

Study on Letter of Comfort

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Abstract

This research focuses on the letter of comfort. After introducing the development history, use incentives and timing of letters of comfort, this essay then summarizes and types them by collecting the content of common letters of comfort at home and abroad. The essay then refers to the classification of foreign literature to classify letters of comfort into ‘hard letter of comfort (harte Patronatserklärung)’ and ‘soft letter of comfort (weiche Patronatserklärung)’ with related discussions.

Regarding the hard letters of comfort, this essay characterizes it as a pure Innominate Contract by analyzing the connotation of its payment obligation, comparing its similarities and differences with traditional non-life insurance and insurance of the person. As for the rights and duties of the parties, the repayment period of the recipient of the letters of comfort for the request for performance of the contract shall be the same as that of the primary liability. In the face of the recipient’s claim, the issuer can not only raise defenses (rights) originating from the hard letter of comfort itself, but also based on the subordinate character of the hard letter of comfort, it can also raise several defenses (rights) related to the primary liability for defense.

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As for soft letters of comfort, because of the variety, this article divides them into: support letters that confirm certain factual information, support letters that promise not to do certain behaviours, and support letters that promise to do certain behaviours. With regard to the latter two types of soft letters of comfort, since the promises that should or should not be certain actions are already legally binding, they can be evaluated as contracts. Therefore, if the issuer violates its obligations, it may be liable for breach of contract. As for the letters of comfort confirming certain factual information, although it cannot be evaluated as a contract, under the requirement of the principle of good faith, the issuer shall have the obligation to ensure the correctness and completeness of the provided information. The recipient of the transaction relying on the information shall be liable for damages due to the reliance interest.

Keywords: letter of comfort, binding comfort letters, dependent personal security, hard letter of comfort, soft letter of comfort, duty of culpa in contrahendo on third party, principle of reliance