonds, bondsperson's identification

ENF 8 Deposits and Guarantees

documents, faxes, receipts, solemn declarations, applicable letters, proof of funds, conditions of release, the Authority to Release from Detention form, etc.)

If release is ordered by the Immigration Division, have the person concerned sign conditions of release specified by the Immigration Division.

Where the person is to be released on the Acknowledgement of Conditions form plus the payment of a deposit or the posting of a guarantee, officers shall comply with the procedures for deposits in Sections 8.5 to 8.9, or for guarantees in Sections 8.11 to 8.15, as applicable.

8.3 Modifications of conditions of release

Where release from detention was ordered by a CBSA officer under A56 before the first detention review, a CBSA delegated officer may modify the conditions of release, including the deposit or guarantee.

Where the conditions were imposed by the Immigration Division under A58, only the Immigration Division may modify the conditions it imposed.

When a person concerned's conditions of release from detention have been modified and there is an existing deposit or guarantee, the bondsperson must be notified and agree to the modifications in order for them to continue to be legally bound by the deposit or guarantee. If they do not agree, the conditions should not be modified or if the modification is deemed necessary, a new deposit or guarantee shall be required if deemed appropriate in the circumstances for compliance with the conditions.

In cases where modification of conditions are considered and it comes to light that the bondsperson cannot be notified as they are no longer at their last known address and the person concerned cannot provide their current address, the person concerned has breached the mandatory condition imposed under R48(1)(a) to advise the IRCC or the CBSA of changes in the address of the bondsperson. Forfeiture may be considered and actioned, if deemed appropriate in the circumstances. Should the condition modification be deemed necessary, a new deposit or guarantee shall be required.

8.4 Surrendered passports and other documents

- Where the surrender of the person concerned's passport or other identity or travel document is a condition of release, the passport or other document shall be placed in a Property Envelope, clearly marked with the person concerned's name and GCMS Unique Client Identifier (UCI) and placed on the case file.
- Officers shall provide the person concerned with a Notice of Seizure of Identity Document(s) BSF698 form and update NCMS and GCMS with the information on the document seizure.

8.5 Deposits - General

The following guidelines apply to deposits (detailed procedures follow this section):

- A deposit is a sum of money required to ensure compliance by the person concerned with conditions imposed by an IRCC or CBSA officer or the Immigration Division under IRPA or IRPR.
- A deposit may be provided by the person concerned or by a third party.
- A depositor:
 - must not have signed or co-signed a guarantee that is in default [R47(1)(a)]; and

ENF 8 Deposits and Guarantees

- must be of legal age with the capacity to contract in the province where the deposit is paid [R47(1)(b)]. This means that the depositor must not suffer from a serious mental disability that renders them unable to understand the terms of the deposit and other conditions.

The CBSA or IRCC officer should consider whether the person concerned, who is the subject of a removal order, will likely be removed from Canada within a reasonable time.

When considering taking a deposit from the person concerned, CBSA and IRCC officers should consider whether the amount of deposit is sufficiently high that the possibility of its forfeiture will motivate the person concerned to comply with all conditions. If it is reasonably unlikely that the person concerned's compliance will be ensured by the potential loss of the deposit, officers may consider requiring that any deposit be paid by a suitable third party.

Deposits by the lawyer for the person concerned or group may be made "in trust" for their client and, as such, are a debt by the client to the lawyer. They should not be considered a deposit by a third party. The consideration should be whether the requirement to pay that debt to the lawyer, should the deposit be forfeited, will be sufficient motivation for the person concerned or group to comply with the conditions.

Although the IRPR does not require that the depositor be a Canadian citizen or a permanent resident, CBSA and IRCC officers taking a deposit from a third party should require that the depositor have legal status under IRPA and be physically present and reside in Canada, and be able to ensure that the person concerned or group will comply with the conditions imposed if these requirements are deemed necessary in the circumstances to achieve the compliance objective of the deposit.

If the person concerned defaults on or breaches any of the conditions, legal proceedings may be taken to forfeit the deposit (see Part 8.19).

When the conditions under which the deposit was paid are revoked or met, the deposit must be refunded (see Part 8.19).

8.6 Ability to ensure person concerned will comply with deposit conditions

Officers may, if they deem it reasonable in the circumstances, assess whether the depositor is able to ensure that the person concerned complies with conditions imposed.

In the assessment, officers may consider factors such as:

- whether the person posting a guarantee has a criminal record that, in the circumstances of the case, would cast doubt on their ability to ensure compliance with conditions (e.g. breach of a court order);
- the length and closeness of relationship of the depositor with the person concerned or group;
- whether they are related;
- whether the depositor has real influence over the person concerned or group;
- whether they live in close proximity and the frequency of their contact;
- whether the existence of the deposit and the possibility of its forfeiture will serve as an incentive towards compliance by the person concerned.
- If the officer in the circumstances deems it necessary that the depositor ensure compliance with conditions, however, the officer determines that the depositor is unlikely to be able to ensure compliance with the conditions, the officer may refuse the deposit, except when the release is ordered by the ID. Officers may consider accepting another person as a depositor in these cases, if one is

ENF 8 Deposits and Guarantees

available and willing to post the bond. Officers shall fully document this decision and the reasons in the case file.

8.7 Establish identity of depositor

The IRCC or CBSA should require that the depositor provide the following original genuine documentation to prove their identity, status and residence:

- Government-issued photo identification (e.g. passport; driver's license; permanent resident card);
- Proof of status in Canada (e.g., passport; permanent resident card; birth certificate, citizenship card); and
- A document stating the depositor's current residential address (e.g., driver's license, water bill, hydro bill, cable bill).

