RE: Would the following clause compromise non-control of the Trust?

From: "Petsche, Nadine (TBS)" <nadine.petsche@ontario.ca>
To: "Provis, Ian (TBS)" <ian.provis@ontario.ca>
Cc: "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>
Date: Thu, 09 Mar 2017 16:36:43 -0500

Ian,
How do you see this as different from what we have in the TP guidelines that we have agreed to with the AG? n

---

From: Provis, Ian (TBS)
Sent: March 9, 2017 4:34 PM
To: Petsche, Nadine (TBS); Veinot, Cindy (TBS)
Subject: RE: Would the following clause compromise non-control of the Trust?

Sorry for the delay. I see this as not having a tight tie to the control assessment, but there is concern. in the opinion of the Province makes the province deciding operating policy or forcing the trust to take actions not under their decision. I question that because it seems the nature is intended to be the Province funds the trust and the trust funds the TP recipients
Therefore
demand the repayment of an amount equal to any Funds the Province provided to the Recipient;
does not make sense to me- it should be Funds the Trust provided to the Recipient – if I am right on this – the Province receives no rights to receive any money back but the trust does and they can re-spend it – the trust can never be obligated to refund the province.
This would be the counter claim in a control assessment – the Province is the contributor – the Trust must have independence and the Province deciding when to trigger a non-compliance event seems risky but if it were offset that the trust could invest in similar project with the refunded money without any influence by the Province it would show the Province making the assessment of a compliance event would not get the benefit back but it would actually become free cashflow for the trust to use

Ian Provis
☎ 416.327.2722 | ian.provis@ontario.ca

From: Petsche, Nadine (TBS)
Sent: Thursday, March 09, 2017 3:44 PM
To: Veinot, Cindy (TBS); Provis, Ian (TBS)
Subject: RE: Would the following clause compromise non-control of the Trust?

Cindy/Ian,
I have a call at 4 pm and it would be helpful if you could provide comments on whether the clawback clauses below would compromise the non-controlled nature of the trust.
Thx.n

From: Petsche, Nadine (TBS)
Sent: March 9, 2017 2:01 PM
To: Veinot, Cindy (TBS); Provis, Ian (TBS)
Subject: Would the following clause compromise non-control of the Trust?
Importance: High

1.0 EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT

1.1 **Events of Default.** Each of the following events will constitute an Event of Default:

(a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
  (i) carry out the Project; and
  (ii) use or spend Funds; [QM(1]

1.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

(a) provide the Recipient with an opportunity to remedy the Event of Default;
(b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
(c) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
(d) demand the repayment of an amount equal to any Funds the Province provided to the Recipient; and [QM(2]
(e) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

1.3 **Opportunity to Remedy.** If, in accordance with section 15.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

(a) the particulars of the Event of Default; and
(b) the Notice Period.

1.4 **Recipient not Remedying.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 15.2(b), and:

(a) the Recipient does not remedy the Event of Default within the Notice Period;
(b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
(c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections 15.2(a), (c), (d), (e), (f), (g), (h) and (i).

1.5 **When Termination Effective.** Termination under this Article will take effect as set out in the Notice.

2.0 FUNDS AT THE END OF A FUNDING YEAR

2.1 **Funds at the End of a Funding Year.** Without limiting any rights of the Province under Article 15.0, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Province may take one or both of the following actions:

(a) demand the return of the unspent Funds; [QM(3)]

3.0 FUNDS UPON EXPIRY

3.1 **Funds Upon Expiry.** The Recipient will, upon expiry of the Agreement, return to the Province any Funds remaining in its possession or under its control. [QM(4)]

4.0 REPAYMENT

4.1 **Debt Due.** If, pursuant to the Agreement:

(a) the Province demands the payment of any Funds or an amount equal to any Funds from the Recipient; or

(b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not their return or repayment has been demanded by the Province,

such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay or return the amount to the Province immediately, unless the Province directs otherwise.

4.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

4.3 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province at the address referred to in section 19.1.

4.4 **Failure to Repay.** Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to repay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario. [QM(5)]

Comment for Hydro One: Please ignore this clause for now. We are working with our legal counsel and accounting team to refine this.

Comment for Hydro One: Please ignore this clause for now. We are working with our legal counsel and accounting team to refine this.

Comment for Hydro One: Please ignore this clause for now. We are working with our legal counsel and accounting team to refine this.

Comment for Hydro One: Please ignore this clause for now. We are working with our legal counsel and

accounting team to refine this.

Comment for Hydro One: Please ignore this clause for now. We are working with our legal counsel and accounting team to refine this.