

FW: Change of Law Protection Agreement - Fair Hydro

From: Ken Kandeepan <ken.kandeepan@ofina.on.ca>
To: "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>
Cc: John Psinas <john.psinas@ofina.on.ca>, "Donaldson, Mark (TBS)" <mark.donaldson@ontario.ca>
Date: Thu, 16 Nov 2017 16:41:54 -0500

Hi Cindy

Some more communication on this, given that all of this is simply the provision of information to the Province as a "specified creditor" I don't believe that it should impact the accounting. I am not sure what Steve is referring to in "other Program Agreements" though.

Will talk to Malle and let you know if there is further clarity.

Thanks

Ken k

From: ASHBOURNE, STEPHEN [mailto:STEPHEN.ASHBOURNE@blakes.com]
Sent: Thursday, November 16, 2017 4:07 PM
To: Ramchandani, Rima <rramchandani@torys.com>; Malle Hanslep (MOF) <Malle.Hanslep@ontario.ca>; Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Mike Manning <Mike.Manning@ofina.on.ca>; Gadi Mayman <Gadi.Mayman@ofina.on.ca>; Ken Kandeepan <Ken.Kandeepan@ofina.on.ca>; Tobias P. Whitfield (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Change of Law Protection Agreement - Fair Hydro

Noteholders do not get notice of amendments under your Trust Indenture.

"Specified Creditors" are defined to include the Indenture Trustee. The notices we are most concerned about are the Issuer Certificates, Ordinary Resolutions and other notices contemplated to be delivered to the Indenture Trustee under 11.01 and 11.02. Please confirm that is what you are proposing be delivered to the Province.

Regarding other Program Agreements, there is no notice requirement in favour of Noteholders, the Indenture Trustee or other Specified Creditors. What is your proposal for those situations?

The impact of an amendment on the Province is not aligned with the impact on Noteholders. The Province needs itself to be treated as a "Specified Creditor" in order to make the amending thresholds operate properly in relation to the Province under the Trust Indenture.

As mentioned, a covenant from the Indenture Trustee is not reliable given their passive role, and it is doubtful a trust company would ever take on a standalone obligation of that sort in any event.

Stephen R. Ashbourne
Partner
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Dir: 416-863-3086

From: Ramchandani, Rima [mailto:rramchandani@torys.com]
Sent: Thursday, November 16, 2017 3:31 PM
To: 'Hanslep, Malle (MOF)'; ASHBOURNE, STEPHEN; Mansoori, Nina
Cc: LEE John -TREASURY; WONG Leslie -LAWDIV; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Whitfield, Tobias P. (MOF); Ramchandani, Rima

Subject: RE: Change of Law Protection Agreement - Fair Hydro

Hi Malle, Nina is busily revising the draft process agreement (and Osler is doing the same on the protection agreement) to meet the tight timelines and we will send those to you as soon possible – since the two docs have to hang together, unfortunately it is not a simple or quick exercise. Regarding Steve's email below, our instructions from OPG are that the Province is to receive whatever Specified Creditors are entitled to receive under the Trust Indenture. To achieve that in the simplest way possible from a documentation perspective, as Nina relayed in her email below, we will include a covenant of the Indenture Trustee in the Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTI. Steve's proposal below would require that the Indenture Trustee provide more reporting to the Province than is required for Specified Creditors.

If there is a miscommunication on this point, it would probably be most efficient if you arranged a joint call with John, Mike and Ken.

Thanks,
Rima

Rima Ramchandani

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From: Hanslep, Malle (MOF) [<mailto:Malle.Hanslep@ontario.ca>]
Sent: November-16-17 3:10 PM
To: ASHBOURNE, STEPHEN <STEPHEN.ASHBOURNE@blakes.com>; Mansoori, Nina <nmansoori@torys.com>
Cc: LEE John -TREASURY <john.s.lee@opg.com>; WONG Leslie -LAWDIV <leslie.wong@opg.com>; Ramchandani, Rima <rramchandani@torys.com>; Manning, Mike (OFA) <Mike.Manning@ofina.on.ca>; Mayman, Gadi (OFA) <Gadi.Mayman@ofina.on.ca>; Kandeepan, Ken (OFA) <Ken.Kandeepan@ofina.on.ca>; Whitfield, Tobias P. (MOF) <Tobias.Whitfield@ontario.ca>
Subject: RE: Change of Law Protection Agreement - Fair Hydro

Hi – If there are questions about Steve's email, would Nina please call Steve. Thanks.

Malle

From: ASHBOURNE, STEPHEN [<mailto:STEPHEN.ASHBOURNE@blakes.com>]
Sent: November 16, 2017 2:01 PM
To: Mansoori, Nina
Cc: LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima; Manning, Mike (OFA); Mayman, Gadi (OFA); Kandeepan, Ken (OFA); Hanslep, Malle (MOF); Whitfield, Tobias P. (MOF)
Subject: RE: Change of Law Protection Agreement - Fair Hydro

Hi Nina,

Based on a discussion earlier today, I understood OPG's proposal would involve:

1. Removal, from the Adherence Conditions in the Protection Agreement (section 4.02), of the requirement to deliver a certificate prior to the amendment of a Primary Obligation.
 - Section 4.02 will remain unchanged in relation to incurrences
 - The Province will still receive a Process Certificate in respect of amendments under the Process Agreement.
2. The Province will be referred to in the Trust Indenture as the "Protection Provider" and the Trust Indenture will specifically designate the Protection Provider as a Specified Creditor.
3. The Trust Indenture will provide that the Protection Provider shall get 10 business days' notice of

any proposed amendments to the Trust Indenture or any of the Program Agreements.

- This will require revisions to the existing amending processes set out in sections 11.01 (*Supplemental Indentures and Amendments without Consent of Specified Creditors*), section 11.02 (*Supplemental Indentures and Amendments with Consent of Debtholders*) and section 13.18 (*Amendments to Program Agreements*) of the Trust Indenture.

The objective is to give the Province comfort that it will not be forgotten in the process by which the underlying agreements are permitted to be amended. A covenant by the Indenture Trustee for it to provide a notice suffers the same sort of process risk for the Province as the one Peter highlighted last night – the Indenture Trustee may well forget or be unaware. We were satisfied that building the notice into the existing amending processes contemplated in the Trust Indenture would address that issue. While the effect would not be to vitiate the limited guarantee due to an unfulfilled Adherence Condition, the Province will at least know that an amendment is pending, and so to look out for the Process Certificate required under the Process Agreement.

Feel free to call if a discussion on this would be useful.

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From: Mansoori, Nina [<mailto:nmansoori@torys.com>]
Sent: Thursday, November 16, 2017 1:36 PM
To: ASHBOURNE, STEPHEN
Cc: LEE John -TREASURY; WONG Leslie -LAWDIV; Ramchandani, Rima
Subject: Change of Law Protection Agreement - Fair Hydro

Steve,

Regarding the Adherence Condition relating to amendments to Funding Obligations, we understand that OPG and the Province have had some further discussions on this point and the suggestion is that the concept be replaced with a covenant from the Indenture Trustee in the

Change of Law Protection Agreement to provide the Province with copies of all notices and documents which the Indenture Trustee is required to provide to Specified Creditors under the MTL. Oslers is considering the point and will discuss with the dealers but didn't see any issue at first blush. Can you please confirm that this is an acceptable resolution on this point from the Province's perspective?

Thanks,
Nina

Nina Mansoori

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