Copies of the original identity, status and residency documentation provided for the establishment of the depositor's identity shall be placed on file and shall accompany the security deposit information when sent to the Revenue Accounting and Reporting Division.

Failure to provide requested identity, status and residency documents may result in the rejection of the depositor or a direction to the proposed depositor to return at a later time with the requested documentation.

8.8 Acceptable forms of payment for deposits

Deposits must be paid by the individual listed on the Order for Release.

Acceptable forms of payment, payable to the Receiver General for Canada, are:

- Bank draft;
 - Money order;
 - Certified cheque;
 - Debit cards;
 - Credit cards, so long as the credit card holder is the same person as the depositor listed on the order for release;
 - Travellers cheques; and
 - Cash – only in offices with capability of processing cash payments.
- Pre-paid credit cards are not acceptable.

When payment is via credit card, officers shall copy the front and back of the credit card used and forward it with the deposit package to the Revenue Accounting and Reporting Division for the CBSA and if the deposit is taken by an IRCC officer, to: Accounting Operations, Revenue Unit, NHQ, at the completion of the deposit process.

Payment may be made only in Canadian funds, or in the exceptional port of entry case described below, in U.S. funds:

- U.S. funds shall be accepted only at the port of entry where the depositor does not have sufficient Canadian funds. CBSA officers shall indicate in the Security Deposit form [BSF579] that U.S. currency was accepted. The depositor shall be advised that refunds will be paid in Canadian funds and that no interest is paid on the deposit.
- CBSA officers should refer to Acceptable Forms of Payment in Chapter 10, Section 1 of the Comptrollership Manual, Finance Volume, for more detailed information

ENF 8 Deposits and Guarantees

8.9 Taking the deposit

Two employees are needed to take a deposit, one of whom must be a delegated officer. This is to ensure that there is a witness so that there is protection against accusations of mishandling funds.

The Security Deposit form [BSF579], and the Acknowledgement of Conditions form must be completed [IMM 1262E]. Officers must ensure that the information is complete (including the mailing address) and easy to read.

For R45(1) port of entry cases, the CBSA officer will begin the process by completing the Request for Security Deposit [BSF 517E] pursuant to subsection 45(1) of the IRPR.

The CBSA or IRCC officer:

- records the personal information of the depositor (full name, date of birth, address, phone numbers, driver's license number, status, name, address and phone number of employer, relationship to person concerned, etc.) for the file;
- verifies that the information on the money order, bank draft, or certified cheque is correct. For cash handling procedures, see below;
- completes the Security Deposit form [BSF579] after receiving the sum of money;
- advises the depositor that should conditions be met, the deposit will be refunded in the form of a cheque (Canadian currency), which may take several months to be processed and that no interest will be paid;
- advises the depositor that it is imperative that they advise the CBSA if they change addresses as the deposit will be refunded to the address listed on the Security Deposit form;
- completes the Acknowledgement of Conditions form [IMM 1262E];
- explains the conditions and the consequences of non-compliance to the person concerned and depositor, ensuring that they understand their responsibilities and the consequences should the person concerned not comply with any of the conditions imposed;
- ensures that the person concerned and a witness sign the Acknowledgement of Conditions form [IMM 1262E], and in port of entry cases, the Request for Security Deposit form [BSF 517E];
- gives copy 1 (white copy) of the Security Deposit Form (which is also the official receipt) and a copy of the signed Acknowledgement of Conditions to the depositor; in port of entry cases, provide a copy of the Request for Security Deposit form to the depositor;
- If the depositor has presented a signed and sealed Power of Attorney document for an assignment for the refund of the deposit, CBSA officers shall send the original copy of the document, not a photocopy, to Revenue Accounting and Reporting Division at the address below; and for IRCC officers, to: Accounting Operations, Revenue Unit, NHQ;
- advises the person concerned that failure to confirm departure from Canada may result in the forfeiture of the deposit if conditions of the deposit require departure from Canada on or before a specified date;
- provides detailed reasons in file notes for the decision to require a deposit;

ENF 8 Deposits and Guarantees

- CBSA staff shall follow the procedures for depositing payments into a financial institution set out in *Receipts, Deposits and Safeguarding of Public Money and Monetary Assets* in Chapter 10, Section 11 of the Comptrollership Manual, Finance Volume;
- The deposit information needs to be entered into the financial systems. The Corporate Administrative System (CAS) document number, or if using TEPs/G11, the K21 or K10 document number needs to be recorded on the Security Deposit form [BSF579];
- After ensuring the financial systems are updated, CBSA staff shall forward the following documentation to the CBSA Revenue Accounting and Reporting Division, 355 North River Road, 18th Floor, Ottawa, ON K1A 0L8:
 - a copy of both sides of the credit card, if payment is by credit card;
 - copy 2 of the Security Deposit form [BSF579];
 - a copy of the K10 document if deposit entered in G11;
 - original of any valid Power of Attorney signed by the depositor.

IRCC officers shall forward the following documentation to the Accounting Operations, Revenue Unit, NHQ, 70 Crémazie Street, Gatineau, QC, K1A 1L1:

- depositor's personal information (full name, date of birth, address, phone numbers, driver's license number, status, name, address and phone number of employer, relationship to person concerned, etc.);
- a copy of both sides of the credit card, if payment is by credit card;
- for payment methods other than credit card, all funds collected must be sent to the Revenue Unit, NHQ to be deposited in NHQ bank account;
- copy 2 of the Security Deposit form [BSF579];
- original of any valid Power of Attorney signed by the depositor.

