



**Property Litigation Association Law Reform Committee**

**Proposed Amendments to the Landlord and Tenant (Covenants) Act 1995**

**Briefing Note to the Secretary of State for Communities and Local Government**

**1 Executive Summary**

- 1.1 The Landlord and Tenant Covenants Act 1995 is an impediment to parties:
- (a) intending for a guarantor of a lease to guarantee an assignee of the same lease;
  - (b) intending for a guarantor of a lease to be the assignee of the lease;
  - (c) seeking to perform an intra-group restructuring;
  - (d) dealing with transfers between business partners.
- 1.2 The Act invalidates the provision of repeat guarantees, even where the parties intend for the guarantee to be provided, or it is freely offered.
- 1.3 The Act fetters tenants from being able to restructure their property holdings.
- 1.4 An invalid guarantee can result in significant value being eroded from the value of the landlord's property.
- 1.5 The Act creates further unnecessary complications and uncertainty in respect of joint ownership situations.
- 1.6 The Court of Appeal has considered the Act in *K/S Victoria Street v House of Fraser*. The decision of the Court of Appeal has highlighted the commercial problems arising from the manner in which the Act is to be interpreted. At present there is an inherent conflict between the desire of landlords and tenants to freely contract and the operation of the anti-avoidance provisions of the Act.
- 1.7 The Property Litigation Association has given serious thought to (and consulted its members and industry stakeholders) as to how the Act might be reformed in order to achieve commercial effect without offending the anti-avoidance aims of the Act when originally enacted.
- 1.8 The PLA has prepared this proposal and has advanced and consulted upon draft amendments to the Act that are appended to this proposal.
- 1.9 The PLA has the support of the property industry and has received endorsement for the proposal from the British Property Federation, the British Retail Consortium and the Property Bar Association.
- 1.10 The PLA welcome consideration of this proposal and further discussion with the DCLG in order to understand how best to effect much-needed reform of the Act.

## 2 Interpretation

2.1 The following abbreviations are used in this note and the appendices to it:

- (a) LL Landlord
- (b) T1 Tenant 1 (the 'assignor')
- (c) T2 Tenant 2 (the 'assignee')
- (d) T3 Tenant 3 (a subsequent assignee)
- (e) G Guarantor

2.2 Note that T1, T2 and T3 may be intra-group companies as the context below allows.

## 3 The Landlord and Tenant (Covenants) Act 1995

3.1 Prior to 1996, the original tenant under a lease remained liable, after parting with (assigning) the lease unless there was an express release, for performance of the lease covenants for the duration of the lease term by virtue of privity of contract. In practice landlords also required that an assignee accept liability for the whole remainder of the term. Therefore an original tenant could be liable under a long lease for a subsequent assignee's failure to comply with the covenants even though the assignment took place many years previously and/or where there were interim assignees between the original tenant and the assignee in default.

3.2 This position was changed by the Landlord and Tenant (Covenants) Act 1995 (the "Act") for leases granted after the Act came into effect.

3.3 The key purpose of the Act is to release tenants assigning their lease from continuing liability pursuant to the lease covenants following assignment<sup>1</sup>. A recent judicial comment has restated this more widely namely that *"the whole thrust of the Act is that there should be no re-assumption or renewal of liabilities, whether on the tenant or the guarantor"* - Miss Amanda Tipples QC *EMI Group Ltd v O&H Q1 Ltd*<sup>2</sup>

3.4 Section 25 of the Act contains an anti-avoidance provision that voids any attempt to avoid the purpose of the Act. The section states that an agreement is void to the extent that it would (apart from that section) *"exclude, modify or otherwise frustrate"* the operation of the Act (including the provisions for the automatic release of tenants and guarantors). This provision is to be *'interpreted generously, so as to ensure that the operation of the 1995 Act is not frustrated, either directly or indirectly'*<sup>3</sup>. It is a 'comprehensive anti-avoidance provision'<sup>4</sup>. A key feature of this anti-avoidance provision is that it applies equally to freely assumed liabilities as it does to prescribed obligations.

3.5 The Act permits a tenant to remain bound by the lease covenants following an assignment in two circumstances only: (1) pursuant to section 11 of the Act where a tenant makes an 'excluded assignment' (in breach of covenant or by operation of law); and (2) pursuant to section 16 of the Act where the tenant provides an Authorised Guarantee Agreement ("AGA") to the landlord. The AGA is a guarantee by an assignor of the assignee's performance of the lease covenants until such time as the assignee subsequently lawfully assigns the lease.

