



## Landlords and Bank Guarantees

Landlords are increasingly turning to bank guarantees as an effective security to ensure tenants comply with their obligations under the lease.

It is common for tenants to be required to provide a bank guarantee in favour of the landlord for three months rent plus GST at the commencement of the lease.

From a landlord's perspective, care must be taken to ensure the bank guarantee is effective and cannot be challenged by the tenant or the bank upon its presentation in the event of a default by the tenant.

Landlords should ensure when receiving a bank guarantee that:

- the guarantee has been provided from an Australian licensed bank. You may have difficulty claiming on a bank guarantee from an overseas bank;
- the bank guarantee should clearly disclose the full and correct name of the landlord;
- the bank guarantee should be assignable or transferable if at all possible to allow the bank guarantee to be transferred to a purchaser of the land;
- the tenant on whose behalf the guarantee is issued, must be clearly noted and be identical to the tenant under the lease;
- the bank guarantee should have no expiry date. Some banks have recently changed their practices and require an expiry date to be inserted. If this is the case then we recommend that the expiry date of the guarantee be well after the expiry date of the lease;
- the purpose of the bank guarantee must be clearly expressed. That is, to cover all of the tenant's obligations imposed on the tenant pursuant to the terms of the lease;
- the correct amount of the guarantee must be noted; and
- most importantly, the bank guarantee should be an unconditional undertaking by the issuing bank to pay the guaranteed amount to the landlord if demanded by the landlord. It should not be conditional upon any event.

We recommend that you review the terms of any bank guarantee prior to accepting it.

At Everingham Solomons we have the expertise to assist you because *Helping You is Our Business.*



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