

## BANK GUARANTEE COMPLIANCE GUIDE

PLEASE NOTE THAT THIS IS AN IMPORTANT DOCUMENT.

ENSURE THAT YOU READ AND COMPLETE EACH QUESTION AND IF IN DOUBT SEEK ADVICE FROM YOUR ACCOUNTANT OR OTHER PROFESSIONAL ADVISOR.

NOTE THAT MISSING, INCOMPLETE, INACCURATE OR ILLEGIBLE DETAILS MAY DELAY ASSESSMENT OF YOUR APPLICATION OR RESULT IN THE APPLICATION BEING REJECTED.

The purpose of a bank guarantee is to indemnify a provider for refund amounts that the provider may be required to pay in the case of a provider or student default.

In order for a provider to have a bank guarantee approved, a provider must first apply to the Minister in writing, and demonstrate compliance with the relevant provisions of the *Education Services for Overseas Students Act 2000* (ESOS Act 2000) and *Education Services for Overseas Students Regulations 2001* (ESOS Regulations 2001). The application must include the following:

**1. An explanation why the provider is exempt from the requirement to be a member of a Tuition Assurance Scheme [s.22 of the Act].**

Examples of compliance include:

A letter stating that the provider cannot get Tuition Assurance Scheme (TAS) coverage for its courses because of the special nature of the courses, or that a TAS has rejected the provider's application for coverage.

*AND/OR*

A letter from a TAS saying it won't cover the courses, and stating reasons why.

Documentation attached

**2. A copy of the bank guarantee [r.3.12(2)(a) of the Regulations].**

Examples of compliance include:

A completed and signed copy of the pro-forma Bank Guarantee.

Documentation attached

**3. Information showing that the individuals signing the agreement for the provider have the authority to do so [r.3.12(2)(b)].**

Examples of compliance include:

A letter of attorney from the provider's CEO or Managing Director.

Documentation attached

**4. Information showing that the individuals signing the agreement for the Bank have the authority to do so [r.3.12(2)(c)].**

Examples of compliance include:

A letter of attorney from the Bank Manager.

Documentation attached

**5. Information showing that the Bank has, and will continue to have, financial resources, or access to financial resources, to pay amounts for which the guarantee is given [r.3.13(2)].**

Examples of compliance include:

Evidence of financial resources such as an Annual Report.

Documentation attached

**Note:**

**A provider who has a Bank Guarantee must within 28 days after the end of the calendar year give the Secretary<sup>1</sup> and the Fund Manager<sup>2</sup> written notice explaining why the provider is exempt from the requirements of the Act and a copy of the Bank Guarantee.**

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<sup>1</sup> *Secretary* means the Secretary of the Department

<sup>2</sup> *Fund Manager* means the Fund Manager appointed under section 49 of the *Education Services for Overseas Students Act 2000* to manage the ESOS Assurance Fund.

# BANK GUARANTEE

THIS DEED is made on \_\_\_\_\_ day of \_\_\_\_\_ 2003  
by [\*BANK] ACN (“the Bank”), an authorised deposit-taking institution within the meaning of the Banking Act 1959, and [\*PROVIDER] ABN (“the Provider”) under the *Education Services for Overseas Students Act 2000* (“the Act”) and *Education Services for Overseas Students Regulations 2001* (“the Regulations”) in favour of Overseas Students<sup>3</sup> as listed in Item 1 of the attached Schedule (“the Students”), who have paid Course Money<sup>4</sup> (as listed in Item 2 of the attached Schedule) to the Provider for the course that the Provider is offering the Students (“Course Money”).

## WHEREAS

- A Section 22 of the Act requires all Providers to belong to a tuition assurance scheme, unless exempted by the Regulations;
- B [\*PROVIDER] of [\*ADDRESS] in [\*STATE OR TERRITORY], a Provider within the meaning of the Act, seeks to gain an exemption, under regulation 3.11 (b) of the Regulations, from being required to comply with Section 22 of the Act for the 2003 academic year (“the Guaranteed Year”);
- C Under regulation 3.11 (b) of the Regulations, a Provider is exempt from the requirement of Section 22 of the Act if the Provider has obtained a bank guarantee that is approved by the Minister in accordance with regulation 3.13 of the Regulations;
- D The Provider represents that the total Course Money it will receive from Students during the Guaranteed Year will not exceed \$[\*AMOUNT].

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<sup>3</sup> *Overseas student* means a person (whether within or outside Australia) who holds a student visa. Section 5, *Education Services for Overseas Students Act 2000*

<sup>4</sup> *Course money* means money a provider receives, directly or indirectly, from: (a) an overseas student or intending overseas student; or (b) another person who pays the money on behalf of an overseas student or intending overseas student; for a course that the provider is providing, or offering to provide, to the student. Money received for a course includes: (a) tuition fees; and (b) any amount received by the provider that the provider is to pay, on behalf of the student, to a registered health benefits organisation (within the meaning of the *National Health Act 1953*); and (c) any other amount that the student had to pay the provider, directly or indirectly, in order to undertake the course. Section 7, *Education Services for Overseas Students Act 2000*.

**NOW THEREFORE THIS DEED WITNESSES** as follows:

1. The Bank indemnifies the Provider for any amount the Provider could be required to pay under Sections 28 or 29 of the Act, to a maximum amount of [\*AMOUNT] (\$[\*AMOUNT]) for the Guaranteed Year;
2. The parties acknowledge that each student who is entitled to a refund from the Provider of any amount under sections 28 or 29 of the Act may make a claim in writing directly to the Bank (up to the amount for each Student listed in Item 2 of the Schedule) and the Bank will in good faith pay such amount promptly **PROVIDED** the Bank receives notification either from the Provider or the Department of Education, Science and Training that a refund is payable under Section 28 or Section 29 of the Act to that student during the Guaranteed Year. Any such payment made by the Bank shall satisfy the Bank's indemnity in paragraph 1;
3. The Provider will have no claim against the Bank on any grounds whatsoever for any payment the Bank makes in good faith under paragraph 2 above and it is agreed that the Bank shall have no responsibility to investigate the authenticity of a claim or the Students respective capacity or entitlement to make a claim under paragraph 2 above;
4. This Deed is only operative upon it being approved by the Minister or his delegate appointed under Section 170 of the Act; and
5. This Guarantee is to continue until it is returned to the Bank together with a letter from the Department of Education, Science and Training approving the return of the Guarantee.

This Deed shall be governed by the law of [\*STATE OR TERRITORY] and the benefit of this Deed is not capable of assignment.

**IN WITNESS WHEREOF** this Deed has been executed on the date aforementioned.

**EXECUTED BY** [\*PROVIDER] ABN by being signed by those persons who are authorised under its constitution to sign for the company.

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Director  
Full Name.....  
Address.....  
.....

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Director  
Full Name.....  
Address.....  
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Signed in my presence for and on behalf of  
[\*BANK] by the duly constituted attorney  
of the said Bank

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[\*BANK] by its attorney who is the  
[\*TITLE] and who is the attorney  
mentioned and referred to in Power  
of Attorney registered in the Land  
Titles Office, Book ..... No. ....

.....  
[\*TITLE]  
who is personally known to me.

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.....  
Signature of Witness

.....  
Name of Witness (BLOCK LETTERS)

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Address of Witness