Hard copies of the bank deposit slip and the internal deposit slip shall be placed in the person concerned's file.

Cash handling procedures

When a deposit is paid in cash, the following procedures will be incorporated into the procedures above:

- The officer and the second employee shall separately count the currency in the presence of each other to verify accuracy, noting the currency denominations on the Security Deposit form [BSF579];
- They shall each sign the Security Deposit form;
- They shall seal the BSF579 form **along with** the cash in an envelope and shall initial it over the seal;
- The envelope must be labelled with the person concerned's name, client I.D., deposit number and the amount of the deposit;
- The deposit information is recorded in the office log for bonds, and the officer and employee witness shall initial the entry;
- The officer shall notify the manager via email that a cash deposit has been received, specifying the amount of the deposit, the name of the depositor and the document number of the deposit;
- The officer and employee witness shall deposit the sealed envelope and corresponding documents into the safe in the office;
- The employee responsible for handling cash payments in the office will retrieve the sealed envelope with accompanying documentation from the drop safe in the presence of a CBSA manager and verify the

ENF 8 Deposits and Guarantees

cash amount in the envelope, then secure the cash and documentation in the petty cash safe in the presence of a witness;

- The employee responsible for regional finance transactions will enter the deposit information into CAS and record the numbers generated by CAS on the security deposit form [BSF579];

8.10 Altering or amending a deposit

An amended deposit may be warranted if any of the conditions of the original deposit have been altered or amended;

When the subject of a deposit makes a request to the CBSA, IRCC or the Immigration Division to have any reporting conditions modified and the request is granted, the depositor must be made aware of the new conditions imposed on the subject. The depositor is required to appear at the CBSA or IRCC office as applicable and sign the amendment to the terms of the deposit;

The original office involved in the original imposition of the deposit, should whenever possible, be advised of any alterations, amendments, extensions, and refunds.

Procedures to increase the amount of the original deposit

To increase the amount of the original deposit, the IRCC or CBSA officer:

- advises the depositor that an additional deposit is required;
- completes a second Security Deposit form [BSF579] to replace the original form;
- provides reasons for the increased amount of the deposit in NCMS or GCMS (as appropriate);
- ticks off 'Replaces previous security deposit no...' in the Official Receipt box of the Security Deposit form, and add the previous deposit number;
- for the CBSA, forward copy 2 of the BSF579 to CBSA Revenue Accounting and Reporting Division, 355 North River Road, 18th Floor, Ottawa, ON K1A 0L8; and
- for IRCC, forward copy 2 of the BSF579 to Accounting Operations, Revenue Unit, NHQ, 70 Crémazie Street, Gatineau, QC, K1A 1L1 .

Procedures to reduce the amount of the original deposit

To reduce the amount of the original deposit, the CBSA or IRCC officer:

- completes a Requisition for Refund / Forfeiture of Security Deposit form [IMM 0709B] to request a partial refund of the original deposit;
- provides reasons for the decreased amount of the deposit in NCMS;
- for the CBSA, forwards copies 1 and 2 of the IMM 0709B and documentation showing the current address and the proper full name of the depositor (copies of identity documents; proof of address, etc.) to CBSA Revenue Accounting and Reporting Division, 355 North River Road, 18th Floor, Ottawa, ON K1A 0L8; and

ENF 8 Deposits and Guarantees

For IRCC, forwards copies 1 and 2 of the IMM 0709B to Accounting Operations, Revenue Unit, NHQ, 70 Crémazie Street, Gatineau, QC, K1A 1L1.

8.11 Guarantees - General

A guarantee is a written enforceable undertaking by a third party that the person who is the subject of the guarantee (the person concerned) will abide by the conditions imposed by a CBSA or IRCC officer or by the Immigration Division and to forfeit or pay a sum of money to the Crown if the person concerned breaches any conditions. The guarantor and the person concerned must both agree to the conditions.

A guarantor is not required to provide the sum of money, unless the subject of the guarantee does not comply with the conditions, hence, a guarantee is also referred to as a conditional bond.

Proposed guarantors must be examined by a CBSA or IRCC to determine if the person is:

- liable for any outstanding guarantees;
- able to exercise control and influence over the actions of the person concerned. If the proposed guarantor had knowledge of, or harboured the person concerned while that person was illegally in Canada, they may not be a suitable guarantor;
- a Canadian citizen or permanent resident. Guarantees are not to be accepted from persons who are not physically present and residing in Canada, due to the potential difficulty in enforcing a guarantee;
- all parties to the contract must have the legal capacity to enter into a contract in the province or territory where the guarantee is taken, i.e., be of legal age and not suffer from a legal disability;
- sufficiently financially solvent, i.e., have sufficient liquid assets, to meet the obligations of the guarantee should the person concerned not respect the conditions imposed.
- the CBSA or IRCC officers should consider whether the subject of the guarantee under a removal order will likely be removed from Canada within a reasonable time.
- when the conditions under which the guarantee was posted are revoked or met, the obligation under the guarantee becomes null and void.

