

Waiver and consent letter Q&A: Ireland

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This Q&A provides country-specific commentary on *Practice note, Waiver and consent letter* and forms part of *Cross-border loan financing*.

Confidentiality agreement

1. Is it possible for a lender to relinquish rights unilaterally? If so, are there any formalities to be observed in order to do that, and (if there are) what are they? Is there a particular term used in your jurisdiction for such a relinquishing of rights (equating to "waiver")?

Irish law relating to waiver of rights is complex. In theory, a waiver of rights must be supported by consideration, or executed under deed. If not, it is a mere forbearance and may be revoked at any time. However, where Party A indicates that it will not assert its legal rights against Party B, and Party B acts to its detriment in reliance on that indication, Party A will not be permitted later to assert those rights against Party B. This process is referred to as "waiver", "estoppel" or "forbearance."

Standard document, Waiver and consent letter: Cross-border: paragraphs 2(a) and 3.1(a) should be amended as follows if governed by Irish law: after the word "waive" it would be appropriate to insert "all of our rights and remedies arising from".

2. Would a waiver and consent given by a lender located in your jurisdiction, or given in relation to a finance document which is subject to the law of your jurisdiction, normally be restricted to specified provisions of the finance documents?

A lender's waiver and consent will normally be restricted to specified provisions of a finance document, and to specific matters occurring on a specific date.

3. Who would be entitled to countersign a waiver and consent letter on behalf of the borrower incorporated in your jurisdiction?

An officer or duly authorised agent or attorney of an Irish incorporated borrower would have authority to sign a waiver and consent letter. The requirement for authority is the same irrespective of the contract's governing law.

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