<sup>1</sup> Section 5

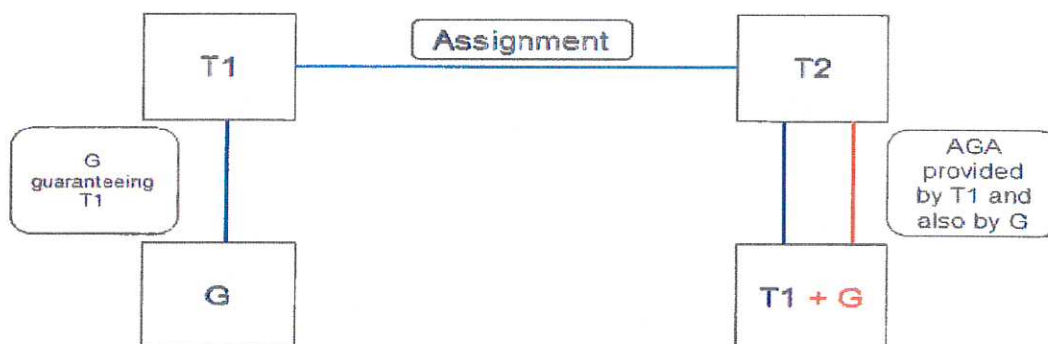
<sup>2</sup> [2016] EWHC 529 (Ch)

<sup>3</sup> *Avonridge Property Co Ltd v Mashru* [2005] UKHL 70; paragraph 18

<sup>4</sup> Paragraph 14, *Avonridge*

- 3.6 A guarantor of an assigning tenant is also released from further liability for the lease covenants by virtue of section 24 of the Act. There is no ability for the guarantor to provide an AGA guaranteeing the assignee's performance of the lease, as established by the High Court decision of *Good Harvest v Centaur*<sup>5</sup> and the Court of Appeal decision in *K/S Victoria Street v House of Fraser*<sup>6</sup>. Accordingly, an AGA provided by a guarantor for the assignee's performance of the lease upon an assignment of a lease is void<sup>7</sup>.

### Illustration 1 - Guarantor's AGA is Void



Case law confirms that the Guarantor AGA is void. Depending on AGA construction, LL may be able to rely on T1's AGA, but the AGA may well be of limited value if T1 is an SPV entity.

- 3.7 The Court of Appeal's obiter view is that a guarantor can sub-guarantee a tenant's AGA – in other words, the guarantor does not guarantee the assignee's performance of the lease covenants (which would be void), but instead guarantee's the assignor's performance of the AGA, which would appear to be valid<sup>8</sup>.

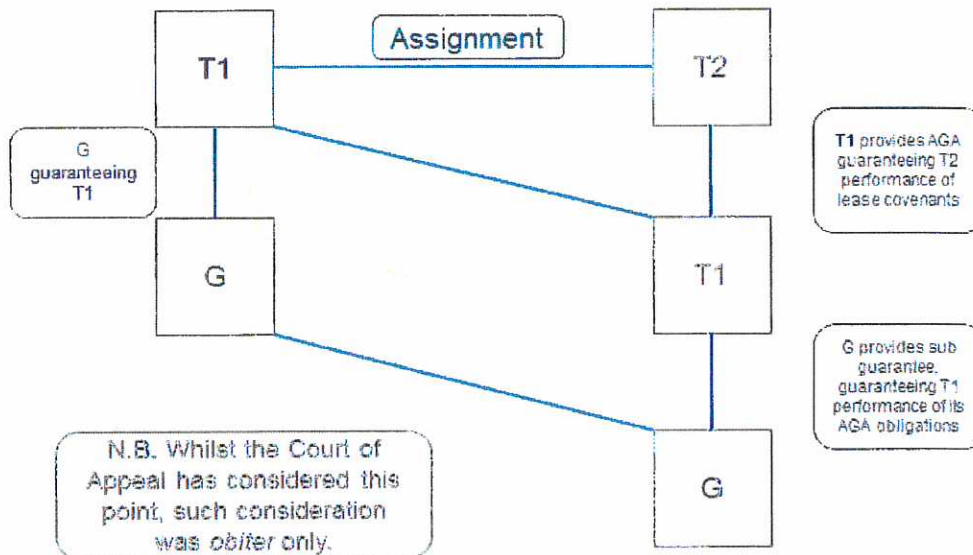
<sup>5</sup> [2010] EWHC 330 (Ch)

<sup>6</sup> [2011] EWCA Civ 904

<sup>7</sup> See illustration 1

<sup>8</sup> See illustration 2

## Illustration 2 - Guarantor's Sub-Guarantee is Valid



### 4 Issues

- 4.1 One of the harshest commercial outcomes arising from the decision in *K/S Victoria Street* is that a repeat guarantee (i.e. where G guarantees T1 and intends to guarantee T2) upon assignment is void. *EMI* confirms that the assignment of the lease from T1 to G would also be void<sup>9</sup>. This is the case even if the guarantee is 'freely offered'<sup>10</sup> and no matter how commercially desirable it is for both parties to achieve such an outcome. It is neither 'here nor there' if the consequence of the operation of the Act is 'unattractively limiting and commercially unrealistic'<sup>11</sup>.
- 4.2 Newey J in *Good Harvest* noted that 'the Act is plainly designed to impose restrictions on freedom of contract'<sup>12</sup>. Further, 'the Covenants Act would... prevent the parent company from giving any guarantee for the second subsidiary however much it wished to and however commercially desirable that was'<sup>13</sup>.
- 4.3 Furthermore, in *K/S Victoria Street*, Lord Neuberger noted that 'even where it suited the assignor, the assignee and the guarantor that the assignee should have the same guarantor as the assignor (because, for instance, the assignor and the assignee had the same parent company, or shared a common bank, which was the guarantor), they could not offer that guarantor. It would also appear to mean that the lease could not be assigned to the guarantor, even where both tenant and guarantor wanted it'<sup>14</sup>.