Officers must ensure that prospective guarantors:

- are Canadian citizens or permanent residents;
- are physically present;
- reside in Canada;
- have not signed or co-signed another guarantee that is in default;
- have capacity to contract in the province where the guarantee is posted, i.e. be of legal age and capable of understanding the guarantee and its possible consequences;
- be able to ensure that the person concerned will comply with the conditions imposed; and
- present evidence of their ability to fulfil the obligation arising from the guarantee, i.e. pay the debt if the guarantee is forfeited. This is the determination of solvency.

ENF 8 Deposits and Guarantees

When multiple guarantors are required, all must be present and all must qualify as guarantors. Failure of one to qualify will result in the rejection of the guarantee.

Role of the Hearings Officer relating to guarantees

The Hearings Officer submits to the member of the Immigration Division that, as a minimum condition of release, the following conditions should be imposed on the subject and included in the Acknowledgement of Conditions form [IMM 1262E]:

- that [name of person concerned] shall keep the peace and be of good behaviour;
- that [name of person concerned] shall report when and where required to do so by an IRCC or CBSA officer or member of the Immigration Division, for all lawful purposes of the Immigration and Refugee Protection Act; and
- that [name of person concerned] advise a CBSA officer of any change of address 48 hours before moving;

The Hearings Officer provides detailed reasons in the file notes for the recommendation that a guarantee be imposed.

8.12 Ability to ensure the person concerned will comply with conditions of guarantee

Officers shall assess whether a proposed guarantor is able to ensure that the person concerned complies with conditions imposed [R47(2)(b)].

In the assessment, officers may consider factors such as:

- whether the guarantor has a criminal record that, in the circumstances of the case, would cast doubt on their ability to ensure compliance with conditions (e, breach of a court order);
- the length and closeness of relationship of the depositor with the person concerned or group;
- whether they are related;
- whether the depositor has real influence over the person concerned or group;
- whether they live in close proximity and the frequency of their contact;
- whether the existence of the guarantee will serve as an incentive towards compliance by the person concerned.

If the officer determines that the guarantor is unlikely to be able to ensure compliance with the conditions, the officer may refuse the guarantor (see Part 8.17 below for procedures on rejecting a guarantee). Officers may consider accepting another person as a guarantor in these cases, unless the release was ordered by the Immigration Division, if one is available and willing to post the guarantee. Officers shall fully document this decision and the reasons in the case file.

8.13 Establish identity of guarantor

Guarantors must provide the IRCC or CBSA officer taking the guarantee with the following original, genuine documentation to prove their identity, age, status and residence:

ENF 8 Deposits and Guarantees

- government-issued photo identification (e.g. driver's license, passport, permanent resident card) showing the image of the guarantor, their name, and age or date of birth;
- proof of status in Canada (e.g. passport; birth certificate, citizenship certificate, certificate of Indian status, permanent resident card); and
- a document showing the guarantor's current residential address (e.g. driver's license, utility bill, bank statement, pay stub).
- copies of the original identity documentation will be placed on file.
- failure to provide identity, status and residency documents will result in the rejection of the application to post a guarantee or a direction to the proposed guarantor to return at a later time with the required documentation.

8.14 Determining solvency for guarantors

The requirement that a guarantor be solvent, i.e. have sufficient liquid funds to pay the guarantee if it is enforced, is intended to ensure that the Government is able to collect on the debt should the guarantor go into default upon non-compliance by the person concerned with conditions.

The following principles should guide the determination of solvency:

- the guarantor's annual income should be assessed first. The annual income minus liabilities on income should be **three (3) times** the total of the guarantee. For example, a requirement of a guarantee in the amount of \$5,000 would require net income of at least \$15,000 (3 x \$5,000). A person with annual income of \$50,000 and annual liabilities totalling \$20,000 leaving \$30,000 net income would qualify to post the guarantee. If the guarantor's annual net income is insufficient, then the guarantor's assets shall be assessed.
- when assessing income alone, the liabilities to take into account are the total of the annual liabilities, not the total liability. For example, a loan of \$15,000 payable monthly in the amount of \$200 would constitute a \$2,400 annual liability for the guarantor. A rent or mortgage payment of \$1000 per month would constitute a \$12,000 annual liability.
- assets alone without any income are a strong indication that the individual is likely not solvent, however, officers may consider individual circumstances of the case before making a decision.
- when the amount of the guarantee is too high for the guarantor to qualify on annual income alone, both income and assets are assessed; the guarantor's solvency is calculated by totalling the guarantor's annual income and current assets minus existing total liabilities.
- officers should ask for income and assets in an amount approximately three times the total amount of the guarantee to be posted.
- existing liabilities should be subtracted from the total of the guarantor's combined income and assets for the calculation of solvency. For example, if the guarantor's annual income is \$65,000 and they own a house valued at \$300,000, and they have no other qualifying assets, their total income and assets would be \$365,000. If the guarantor's mortgage on the house is \$280,000, their car loan balance is \$20,000, their student loan balance is \$25,000 and they have a line of credit balance in the amount of \$15,000, then their total liabilities are \$340,000. They have the net amount of \$25,000 (\$365,000 - \$340,000) available for a guarantee, however, if the guarantee required was \$10,000, they would be deemed insolvent as a \$10,000 guarantee requires \$30,000 in available income and assets.

ENF 8 Deposits and Guarantees

- liabilities or debts include mortgage balances; outstanding loan balances; student loan balances; credit card balances; line of credit balances; annual rent obligations; and the average yearly cost of monthly utility payments (e.g. phone, internet, cable, hydro, water, gas/oil).
- original documentation of source of funds must be provided, and if accepted towards the determination of solvency, copies shall be taken and placed on file.
- where reasonable in the circumstances, to assist in the determination of solvency, officers may request proposed guarantors to provide a recent credit report.

