

25 May, 1984

Circular No. 4/84

Letters of Comfort

A Chara,

1. Guarantees in respect of the borrowings of State agencies, or of bodies in the private sector, can only be given in accordance with the relevant statutory provisions. A practice has, however, developed of issuing 'letters of comfort' in response to requests from lending agencies. Such letters have no statutory basis but have, nevertheless, been seen by some recipients as analogous to guarantees and have been subject to the interpretation, however ill-founded, that they provide a pledge of State resources. The Minister for Finance has had this matter under consideration and has directed that the following instructions regarding 'letters of comfort' be issued.
2. A letter which expressly, or by implication, gives a guarantee or undertaking not already authorised by legislation should not, in any circumstances be issued.
3. Furthermore, 'letters of comfort' should not be issued as a device to facilitate avoidance or postponement of major policy decisions (e.g. on the future of State bodies) or of the seeking of any necessary Oireachtas approval for justified increases in powers to guarantee borrowings.
4. Circumstances (e.g. timing difficulties in processing legislation) may justify the issue, as an exceptional measure, of a letter conveying a Minister's intention to approach the Oireachtas for authority to enable him to give a financial guarantee. Any such letter should specify the intended limit of the guarantee and any conditions which it is proposed to attach thereto. It should be made clear that the letter is a statement of intention only and that it can have no binding legal force. In all such cases the necessary legislation should be promoted with all possible speed. Departments should, of course, ensure that statutory powers to guarantee borrowings are closely monitored so that, if necessary, steps can be taken in good time to increase those powers before existing limits are reached.
5. Where there is no immediate intention of approaching the Oireachtas, letters should not be issued which suggest that a Minister would be willing, subject to Oireachtas approval, to meet certain commitments should the necessity arise or that he would be willing to consider sympathetically proposals for such commitments.
6. When the issue of a 'letter of comfort' in the circumstances described in par. 4 is unavoidable, advice as to the appropriate wording should be sought from the Department of Finance and where necessary from the Attorney General's Office. In particular, care should be taken to avoid
 - a) any appearance or implication of exceeding the extent of the Minister's authority in relation to the matter

or

 - b) any suggestion of committing the Oireachtas or presuming on its agreement.

7. The prior approval of the Department of Finance should be sought in every case for a proposal to issue a 'letter of comfort', or a 'letter of intention' as described in para. 4 and for the text thereof. The letter may not issue unless the approval has been given. The requirement to obtain the consent of the Minister for Finance for borrowing by State bodies must also, of course, be observed.
8. Departments should furnish to the Department of Finance by 15 June, 1984, copies of any 'letters of comfort' issued by them in the past which still have effect, together with any relevant background information.

Mise le Meas

Maurice F. Doyle

To All Accounting Officers