Key Considerations for Developers, Contractors and Project Stakeholders

Before seeking legal advice on a construction guarantee or bond, it is helpful to consider the following points and gather the relevant project information.

The Underlying Contract
Providing the relevant building contract, subcontract or other agreement allows your solicitor to check that the proposed guarantee or bond is consistent with the obligations it is intended to support.

The Purpose of the Security
Understanding whether protection is required against non-performance, insolvency, payment default or another project risk helps determine whether the proposed arrangement meets the intended commercial objective.

The Type of Guarantee or Bond
Different forms of security operate in different ways, so it is important to identify whether the proposed document is a parent company guarantee, performance bond, on-demand bond, conditional bond or another arrangement.

The Obligations Being Secured
The document should clearly identify the obligations covered so that all parties understand the extent of the protection and any limitations that apply.

Trigger Events
The circumstances in which the guarantee or bond can be relied upon should be clearly understood, particularly where payment or enforcement depends on specific events occurring.

Liability and Financial Limits
Any cap on liability, exclusions or other limitations should be reviewed to establish the actual level of protection available under the document.

Duration and Expiry
The period for which the security remains in place should reflect the relevant project programme, contractual obligations and any requirements relating to completion or defects.

Stakeholder Requirements
Employers, funders, purchasers and other parties may have particular requirements for guarantees or bonds that need to be identified and addressed during contract negotiations.

Other Project Protections
Guarantees and bonds should be considered alongside collateral warranties, insurance arrangements and other contractual remedies to understand the overall package of project security.

Timing and Delivery
Establishing when the guarantee or bond must be agreed, executed and delivered can help prevent outstanding security documents from delaying funding, commencement or another important project milestone.

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