Assessing income

Income which is not eligible for solvency determination:

- welfare, social assistance, family allowances, child tax benefits, child support payments, medical disability, and worker's compensation should not be considered in the solvency determination given that these payments are made in the public interest and it is unlikely that the Crown would seek to recover the amount of the guarantee from these payments to pay the debt on default;

Income which is eligible for solvency determination includes:

- employment income, proven by the three most recent Canada Revenue Agency (CRA) Notices of Assessment, pay stubs;
- Employment Insurance benefits, including maternity leave benefits and parental leave benefits, proven by EI statements, or the T4E;
- Canada Pension Plan payments / Quebec Pension Plan payments, proven by pension statements or financial institution statements showing these deposits;
- Old Age Security payments, proven by OAS statements or financial institution statements showing these deposits;
- other pension payments, proven by pension statements or financial institution statements showing these deposits;
- investment income such as dividends or interest, proven by the T5 Statement of Investment Income;
- trust income, proven by T3 Statement of Trust Income;
- rental income, proven by recent income tax forms submitted to the CRA, or financial institution statements showing these payments as deposits combined with proof of title to the rental property and rental agreements;
- earnings on a life insurance policy, proven by statements from the life insurance company;
- spousal support (alimony) payments, proven by most recent income tax form filed, or by financial institution statements showing the deposits combined with the agreement/court order showing the amount to be paid;
- business income, proven by the most recent tax filings, or by financial institution professional business account statements.

ENF 8 Deposits and Guarantees

Regularly documented cash deposits into a guarantor's accounts may be proof of income; however officers should require credible evidence of the origin of these deposits and their continuing nature, as well as reasonably satisfying themselves that they are not illegally obtained.

In cases where officers deem it reasonably appropriate in the circumstances, they may accept alternative documentary proof of income or require additional corroborating proof.

Assessing assets:

- assets acceptable for a guarantee should be capable for easy liquidation by the Crown.
- equity in property is acceptable as long as the property is in Canada.
- where the guarantor owns an asset with another person or persons, only the percentage of equity owned by the guarantor will be considered for proof of solvency;
- letters of credit, credit limits on credit cards, and unused or available lines of credit are not considered assets;

Assets which should not be accepted for solvency determination:

- assets held in foreign locations (e.g. offshore accounts) due to the difficulty of seizing these assets upon forfeiture;
- assets held in forms of ownership so complicated that enforcing the debt would be overly time consuming and difficult, for example, a commercial building held by a number of owners;
- Registered Retirement Savings Plans (RRSP);
- Registered Educational Savings Plans (RESP);
- value of pension plans, including personal locked-in or prescribed plans such as Locked In Retirement Accounts (LIRA), Life Income Funds (LIF), Life Registered Income Funds (LRIF), etc. (*Note: all provinces provide unconditional protection against creditors for money held in a pension plan or when transferred out to a personal locked or prescribed plan such as a LIRA, LIF, LRIF*)
- Canada savings bonds and bonds issued by entities other than the Government of Canada;
- vehicles of any type;
- tools;
- machinery;
- personal property such as furniture, antiques, collectibles, jewelry, artwork, clothing, and other personal effects.

Eligible assets for solvency determinations include:

- savings, proven by the previous 12 month period of financial institution statements;
- Guaranteed Investment Certificates (GICs), proven by financial institution statements;
- Treasury bills, proven by financial institution statements;

ENF 8 Deposits and Guarantees

- bonds issued by the Government of Canada which are transferrable (Canada Savings Bonds are not acceptable because they are not transferable), proven by bond certificates;
- stocks, proven by stock certificates, where the principle investment is at least 12 months old;
- equity in real estate, proven by the registered title or deed to the property, the mortgage balance statement or mortgage discharge, where applicable, and the most recent municipal property tax assessment or property evaluation done by the bank or other reputable institution;

Officers may accept other documentary proof of assets, or require additional corroborating proof in cases where they deem it appropriate in the circumstances.

8.15 Taking a guarantee

To take a guarantee, the IRCC or CBSA officer shall:

- ensure that information showing that the guarantor meets regulatory requirements is recorded and placed on file;
- photocopy all documents produced to prove income and assets as well as identification documents, and place on file;
- complete the Solemn Declaration of Solvency by Guarantor form [BSF564];
- complete the Guarantee form IMM1230E;
- complete the Guarantee (where there are Co-signers) Bond, where applicable [BSF 507];
- complete the Guarantee Log form to maintain control of guarantees issued and for statistical purposes [IMM 5073B];
- complete the Acknowledgement of Conditions form [IMM 1262E] which shall be written in a clear and precise manner in order to render the guarantee enforceable;
- explain the conditions and the consequences of non-compliance to the person concerned and the guarantor, ensuring that the guarantor understands their responsibilities and the consequences should the person concerned not respect any of the conditions imposed;
- ensure that the person concerned and a witness sign the Acknowledgement of Conditions form [IMM 1262E]. (Under R49(1), the guarantor must acknowledge in writing that they have been informed of the conditions imposed and that non-compliance with any of the conditions will result in forfeiture of the deposit or enforcement of the guarantee);
- provide a copy of the guarantee, the Declaration of Solvency, and the Acknowledgement of Conditions form to the guarantor; and a copy of the Acknowledgement of Conditions to the person concerned;
- place the original guarantee and Declaration of Solvency, and a copy of all other signed forms on file;
- provide detailed reasons in the file notes for the recommendation that a guarantee be imposed; and
- update GCMS and NCMS, as applicable.

