



EPA Financial Strength Assessment For Company Guarantees

2019

ENVIRONMENTAL PROTECTION AGENCY

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Introduction

The EPA published *Guidance on Financial Provision for Environmental Liabilities* in 2015 (<https://www.epa.ie/pubs/advice/licensee/financiaprovisionsreport.pdf>). The overarching principles are that financial provisions must be secure, sufficient and available when required.

Company guarantees are, in principle, suitable financial provision instruments for all environmental liabilities, with the exception of inevitable closure costs¹.

A licensee who wishes to avail of a company guarantee must engage in a four-step process:

1. The proposed guarantor must demonstrate that it has sufficient financial strength to address the liability.
2. The proposed guarantor must demonstrate that there are no legal obstacles preventing it from entering into the guarantee or preventing the EPA from enforcing the guarantee.
3. Execution of the guarantee.
4. Ongoing demonstration of the financial strength of the guarantor.

Step 1 necessitates a financial strength assessment of the proposed guarantor. To demonstrate adequate financial strength, the proposed guarantor must have a net worth that is acceptable to the EPA and must be financially independent of the licensee; that is to say, be demonstrably not reliant on the financial performance of the licensee.

A review has been completed of financial strength assessment criteria in use nationally and internationally for environmental and other liabilities. From this review, criteria have been developed upon which financial strength assessments for guarantors proposed to meet financial provision obligations will be based. The EPA is publishing these criteria to allow for greater transparency for licensees who may be considering company guarantees to meet such obligations.

This document outlines the EPA's approach to financial strength assessment of proposed guarantors and the requirements for ongoing demonstration of financial strength.

Financial Strength Assessment

When costings are agreed for the environmental liabilities associated with a facility, the licensee will be invited to submit a proposal for financial provision. If the licensee wishes to pursue a company guarantee to meet their agreed costs, they must submit the information outlined in Table 1 to the EPA for assessment.

¹ Costs associated with the closure of an activity with a finite lifespan, for example a landfill or a mine.

Table 1: List of documentation required for financial assessment of a proposed guarantor

Requirement	Information Required
To be submitted by licensees when proposing a company guarantee as financial provision	<ul style="list-style-type: none"> Completed company status questionnaire if the guarantor is registered outside of the Republic of Ireland (see Appendix 1) Confirmation from the auditors that there is a group structure in place between the guarantor and the licensee (see Appendix 2 for template letter) Inter-company Matrices detailing the inter-company balances owing to and owed by the guarantor, one as at the most recent financial year-end and one showing any movements since that time (see Appendix 3) Audited financial statements for the previous 3 years for the proposed guarantor and licensee A listing of guarantees and contingent liabilities of the proposed guarantor (see Appendix 3)
To be submitted on request	<ul style="list-style-type: none"> Up-to-date unaudited management accounts for the guarantor and the licensee Audited financial statements for the previous 3 years for all group companies

Assessment criteria

Net current assets are the primary criterion upon which the financial strength assessment is based. Net current assets are more liquid than net assets and enable a guarantor to discharge any potential guarantee if, and when, called upon. This meets the principle of the financial provision being available when required.

The documentation in Table 1 will be assessed as outlined in Figure 1. If a proposed guarantor meets the criteria outlined in Stages 1, 2 and 3, the proposed guarantor will have passed the financial strength assessment². The EPA will advise the licensee where this is the case and invite them to move to the next step of the assessment process (legal agreement).

If a guarantor passes Stage 1 and 2 but fails to meet the threshold in Stage 3 (revised net current assets of > 6 times the amount to be guaranteed once contingent liabilities, guarantees etc. have been excluded), additional documentation will be required to facilitate an in-depth assessment of the financial strength of the proposed guarantor. This assessment will take account of, inter alia, the quality of trade receivables, inventory/stock, intercompany receivable balances, intercompany payable balances and cash balances. This information will be used to derive the adjusted revised net current assets of the proposed guarantor, which must be at least 3 times the amount to be guaranteed for the proposed guarantor to pass the assessment.²

Where a proposed guarantor fails to meet any of the criteria set out in Stage 1 or 2, or the threshold required in Stage 4 (adjusted revised net current assets of > 3 times the amount to be guaranteed), the proposed guarantor will be deemed not to have demonstrated adequate financial strength to meet the financial provision obligations of the licence and the licensee will be requested to propose an alternative guarantor or a suitable alternative financial provision instrument.

