

**FOREIGN
LAWYER'S
OPINION**

It is becoming increasingly common in property transactions to find that you are dealing with a company which is not incorporated in Ireland. A foreign company may be selling property, taking a lease, giving a guarantee or issuing security for an advance. In those circumstances the Conveyancing Committee recommends that you should ask the solicitors representing the foreign company to provide to your client on closing an opinion from a lawyer based in the jurisdiction where the company was incorporated to cover the following points:-

1. that the company was properly incorporated, is still in existence and has power to enter into the transaction in question;
2. that the deed, as executed by the company, has been correctly executed by it and that the document binds the company and is enforceable against it;
3. that any corporate or statutory procedures required in the jurisdiction in which the company was incorporated (required in relation to the execution of the deed) have been attended to; and
4. that there are no charges or other incumbrances registered against the company which affect it or which are capable of affecting the property involved in the transaction.

A precedent of an opinion is set out below and this could be adapted for use. It is not uncommon for foreign lawyers when giving these opinions to choose to use an opinion in a form which they feel comfortable with and clearly this is acceptable provided the relevant points are covered in that opinion. There are a couple of points worth noting:-

1. The practice of issuing these letters of opinion has carried forward from commercial transactions and the party giving the opinion will often try and put in numerous exclusions which can have the affect of watering down the letter so that it is of little value. The most frequent clause that foreign lawyers tend to insert in these opinion letters is one limiting the reliance on the opinion to the person to whom it is addressed. It would be preferable that the opinion letter should not be limited in this way. In a case where this becomes a sticking point the letter could be limited so that it can be relied upon by the parties who it could be reasonably anticipated will need to rely on the letter.
2. There is a tendency for lawyers in certain tax havens to seek very substantial fees to issue these letters.

It is therefore strongly recommended that you clarify the question of the cost in advance of obtaining the letter. It is the view of the Committee that the cost of obtaining the opinion should be borne by the foreign company.

**PRECEDENT OPINION**

Draft []

[Date]

[Your Ref.]

[Ref./Matter No.]

To: [Your Client]

Dear Sirs

We have acted on behalf of [the company] who has requested us to give you this opinion in connection with [specify transaction].

1 We have examined:

1.1 [specify document] ("the Agreement"), and¹

1.2 [specify ancillary documents];

and such other documents as we have considered necessary or desirable to examine in order that we may give this opinion.

[Terms defined in the [specify document] shall have the same meaning herein].²

2 For the purpose of giving this opinion we have assumed:

2.1 the conformity to the originals of all copies of all documents of any kind furnished to us by [company/company's Irish solicitors];

2.2 that the certified copies produced to us of minutes of meetings and/or of resolutions are true copies and correctly record the proceedings of such meetings and/or the subject matter which they propose to record and that the resolutions contained in the minutes remain in full force and effect;

2.3 the genuineness of the signatures and seals on all original or copy documents which we have examined;

2.4 that the certified up to date Memorandum and Articles of Association of [the company] or other constitutional documents furnished to us by [the company] are correct and up to date;

2.5 without having made any investigation, that the terms of [the Agreements] are in all respects lawful and enforceable under Irish law;

2.6 the accuracy and completeness of all information appearing on public records.

1. *Depending on the nature of the case it may be simpler to refer here to "the Conveyance", "Mortgage" etc as appropriate.*

2. *This clause is helpful in a complicated transaction but otherwise it may be sufficient to simply define the Company and the property.*

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(Contd.)



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(Contd.)

- 3 We express no opinion as to any matters falling to be determined other than under the laws of [specify jurisdiction in which the company is incorporated]. Subject to that qualification and to the other qualifications set out herein we are of the opinion that:
- 3.1 [the company] is a company duly incorporated under the laws of [specify jurisdiction], is a separate legal entity, subject to suit in its own name. It is validly existing under the laws of [specify jurisdiction] and no steps have been taken or are being taken to appoint a receiver, examiner, liquidator or similar officer over or to wind it up.
- 3.2 [the company] has the necessary power and authority and all necessary corporate and other actions has been taken to enable it to sign, deliver and perform the obligations undertaken by it under the Agreement and implementation by [the company] of the foregoing will not cause:-
- 3.2.1 any limit on [the company] or its Directors (whether imposed by the documents constituting them, state or regulation) to be exceeded; or
- 3.2.2 any law or order to be contravened.
- 3.3 The Agreement has been duly executed and delivered on behalf of [the company] and the obligations on the part of [the company] are valid and legally binding on and are in a form capable of enforcement against [the company] under the laws of [specify jurisdiction] in the Courts of [specify jurisdiction] in accordance with their respective terms.
- 3.4 All authorisations, approvals, licences, exemptions and consents of governmental or regulatory authorities required in [specify jurisdiction] with respect to the Agreement have been obtained.
- 3.5 Under the laws of [specify jurisdiction] in force at the date hereof [the company] will not be required to make any deduction or withholding from any payment it may make under the Agreement.
- 3.6 Under the laws of [specify jurisdiction] in force at the date hereof the claims of [your client] against [the company] will rank at least pari passu with the claims of all other unsecured creditors except claims which rank at law as preferential claims in a winding up or receivership [save for a claim of [your client] against [the company] under the [security document] which will rank in priority to the claims of any other creditor].³
- 3.7 It is not necessary or desirable under the laws of [specify jurisdiction] in order to ensure the validity, enforceability and priority of the obligations and rights of [your client] under the Agreement that it be filed, registered, or notarised in any

3. *This is usually only required where the opinion relates to a lending transaction.*



public office or elsewhere or that any other instrument relating thereto be signed, delivered, filed, registered or recorded.⁴

- 3.8 In any proceedings taken in [specify jurisdiction] for the enforcement of the Agreement the choice of Irish law as the governing law of the Agreements would be upheld by the [specify jurisdiction] courts.
- 3.9 The submission by the parties to the [exclusive or non-exclusive] jurisdiction of the Irish Courts will be upheld by the [specify jurisdiction] courts.⁵
- 3.10 It is not necessary under the laws of [specify jurisdiction] (a) in order to enable [your client] to enforce its rights under the Agreement or (b) by reason of the execution of the Agreement that it should be licensed, qualified or otherwise entitled to carry on business in [specify jurisdiction].
- 3.11 The Agreement will not be liable to ad valorem stamp duty, registration tax, or other similar tax or duty in [specify jurisdiction].
- 3.12 Based solely on searches which we have carried out on [date of search] in [details of search carried out] there are no charges registered against the assets of the Company.
4. This opinion is addressed to [your client] and may be relied upon by [your client] for its benefit in connection with the transaction contemplated. It may also be relied on by all assignees of the interest of [your client] under the Agreement but not by any other person.⁶

Yours faithfully

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4. *The reference to priority in this clause is usually only required in a lending transaction.*
5. *This clause will usually be amended but it is helpful and more cost effective if the overseas lawyers carry out basic searches which can be supplemented with the purchasers own searches here. This is mainly because the external register in the Companies Office may not show the full position.*
6. *Overseas lawyers will usually try and limit the opinion so as to limit their liability. Ideally this limitation would not appear in the opinion letter.*

FOREIGN LAWYER'S OPINION

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