8.16 Altering or amending a guarantee

ENF 8 Deposits and Guarantees

Any unilateral attempt to alter or amend the conditions upon which a guarantee was posted shall not be enforceable. The original guarantee will remain valid and enforceable.

The conditions of a guarantee cannot be altered without the consent of all parties, e.g., an IRCC or CBSA officer or a member of the Immigration Division, signatory to the guarantee as well as the guarantor.

An amended guarantee is required if any of the conditions of the original guarantee have been altered or amended.

When the person concerned makes a request to the CBSA, IRCC or the Immigration Division to have any reporting conditions modified and the request is granted, the guarantor must be made aware of the new conditions imposed on the person concerned; and the guarantor is required to appear at the CBSA or IRCC office as applicable and sign the Amendment to Guarantee for Compliance Issued form [IMM 5071B] outlining the amended conditions. The person concerned is also required to sign the form.

The original office involved in the taking of the original guarantee must be advised of any alterations, amendments, and extensions.

Procedures to increase the amount of the original guarantee:

To increase the amount of the original guarantee, a CBSA or IRCC officer shall:

- advise the guarantor that the change in conditions means that the guarantee amount is being increased;
- reassess the solvency of the guarantor for the increased amount, following the process outlined in 8.14 above, complete the Solemn Declaration of Solvency by Guarantor form [BSF564] and the Guarantee Log [IMM 5073B];
- complete the Amendment to Guarantee for Compliance form [IMM 5071B], explain amended conditions to the guarantor and ensure that the guarantor and a CBSA or IRCC witness sign the form;
- provide a copy of the form IMM 5071B to the guarantor and place the original on file; and
- update GCMS and NCMS, as applicable.

Procedures to reduce the amount of the original guarantee:

To reduce the amount of the original guarantee, the CBSA or IRCC officer shall:

- complete the Amendment to Guarantee for Compliance form [IMM 5071B], explain the amended conditions to the guarantor and ensure that the guarantor and a CBSA or IRCC witness sign the form;
- provide a copy of the form [IMM 5071B] to the guarantor and place the original on file; and
- update GCMS and NCMS, as applicable.

8.17 Rejecting a deposit or guarantee

If the bondsperson fails to provide personal documentation to prove identity, status, residency and their current address, or fails to provide evidence of their ability to ensure that the person concerned will comply with the conditions imposed, the officer will advise them to return with more documentation or to request a change of conditions. Officers will document this action and the reasons on the file as the person concerned will continue to be detained in the meantime.

ENF 8 Deposits and Guarantees

For guarantees, if income and assets presented are insufficient to post a guarantee, the officer will advise the guarantor to return with more documentation or to request a change of conditions. Officers will document this action and the reasons on the file as the person concerned will continue to be detained in the meantime.

Delegated officers may make a decision to reject a deposit or guarantee except in cases where the Immigration Division has imposed the guarantee and named the bondsperson. In these cases, officers shall not assess the suitability of the bondsperson and may not reject the bond or guarantee. Officers can only consider solvency issues if the assessment was not completed by the Hearings Officer or one of the exceptions listed in 7.2.2 applies. If justified, the officer may then reject the deposit or guarantee and will document this action and the reasons on file. Since the person will remain in detention, the officer must inform the Hearings Officer who will then present this information to the ID, client and their counsel.

Once the Immigration Division has made a decision to release and specified conditions, an officer has no legal authority to reject or change the conditions; however if they have concerns regarding the bondsperson named by the Immigration Division, they should communicate their concerns to the Hearings Officer who can address them, if appropriate, with the Immigration Division.

For the CBSA, Inland Enforcement Assistants may review the documentation received and prepare the file for officer review, but may not make the decision on whether a proposed bondsperson meets the requirements and is suitable to post a bond.

Officers shall fully document decisions to reject a bond and their reasons in the case file and NCMS or GCMS, as applicable.

8.18 Stay of removal order

Deposits: A stay of removal by the Immigration Appeal Division has the effect of cancelling a deposit [A68(2)(b)]. Deposits are to be refunded unless the conditions were breached before the stay was ordered.

Guarantees: A stay of removal by the Immigration Appeal Division has the effect of rendering the guarantee null and void. A guarantee should be left on file and, apart from the requirement to update NCMS/GCMS systems in order to register the effect of the stay on the guarantee, no further action is to be taken unless the conditions were breached before the stay was ordered.

8.19 Withdrawal, refund and forfeiture of a deposit or enforcement of a guarantee

Withdrawal:

- if the bondsperson wishes to replace or be relieved of the deposit or a guarantee, another deposit or guarantee must be signed or the bondsperson must make arrangements with the CBSA to deliver the person into CBSA custody.
- the onus is on the bondsperson to arrange to deliver the person concerned into CBSA custody. CBSA officers will not locate and arrest the person concerned so that a bondsperson may be relieved of the obligation of the deposit or guarantee.
- the death of a bondsperson does not render the deposit or guarantee unenforceable. The rights and liabilities flowing from security deposits and guarantees are passed on to the executors or administrators of the estate of the depositor or guarantor.
- officers' decisions on compliance and forfeiture are subject to a judicial review application to the Federal Court of Canada.

