

Comfort letters Q&A: Ireland

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This Q&A provides jurisdiction-specific commentary on *Practice note, Comfort letters* and forms part of *Cross-border loan financing*.

Comfort letters

1. Are comfort letters issued under the laws of your jurisdiction? If so, what are they called, and are they always issued by parent companies in respect of subsidiaries?

Letters of comfort are sometimes encountered in Ireland. Their usual context is where a parent company intends to provide a level of commercial assurance to a creditor of a subsidiary without going so far as to incur liability as a guarantor. However, they can arise in many different contexts unrelated to loan financing, for example general commercial contexts where a third party is dealing with a thinly capitalised subsidiary.

2. Can comfort letters be issued in binding form as well as in non-binding form under the laws of your jurisdiction? If so, how common are binding comfort letters?

A comfort letter may be binding or non-binding. Binding comfort letters are less common. If the parties intend the document to be binding, the creditor will usually insist on a formal document, such as an indemnity or guarantee.

3. Are there any particular requirements for comfort letters (whether binding or non-binding) under the laws of your jurisdiction?

There are no particular requirements for non-binding comfort letters under Irish law. If the comfort letter is intended to be binding, then it must be signed by, or on behalf of, the obligor. The key issue is always whether the parties intend the comfort letter to be legally binding and parties should clarify this at the outset.

4. Does a binding comfort letter differ from a primary or secondary liability guarantee under the laws of your jurisdiction, and if so how does it differ?

Whether a binding comfort letter creates a primary or a secondary obligation depends on how its terms are properly construed. It is, theoretically, possible for a comfort letter to create a primary obligation (for example, by way of an indemnity). However, it would be more common for a binding comfort letter to create a secondary obligation, namely one that is dependent on the underlying obligation being legal and enforceable.

5. What are the differences between primary and secondary liability guarantees in your jurisdiction?

It is incorrect to refer to a "primary liability guarantee" as a matter of Irish law. A contract of suretyship that creates a primary obligation is referred to as an "indemnity". This means that the surety is liable to make the relevant payment even if the underlying obligor's obligation is illegal, invalid or unenforceable. A contract of suretyship that creates a secondary obligation is referred to as a "guarantee". If the underlying obligation is illegal, invalid or unenforceable, then the surety has no liability either.

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