

The Austrian Supreme Court (OGH) recently clarified key aspects of a *hard letter of comfort* (harte Patronatserklärung) in its decision OGH 31 July 2025, 1 Ob 45/25m.

👉 **Fundamentals of the *hard letter of comfort***

In general, in such a declaration, the issuer (the patron) is not directly liable for the borrower's debts. Instead, the patron undertakes to provide the subsidiary with sufficient funding to meet its obligations. However, if the patron fails to fulfill this duty and the borrower becomes insolvent, the creditor gains a direct claim for damages against the patron. This compensatory claim aims to place the creditor in the same economic position as if the patron had properly provided the promised capital.

👉 **Clarified key aspects**

In the case at hand, the managing director and 5% shareholder of a GmbH had issued to the GmbH's bank an irrevocable commitment to ensure that the company will be provided with "at least €40,000" in capital, to be paid into the overdrawn account. When the company later went bankrupt with an outstanding balance of over €57,000, the Court found that this declaration constituted a *hard letter of comfort* as his obligation clearly included a specific funding duty, not merely a non-binding statement of support. Due to (poor?) drafting ("at least"), the Court found that it did not limit the funding obligation to €40,000, but the patron's liability extended to the full remaining debt.

The OGH affirmed that—in line with prevailing opinion—a creditor may assert a direct damages claim against the patron in the event of the debtor's insolvency. Nevertheless, the proceedings will continue in particular with a view to examine whether an alternative party intent or mistaken understanding (*Irrtum*) (on the patron's side - patron alleges that his undertaking was (and is) to be understood that he will endeavor that the company is provided with additional capital, rather than taking a personal obligation to provide such funding) existed at the time of signing.