ENF 8 Deposits and Guarantees

- procedures must be in place in each office to review deposits for refund or forfeiture at the conclusion of the case before the file is sent to archives.
- a bondsperson, including a co-signer, may request to be released from the obligation of the deposit or guarantee.
- a bondsperson, including a co-signer, cannot be relieved of their obligation by simply stating the desire to be relieved, or by simply requesting it.
- the bondsperson must apply to a CBSA or IRCC officer, depending on which officer imposed the deposit or guarantee, or to a member of the Immigration Division if a member of the Immigration Division imposed the deposit or guarantee. Before relieving the bondsperson of the bond, and if the bond was posted as an offer of release by the Immigration Division, an application must be made to the ID and the ID must approve the change. If a suitable new bondsperson is not available, the existing bondsperson must surrender the person into CBSA custody as the person no longer meets the conditions of release.

Refund of a deposit:

When the person concerned subject to a deposit has complied with the conditions of the deposit, as set out on the Security Deposit form [BSF579], the deposit will be refunded to the depositor.

The IRPA does not provide specific authority for refunds, but R49(3) provides the authority to return funds held in the Consolidated Revenue Fund to the depositor.

Officers shall review the file to determine if the deposit should be refunded.

If the deposit should be refunded, the officer shall cancel the deposit and arrange for the return of the money deposited.

The officer shall complete a Requisition for Refund/Forfeiture of Security Deposit form [IMM 0709B] and forward it to the authorized manager/supervisor for signature.

When completing the IMM 0709B form, officers shall:

- confirm the latest address for the depositor and insert it in the “*Current mailing address of the depositor- Adresse postale actuelle du déposant*” field;
- insert the security deposit number into the “*Receipt No. – Reçu no*” field in the IMM 0709B. The FIN 0007B or the K21 form number is not to be inserted into this field;
- print the name of the authorizing officer (signing authority) in the “*Name of authorizing officer – Nom du fondé de pouvoir*” field. Initials are unacceptable; and
- print out authorizing (signing) officer’s title in the “*Title as per delegation instrument – Titre conformément au document officiel de delegation de pouvoir*” field.

Only a manager/supervisor with delegated authority for section 34 of the *Financial Administration Act* is delegated to sign the IMM 0709B, as per the procedures set out in Chapter 2 - Financial Signing Authorities of the *Comptrollership Manual*, Finance Volume.

The manager/supervisor will return to the officer the signed IMM 0709B

Page 3 (pink copy) is placed on file.

ENF 8 Deposits and Guarantees

For the CBSA, the regional Financial Administration officer and/or Administrative officers, depending on regional processes, shall forward the following documentation to CBSA Revenue Accounting and Reporting Division, 355 North River Road, 18th Floor, Ottawa, ON K1A 0L8:

- page 1 (white copy) and page 2 (yellow copy) of the a Requisition for Refund/Forfeiture of Security Deposit [IMM 0709B];
 - copy of the Security Deposit form [BSF579];
 - copy of any form completed by officers recording the depositor's information – sometimes referred to as the bondsperson's information sheet or the personal information sheet (full name; date of birth; address; phone numbers; driver's license number; status; name, address and phone number of employer; relationship to person concerned, etc.);
 - copy of any form or request submitted by the depositor or the person concerned requesting a refund of the deposit (this is valuable as it would most likely have a more current address for the depositor than the original Security Deposit form);
 - copies or scans of the identification documents provided by the depositor when the deposit was taken (needed to ensure correct spelling of the name for the refund cheque and also to perform a name query in GCMS in an attempt to verify the bondsperson's current address); and
 - copy of the proof of address when the deposit was taken.
-
- IRCC officers shall forward the documentation for action to: Accounting Operations, Revenue Unit, NHQ, 70 Crémazie Street, Gatineau, QC, K1A 1L1.
 - once the documentation has been sent as noted above, written notification shall be sent to the depositor that the deposit has been forwarded to CBSA Revenue Accounting and Reporting Division in Ottawa; or if IRCC, to Accounting Operations, Revenue Unit, NHQ for refund and that they should allow ten to twelve weeks for cheque processing.

If information becomes available to cause a CBSA or IRCC officer to recommend that the deposit be refunded, rather than forfeited, after a forfeiture has been processed, the refund procedures described above shall be followed, detailing the reasons for the reversal in the Remarks section of the IMM 0709B.

Powers of Attorney:

A depositor may give power of attorney to another person to act as the depositor's agent with respect to all or part of the depositor's finances and property. In order to refund a deposit to an individual who is not the depositor, a validly executed Power of Attorney document must be provided by the depositor;

For the CBSA, the original copy of the Power of Attorney or Consent document, not a photocopy, must be forwarded to CBSA Revenue Accounting and Reporting Division, 355 North River Road, 18th Floor, Ottawa, ON K1A 0L8, before a deposit can be refunded to an attorney.

For IRCC, the original copy of the Power of Attorney or Consent document, not a photocopy, must be forwarded to Accounting Operations, Revenue Unit, NHQ, 70 Crémazie Street, Gatineau, QC, K1A 1L1.

Assignment of deposit or guarantee:

A deposit or guarantee, is not assignable to a third party.

If a bondsperson wants to "assign" the deposit or guarantee to a third party willing to assume the deposit or guarantee obligation, the original deposit must be refunded and the original guarantee must be cancelled/considered null and void and then a new deposit or guarantee must be issued, following the procedures for the taking of deposits or guarantees.

