

CANADA PORT AUTHORITIES – BORROWING LIMITS

The *Canada Marine Act* (CMA) places several limitations on the borrowing powers of Canada Port Authorities (CPAs). A CPA cannot borrow money as an agent of the Crown nor will the Crown give any guarantee for an obligation or liability incurred by a CPA.

In accordance with section 8 of the CMA, limits are placed on CPA's power to borrow through their Letters Patent.

Presently, CPAs can seek an increase in their borrowing limit under section 9 of the CMA by making a request to the Minister of Transport, Infrastructure and Communities for Supplementary Letters Patent that increase the borrowing limit set out in the Letters Patent. An increase requires the recommendation of the Minister of Transport, Infrastructure and Communities, supported by an independent financial assessment of the CPA's debt capacity and ability to remain financially self-sufficient. Approval is then required of the President of the Treasury Board, the Minister of Finance and the Governor in Council.

Background

CPAs operate as Crown Agents for certain port-related activities, debt is incurred only if deemed appropriate by private-sector lenders, and without any guarantee of loans by the government. The borrowing limits serve the public interest in protecting the financial integrity of CPAs.

CPAs must employ commercially-based financing. Borrowing to support capital investment is obtained from private sector lenders, based on the CPA's stream of future revenues. Based on a two-tiered port

system, a more flexible borrowing regime is proposed that would allow Tier 1 ports to be subject to a code governing borrowings. These CPAs would be provided the option of substituting the current aggregate limits as the determinant for a code governing their power to borrow, and allow them to assume a larger debt obligation whenever their financial capacity permits them to do so. Requests for revised borrowing limits would be submitted by way of a resolution of the CPA's Board of Directors. Tier 1 CPAs that are satisfied with the current system would be free to maintain their aggregate borrowing limits.

This approach has the advantage of being dynamic and flexible to reflecting changing circumstances. The Minister of Transport, Infrastructure and Communities would no longer need to re-adjust aggregate limits for Tier 1 CPAs. The legal risk to the Crown would also be addressed through these amendments to the CMA.

Independent financial advice supporting this initiative was obtained from Pricewaterhouse Coopers (copy of the Executive Summary report attached).

Proposed Change

It is proposed to amend the CMA by:

- Adding, in section 8, a reference to a code governing a port authority's power to borrow;
- adding compliance and enforcement type provisions in section 28; and
- adding monitoring/certification requirements in section 30.1.

Recommendation by the CMA Review Panel – 5.3

Application and approval processes to increase borrowing limits should be simplified and streamlined to ensure that CPAs can undertake projects in a timely manner.

Stakeholder Views

An overwhelming majority of the stakeholders who raised the issue of borrowing limits for CPAs recommended that all restrictions imposed by the government in the letters patent be removed. They argue that market forces and lending institutions would provide the appropriate checks and balances.