² Subject to EPA discretion – refer to page 4

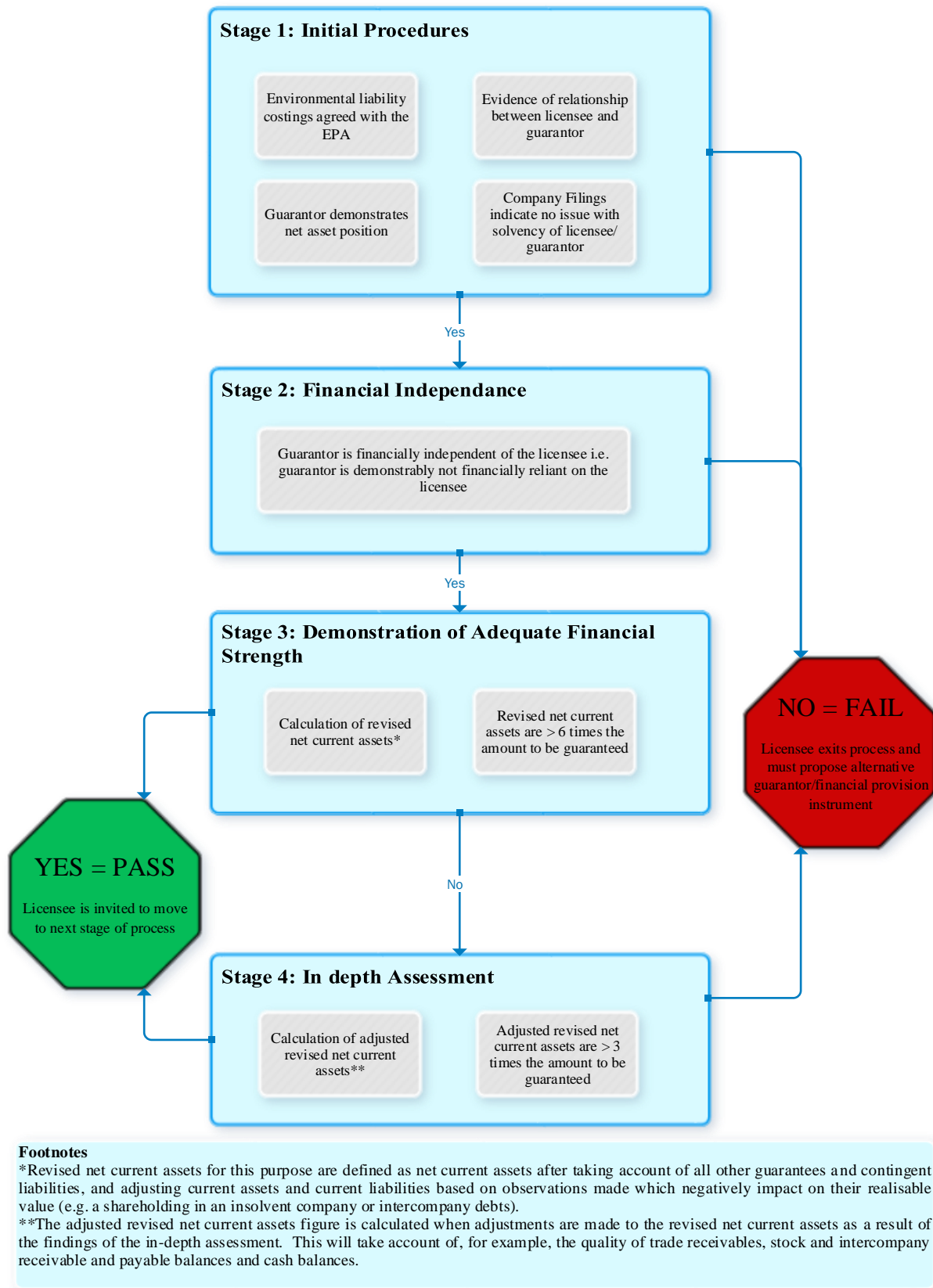


Figure 1: Process for assessment of financial strength of a proposed guarantor

EPA Discretion

The EPA retains discretion over the outcome of the financial strength assessment at all times. There may be certain circumstances where, even where the thresholds identified in Figure 1 are satisfied, the proposed guarantor may not be considered to have demonstrated adequate financial strength to provide the guarantee, for example, if a review of accounts indicates that the year of assessment is not representative of the normal trading performance of the company.

Ongoing Demonstration of Financial Strength

If a proposed guarantor is considered to have sufficient financial strength to meet the guarantee, the licensee will be invited to move to the next step of the process – legal agreement. As part of all legal agreements, the guarantors annual accounts must be submitted to the EPA yearly, which the EPA will review and apply the same financial assessment process and criteria outlined herein to ensure that guarantor continues to demonstrate adequate financial strength to meet the guarantee.

Where the EPA considers that the annual accounts, or other information with respect to the guarantor, demonstrates that the guarantor is no longer of adequate financial strength to meet the guarantee, the EPA will require the licensee to put a replacement financial provision in place to meet the financial provision obligations under their licence.