Forfeiture of a deposit or enforcement of a guarantee:

ENF 8 Deposits and Guarantees

The CBSA generally makes the decisions on forfeitures of deposits and enforcement of guarantees.

Forfeiture of a deposit is to the Receiver General for Canada.

If the person concerned for whom a deposit has been paid or a guarantee posted breaches any condition, a CBSA or an IRCC officer will review the circumstances of the breach.

Although R49(4) does not provide for officer discretion in determining if a breach of condition has occurred, jurisprudence (*Hamid v. Canada*, 2015 FC 1208) indicates that officers have a limited discretion to decide whether a breach of conditions is severe enough to warrant the forfeiture of the deposit or enforcement of the guarantee.

Recommendations that the deposit be forfeited or the guarantee enforced will be directed to the officer's manager with delegated authority for section 34 of the *Finance Administration Act*.

The manager, on receiving the officer's recommendation for forfeiture of the deposit or enforcement of the guarantee, shall determine whether the breach is sufficient in the circumstances of the case to warrant forfeiture of the deposit or enforcement of the guarantee.

The Regulations do not provide express authority for officers to reduce or otherwise alter the amount of the deposit or guarantee. In the absence of express authority, it is CBSA's position that if an officer decides to forfeit the deposit or guarantee, the bondsperson will be held accountable for the entire amount of the deposit or guarantee.

The rules of procedural fairness apply when a deposit or guarantor is under consideration for forfeiture or enforcement due to a breach by the person concerned of a condition imposed. Bondspersons will be provided with notification of the breach of conditions and offered an opportunity to provide written representations with respect to whether there was, in fact, a breach of condition and whether the breach was so minor as to not warrant forfeiture.

If forfeiture or enforcement is warranted, the manager shall have written notification of the specifics of the breach and possible forfeiture or enforcement action sent to the bondsperson by registered mail, providing them with an opportunity to make a written representations as noted above within 30 days of receipt concerning the decision to be made;

All written representations or submissions from the bondsperson shall be considered by the manager in reaching the decision;

If the bondsperson has not responded within 37 days of the written notification, they will be sent written notification of the decision and reasons by registered mail;

Guarantors are notified of the decision to enforce the guarantee via the Guarantee of Compliance Enforcement Notice form [IMM 5072B].

If the decision is to forfeit the deposit or enforce the guarantee, the manager will direct an officer to complete a Requisition for Refund/Forfeiture of Security Deposit form [IMM 0709B] for a deposit forfeiture and the Requisition for Enforcement of Guarantee [IMM 5345B] for a guarantee enforcement.

The officer shall complete a Requisition for Refund/Forfeiture of Security Deposit form [IMM 0709B] for a deposit, or a Requisition for Enforcement of a Guarantee form [IMM 5345B] and forward it to the authorized manager/supervisor for signature.

Only a manager/supervisor with delegated authority for section 34 of the *Financial Administration Act* is delegated to sign the IMM 0709B and the IMM 5345B as per procedures set out in Chapter 2 - Financial Signing Authorities of the Comptrollership Manual, Finance Volume.

ENF 8 Deposits and Guarantees

The manager/supervisor will return to the officer the signed IMM 0709B or IMM 5345B forms.

For deposits, the CBSA regional Financial Administration office and/or officers, depending on regional processes, shall forward the following documentation to CBSA Revenue Accounting and Reporting Division, 355 North River Road, 18th Floor, Ottawa, ON K1A 0L8:

- page 1 (white copy) and page 2 (yellow copy) of the IMM 0709B;
- copy of the Security Deposit form [BSF579]; and
- copy of the decision letter to the depositor.

IRCC officers shall forward the IMM 0709B for action to: Accounting Operations, Revenue Unit, NHQ, 70 Crémazie Street, Gatineau, QC, K1A 1L1.

Page 3 (pink copy) of the IMM 0709B is placed on file.

For guarantees, the officer or regional financial administration office, according to regional processes, will send the guarantor, by registered mail, the original signed Requisition for Enforcement of a Guarantee form [IMM 5345B], and place a copy on file.

Following document shall be sent to CBSA Revenue Accounting and Reporting Division, 355 North River Road, 18th Floor, Ottawa, ON, K1A 0L8:

- copies of the Requisition for Enforcement of a Guarantee form [IMM 5345B],
- the Declaration of Solvency [BSF564; IMM 1416B],
- a copy of the Guarantee/Performance Bond [IMM 1230E],
- a copy of the letter of decision sent to the guarantor / the Guarantee of Compliance Enforcement Notice form [IMM 5072B] sent to the guarantor, and
- copies or scans of the guarantor's identification documents taken at the time of posting the guarantee.

For IRCC, the documentation shall be sent to Accounting Operations, Revenue Unit, NHQ, 70 Crémazie Street, Gatineau, QC, K1A 1L1.

The officer shall update the file as well as GCMS and NCMS. Officers should refer to the NCMS and GCMS user guides for further details.

8.20 Requests for information

Regional offices should not refer requests from the person concerned or depositors and guarantors for information about forfeiture or refunds directly to National Headquarters.

A CBSA regional office may contact CBSA Revenue Accounting and Reporting Division, on behalf of the person concerned, and the bondsperson.

An IRCC regional office may contact IRCC Accounting Operations, Revenue Unit, NHQ, on behalf of the person concerned and the bondsperson.

For any financial coding or financial system transactional issues, the IRCC or CBSA officers should contact their regional headquarters.