<sup>9</sup> [2016] EWHC 529 (Ch)

<sup>10</sup> It was common for landlords to require existing guarantors and the current tenant to guarantee the current Tenant's assignee as a condition of granting consent to an assignment or to expressly require this as a pre condition to an assignment. In that sense the guarantee could be said not to be "freely offered".

<sup>11</sup> Paragraph 86, *EMI*

<sup>12</sup> Paragraph 22(viii), *Good Harvest*

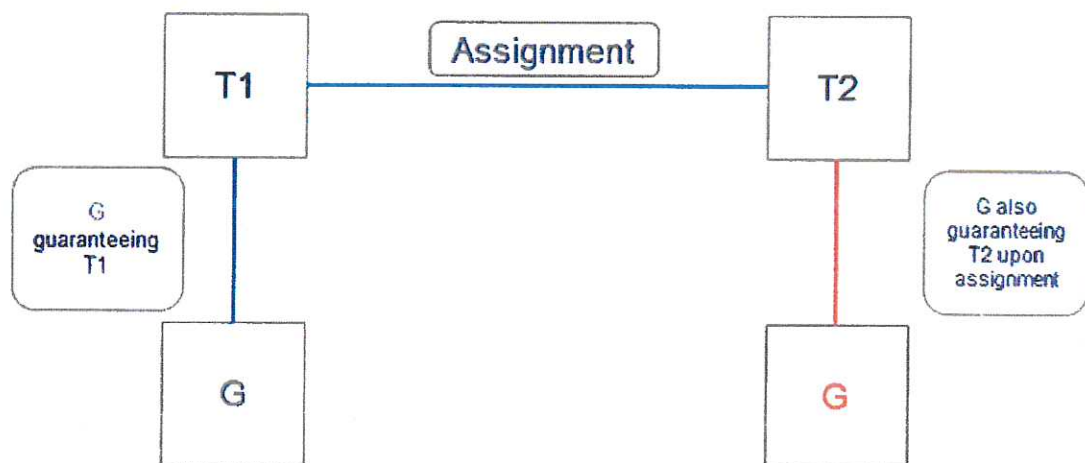
<sup>13</sup> Paragraph 22(xi), *Good Harvest*

<sup>14</sup> Paragraph 37, *K/S Victoria Street*



- 4.4 The issue is one of commercial significance and not simply legal semantics. A clause in a lease, agreement for lease, licence to assign or other document which requires a subsequent guarantee from the guarantor will be void. Despite the Court of Appeal's hope that the 'Act should not lead to many practical difficulties'<sup>15</sup>, the reality is that it causes all sorts of commercial problems in terms of structuring, alienation and financing.
- 4.5 It is common in the interests of commerce for commercial property ownership to be structured so that an SPV entity is the named tenant of a lease of commercial property. This entity will have a limited covenant strength. Accordingly, LL will require T1 to be guaranteed by G, usually the parent entity, in order to ensure that there is sufficient covenant strength in the package offered to LL.
- 4.6 As it stands, the harsh and stark consequence of the Act is that T1 cannot assign to T2 with G guaranteeing T2 if it guaranteed T1<sup>16</sup>.

### Illustration 3 - Repeat Guarantee is Void



This is confirmed *ratio* in the Court of Appeal case of *K/S Victoria v House of Fraser*. The guarantee is void regardless if given pursuant to a contractual obligation or if offered voluntarily.