Appendix 1: Company Status Questionnaire

Where a licensee or proposed guarantor are registered outside of Ireland, this questionnaire must be completed for both the licensee and proposed guarantor.

Additional consultation and documentation may be required if issues become apparent as part of the review of the content of the completed questionnaire.

Name of Guarantor: _____

The following assertions relate to the period up to the signing date of this questionnaire.

a) Are the company filings of the Guarantor fully up to date?

Yes

No

If you answer no, please provide details:

b) Have there been changes in directors or the company secretary of the Guarantor in the previous 3 years?

Yes

No

If you answer yes, please provide details:

c) Has an auditor of the Guarantor resigned in the previous 3 years?

Yes

No

If you answer yes, please provide details:

d) Has a liquidator, receiver or an examiner been appointed in the past to the Guarantor?

Yes

No

If you answer yes, please provide details:

Please provide details of any charges (mortgages/debentures etc.) which have been registered against the Guarantor's assets:

Name of Licensee: _____

The following assertions relate to the period up to the signing date of this questionnaire.

e) Are the company filings of the Licensee fully up to date?

Yes

No

If you answer no, please provide details:

f) Have there been changes in directors or the company secretary of the Licensee in the previous 3 years?

Yes

No

If you answer yes, please provide details:

g) Has an auditor of the Licensee resigned in the previous 3 years?

Yes

No

If you answer yes, please provide details:

h) Has a liquidator, receiver or an examiner been appointed in the past to the Licensee?

Yes

No

If you answer yes, please provide details:

Please provide details of any charges (mortgages/debentures etc.) which have been registered against the Licensee's assets:

Name

Date _____

Company _____

Signature

Appendix 2: Template letter for confirming there is a group structure in place between the guarantor and the licensee

DATE

Environmental Protection Agency
Address Line 1
Address Line 2
Address Line 3
Address Line 4
Address Line 5

RE: [Name of Guarantor]

Dear [EPA Employee],

We are appointed auditors to [Guarantor] and its subsidiaries. We confirm the group structure as set out in Appendix 1 is accurate. The licensee, [Name of Licensee] is a wholly owned subsidiary of the proposed guarantor, [Name of Guarantor].

Should you require any further information, please do not hesitate to contact us.

Yours faithfully,

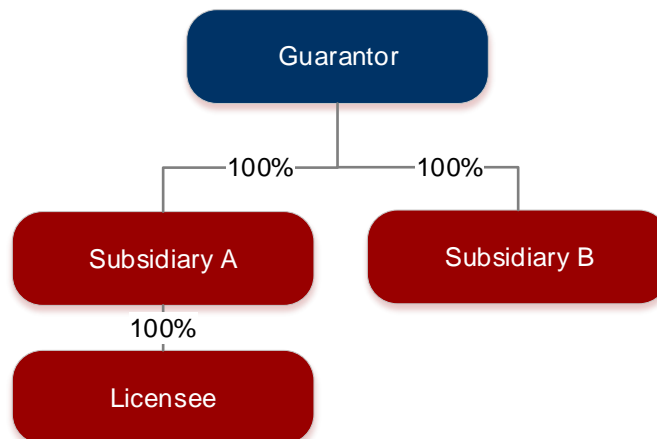
[Name of Auditor]

On behalf of [Name of Auditors]

Appendix 1

[Name of Guarantor]

Corporate Group Structure



Appendix 3: Sample intercompany matrix and listings of contingent liabilities and guarantees

Table 2: Sample intercompany matrix

Amounts owed by Company A (Creditors)					
Amounts owed to Company A (Debtors)	Company A's Inter-company Matrix	Company A	Company B	Company C	Total
	Company A		€1	€2	€3
	Company B	(€1)		€3	€2
	Company C	(€2)	(€3)		(€5)
	Total	(€3)	(€2)	€5	-

Table 3: Sample listing of contingent liabilities

Listing of Contingent Liabilities			
#	Summary Detail	Carrying Value €	Expiry Date (if known)
1	Employer, public and product liability costs		
2	Legal costs		
3	Pension costs		
Total		€	

Additional disclosures relating to Contingent Liabilities	
1	
2	

Table 4: Sample listing of guarantees

Listing of Guarantees				
#	Legal entity subject to guarantee	Carrying Value €	Details e.g. Charged Assets	Expiry Date (if known)
1	ABC Bank – Loan commitment			
2	Subsidiary A's pension scheme		(i) Property (ii) Trade receivables	
3	XYZ Bank – Invoice discounting		Trade receivables	
Total		€		

Additional disclosures relating to Guarantees	
1	
2	

END