

Authorised guarantee agreements

A property case of major importance has recently been settled out of court. The High Court previously held that, if as a pre-condition to consent to assign, a tenant's guarantor must enter into an authorised guarantee agreement (AGA) (to guarantee the performance of the assignee's obligations), the AGA will be void. The judge went further than this and effectively said that such a guarantee would still be void, even if given voluntarily.

What is an AGA?

A lease that creates a "new" tenancy may include an agreement between the landlord and the tenant specifying the conditions under which the landlord could validly refuse consent to the assignment of the lease. A "new" tenancy is generally one that was granted after 1 January 1996.

AGAs are used only in connection with the assignment of "new" leases. An AGA will usually be in a form prescribed by the lease and will often be incorporated into the licence to assign. There may, however, be occasions when the landlord and tenant prefer to enter into a discrete document, for example, in the interests of confidentiality.

What steps do I need to take in the light of the High Court decision?

If you have previously granted any existing leases containing such drafting, it will not work. You should therefore review the covenant strength of any assignee more carefully if the only security on which you are relying is an AGA that includes the tenant's guarantor of the assignee's obligations.