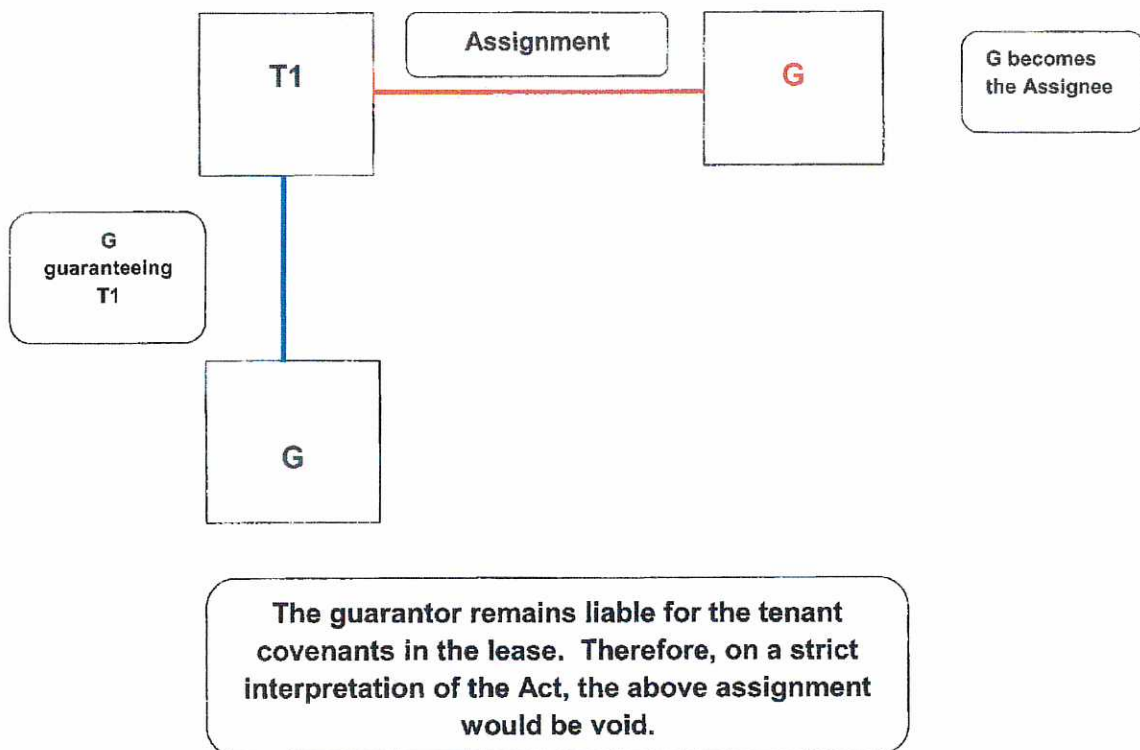
- 4.7 The guarantee would be void, whether required by the lease, or where 'freely offered'. In many circumstances LL would likely be able to refuse consent to the assignment unless there was a valid guarantee of T2. T2 would therefore require a different guarantor that would be able to satisfy industry tests for covenant strength adequacy. From a practical perspective, this may well be impossible for T2 to realise as the group's covenant strength will in most cases rest with just one parent entity.

<sup>15</sup> Paragraph 53, *K/S Victoria Street*

<sup>16</sup> See Illustration 3

- 4.8 As confirmed in the *EMI Group* case, T1 could also not assign to G as G would continue to remain liable for the lease covenants, and thus the assignment would fall foul of section 25 of the Act<sup>17</sup>. Regardless of the willingness of the parties to affect such an arrangement, the policy of the Act is *that a tenant or guarantor cannot, as a result of an assignment, re-assume the very same, or essentially the same, liabilities in respect of the tenancy*<sup>18</sup>.

**Illustration 4 - 'The guarantor re-assumes liability for the tenant covenants in the lease. The assignment is void (see *EMI Group*)**



- 4.9 In order to protect the value in the lease, a landlord on the grant of a new lease may well simply prohibit intra-group assignments, save where a valid guarantor is provided, or where the assignee is a valid assignee (i.e. not the original guarantor) and is of sufficient covenant strength. In practice, it often may not be possible for the tenant to be able to satisfy the above – the Act is thus frustrating group restructuring that is otherwise acceptable to all parties concerned and likely to be in the interests of commerce.
- 4.10 In respect of existing leases where intra-group assignments have been permitted on terms where the parent company guarantees the assignee SPV entity (and where the assignor is not required to provide an AGA), the PLA is aware of situations where this has led to a significant diminution in value in respect of that property. The ability for a tenant to exploit the invalidity of a repeat guarantee is sufficient to adversely impact on the landlord's interest in the property. This can also adversely affect the tenant – in *Tindall Cobham* the more

<sup>17</sup> See Illustration 4

<sup>18</sup> Paragraph 78, *EMI*

streamline assignment provisions for an intra-group transfer were struck out leaving the tenant to comply with the general assignment provisions which (certainly in other cases) could be more stringent<sup>19</sup>.

