

# Bank Guarantees



A bank guarantee is an agreement by a bank to pay a certain sum to the landlord on demand from that landlord when the tenant is in arrears under the lease. The bank does not have to check with the tenant whether or not it should make payment. The benefit of a bank guarantee is the ability of the landlord to call upon the bank guarantee and without having to resort to making demands and taking legal action.

In order to provide the bank guarantee the bank will require additional security from the tenant to cover the bank guarantee amount – in the form of a mortgage over a property or over a cash deposit (not over the business).

Landlords are now increasingly requiring bank guarantees over personal guarantees. Negotiate the amount of the bank guarantee. A landlord will obviously want as much as they can get. Six months seems to be a standard amount.

- Tenants should only offer a bank guarantee or a personal guarantee - not both.
- Agree on the form of the bank guarantee **before** entry into the lease or make this a condition of the Agreement to Lease. Make sure that the bank will be agreeable to the form of the bank guarantee before confirming agreement.

- Check the term of the bank guarantee – we have seen situations where the landlord will require the bank guarantee to be in place beyond the lease term.
- Negotiate the release of the bank guarantee on assignment of the lease or if it is a subleasing/licencing scenario – on entry into a new sublease/licence, and provision of a replacement bank guarantee.
- Ensure the franchisee has the ability to obtain the bank guarantee and that the bank guarantee is in place prior to execution of the franchise documentation.
- If this is a subleasing/ licensing situation negotiate with the landlord that the bank guarantee can be provided by the sublessee/licensee not the tenant.
- Involve the landlord at an early stage if there are any issues regarding payment of rent. You may be able to avoid the landlord making a claim on the bank guarantee.



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