- 4.11 By way of example, a landlord with an SPV tenant guaranteed by a strong plc company commercially should have no issue allowing an intra-group assignment from the SPV tenant to another SPV entity within the group, so long as the assignee SPV entity is guaranteed by the parent. Commercially, the tenant enjoys the flexibility it needs to restructure, and the landlord retains the benefit of the actual strength within the tenant's company. However, there is an inherent and insoluble conflict between commerce and the Act. Where a lease permits intra-group assignment so long as the parent guarantees the assignee, the tenant is free to assign intra-group without providing a guarantee in the knowledge that the parent guarantee of the SPV assignee is void. The parties' contractual bargain is undermined by the Act and the landlord suffers as a consequence for no valid reason.
- 4.12 The Court of Appeal suggest that T1 (guaranteed by G) could assign to T2 (with no guarantee by G) and T2 could assign to T3 with T3 being guaranteed by G<sup>20</sup>. The 'interim' assignment to T2 would be sufficient to avoid the subsequent guarantee by G being void<sup>21</sup>. However, were such arrangement to be a construct to avoid the purpose of the Act (to release G from continuing liability for the lease covenants), then such arrangement would be void<sup>22</sup>. This renders such an arrangement either 1) impractical – if the parties entered into an agreement providing for this arrangement (which would be necessary in order to provide certainty for the parties involved), it would be void because the rationale for such a structure would be to avoid the purpose of the Act; or (2) uncertain – how would it be evidenced that the assignments were not a deliberate attempt to avoid the purpose of the Act.
- 4.13 The Act further creates significant problems for partnerships (and other joint ownership structures). When a partnership enters into a lease, it is common for named partners in the firm to be the tenant under the lease with other partners or third party entities (e.g. a bank) guaranteeing the performance of the lease covenants. If there are changes in the partnership, the named tenant partners will need to assign the lease to new partners (i.e. partners ABCD assign to partners ABCE on the retirement of D, where the commercial and practical intention is for partners F and G (or X Bank PLC) to continue to be guarantors). The consequence of this is that the guarantor cannot provide a repeat guarantee of the assignee partners' lease obligations.<sup>23</sup>
- 4.14 Based on the current drafting of section 28(4) of the Act, it appears that where T1 comprises two or more persons, one or more of them may take an assignment (e.g. where partners ABCD assign to ABCE on the retirement of D). This is because T1 is treated as being ABCD collectively, not A, B, C and D individually. However, this is uncertain and the point should be more clearly made on the face of the Act. Moreover, section 28(4) as drafted gives rise to uncertainty as to whether where G comprises more than one person, one or more (but not all) of those persons would be prevented from doing what G is prohibited from doing (e.g. guaranteeing T2 or taking an assignment from T1).

<sup>19</sup> *Tindall Cobham 1 Limited v Adda Hotels* [2014] EWCA Civ 1215

<sup>20</sup> Paragraph 51, *K/S Victoria Street*

<sup>21</sup> See illustration 5 as an example of where the arrangement contains a intervening assignment which is guaranteed by a different guarantor entity. See illustration 6 as an example of where the arrangement contains an intervening assignment which itself is not guaranteed. Subject to the 'construct' issue, both scenarios do not invalidate the guarantee.

<sup>22</sup> See illustration 7. Indeed, the CA noted the 'capricious effect' of such an arrangement. Interestingly, the CA considered the repeat guarantee in the context of an assignment from T1 to T2 and then back to T1 (as opposed to T3). Such an arrangement itself would appear to be more of a construct than the assignment chain from T1 to T2 to T3.

<sup>23</sup> See illustration 8

- 4.15 The Act reaches into the residential sphere as well. Where a couple are joint tenants of a lease and their performance of the lease covenants is guaranteed by one of them, or a third party, any repeat guarantee of that lease will be void in the event that for whatever reason the joint tenants decide to assign the lease to one or other of the named tenants.

## 5 Proposal

5.1 The Law Reform Committee of the Property Litigation Association is looking to advance a proposed amendment to the Act to address the issues outlined above, particularly those concerning intra-group assignments. Draft amendments to sections 24 and 28 of the Act intended to deal with these issues have been prepared by the Committee and are set out at Appendix 2 below<sup>24</sup>.

5.2 The amendments proposed by the Committee seek:

- (a) To clarify that G may guarantee T1's covenants in the AGA by way of a sub-guarantee (which was confirmed, albeit obiter, in the Court of Appeal's decision in *K/S Victoria Street*);
- (b) To enable G to stand again as guarantor of T2, provided that it is certified by G, T1 and T2 in the instrument containing the guarantee (which will usually be the licence to assign) that:
  - (i) T1 and T2 are group companies (including LLPs); or
  - (ii) T1 and T2 are all partners in the same firm; or
  - (iii) either T1 or T2 comprise partners in a firm and the other is a company (or LLP) in which that firm has a controlling interest;

It will be noted that the proposal is only for certification to be given and not that one of the conditions actually needs to be met. This is to avoid potential difficulties in carrying out due diligence upon acquiring a property subject to a lease with a guarantee. It may be all but impossible for the buyer in that scenario to confirm that one of the conditions was actually met when the lease was assigned. As proposed, however, the buyer should be able to take sufficient comfort if provided with an appropriate certification by the seller.

- (c) To clarify that G may take an assignment of a lease from T1;
- (d) To clarify that where T1 or G comprise two or more persons, one or more (but not all) of them may act in a way which, had they acted jointly, would be void under the Act. For example (i) in the case of joint tenants, an assignment of the lease from partners ABCD to ABCE (as in the example above) would be allowed, and (ii) in the case of joint guarantors, guarantors GHI would be permitted to guarantee T2 even though FGH had guaranteed T1 (in cases where the proposed intra-group exception above would not apply).

## 6 Industry Support

6.1 The PLA has sought the views of key industry bodies whose members are likely to be aware of or affected by the issues raised in this Briefing Note.

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<sup>24</sup> By reason of the proposed introduction of a new defined term of "guarantor" in section 28, it is also proposed that existing references to "a person ("the guarantor")" in sections 17 and 18 are changed to "a guarantor".



6.2 It is important to highlight that the PLA is a non-partisan organisation and does not favour tenants over landlords or vice versa. It is in this context that the PLA has prepared this Briefing Note. It is noteworthy that the PLA has received a broad spectrum of support from across the industry, highlighting:

- (a) the current inadequacies of the Act;
- (b) the cross-industry support for the PLA's proposal; and
- (c) the desire for legislative change.

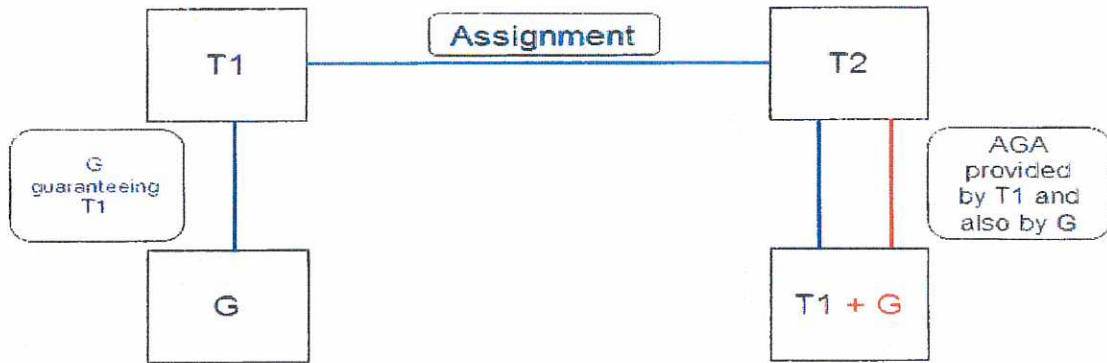
6.3 This support includes endorsement for the PLA's approach from the British Property Federation, the British Retail Consortium and the Property Bar Association.

## **7 Next Steps**

- 7.1 The PLA would be grateful if the proposal and the draft amendments contained in this Briefing Note could be considered by the Minister and the DCLG.
- 7.2 The PLA would appreciate further discussion with DCLG following this consideration in order to understand how any reform of the Act is to be implemented.
- 7.3 Please contact Bryan Johnston of Dentons UKMEA LLP on behalf of the PLA in order to discuss this briefing note further ([bryan.johnston@dentons.com](mailto:bryan.johnston@dentons.com); 020 7320 4059).

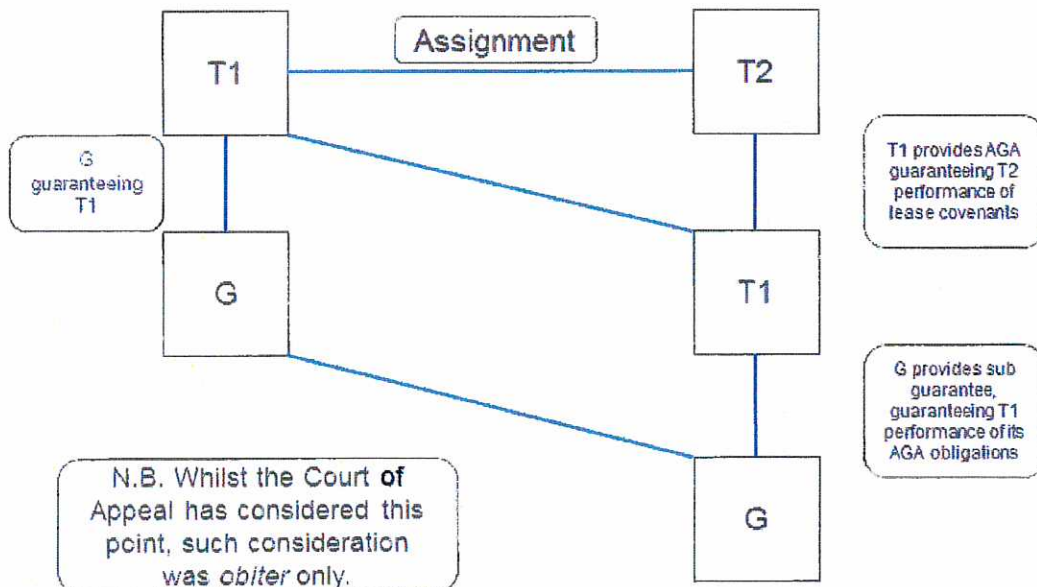
**Property Litigation Association**  
**18 May 2016**

### Illustration 1 - Guarantor's AGA is Void

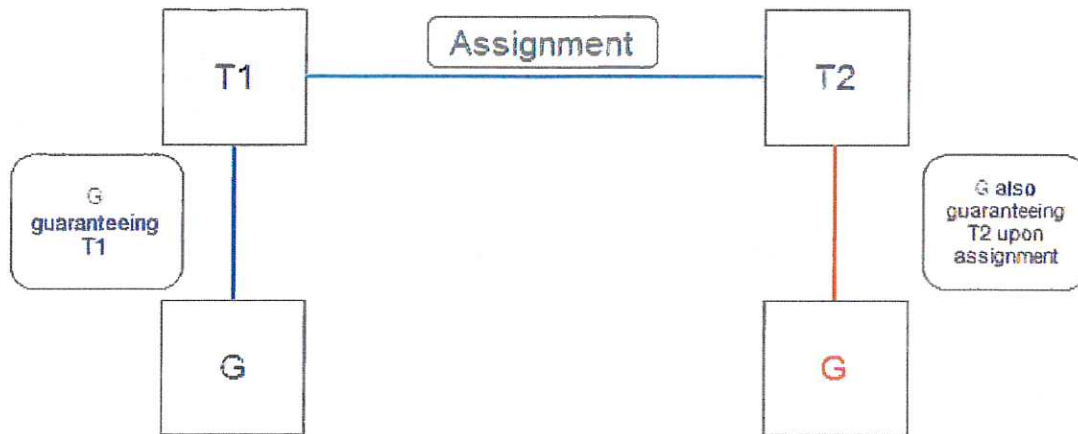


Case law confirms that the Guarantor AGA is void. Depending on AGA construction, LL may be able to rely on T1's AGA, but the AGA may well be of limited value if T1 is an SPV entity.

### Illustration 2 - Guarantor's Sub-Guarantee is Valid

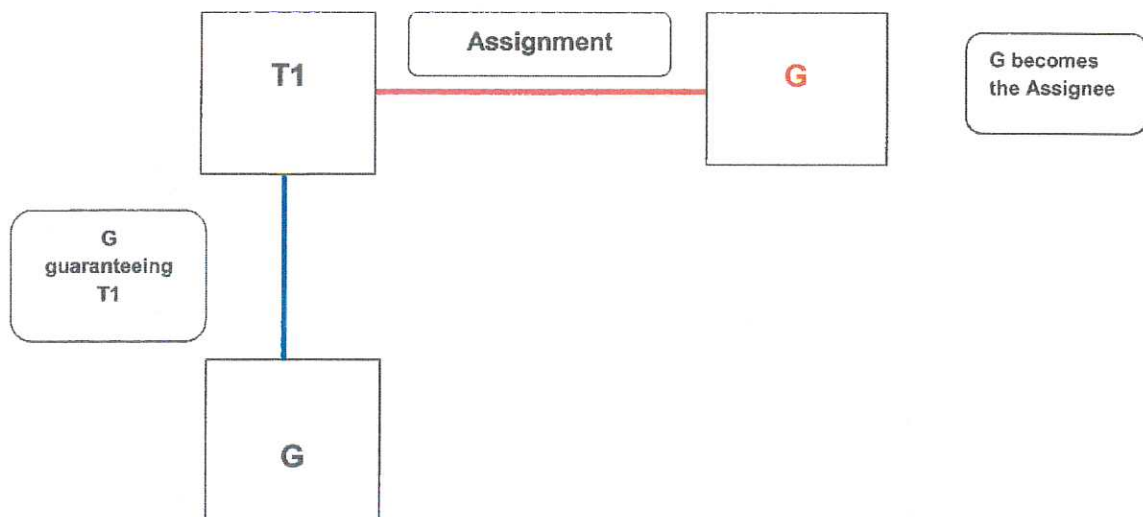


### Illustration 3 - Repeat Guarantee is Void



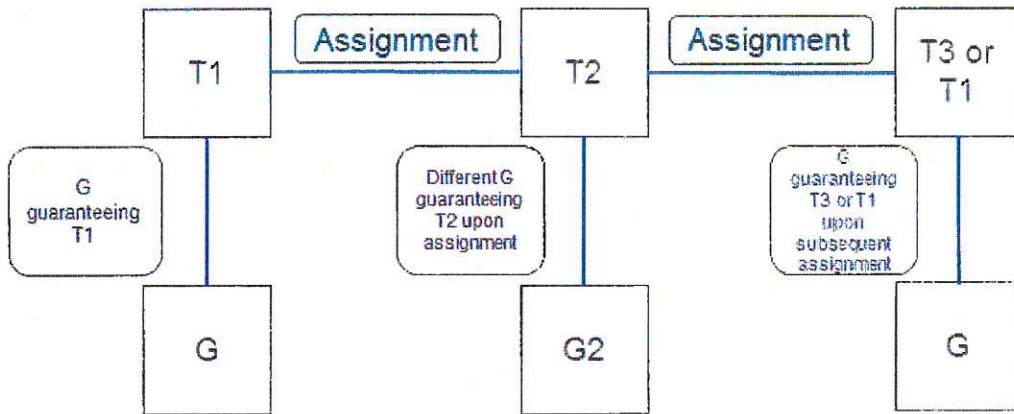
This is confirmed *ratio* in the Court of Appeal case of *K/S Victoria v House of Fraser*. The guarantee is void regardless if given pursuant to a contractual obligation or if offered voluntarily.

### Illustration 4 - 'The guarantor re-assumes liability for the tenant covenants in the lease. The assignment is void (see *EMI Group*)



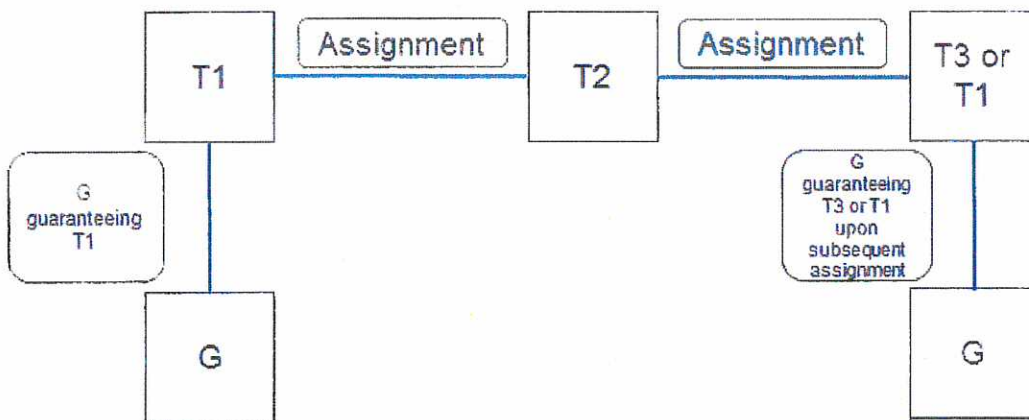
The guarantor remains liable for the tenant covenants in the lease. Therefore, on a strict interpretation of the Act, the above assignment would be void.

## Illustration 5 - Repeat Guarantee Valid where Intervening Assignment



N.B. The above situation cannot be pre-agreed or arranged - i.e. it is not a construct.

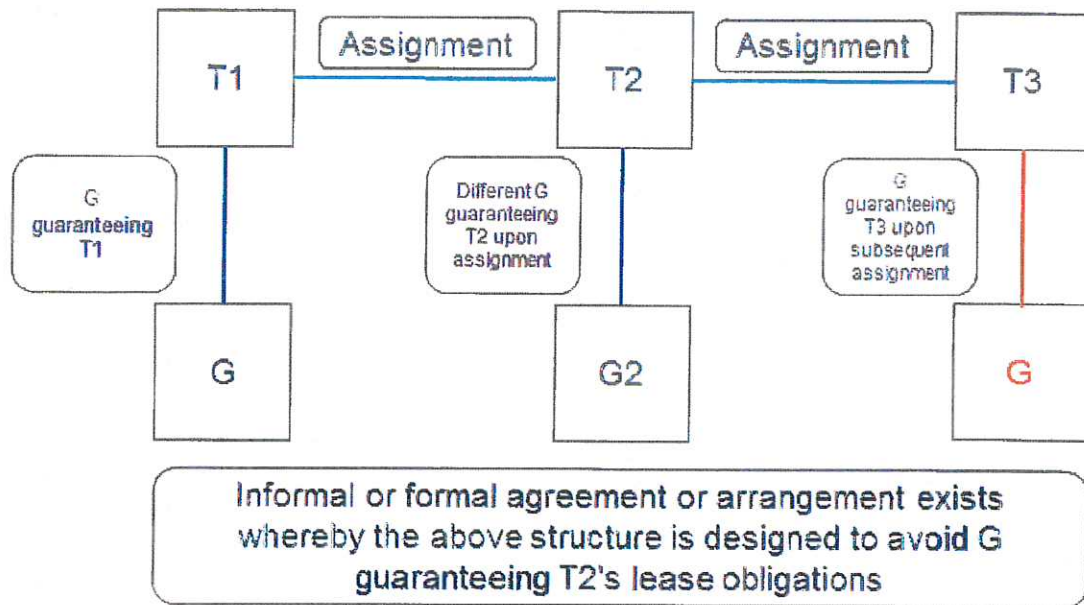
## Illustration 6 - Repeat Guarantee Valid where Intervening Assignment



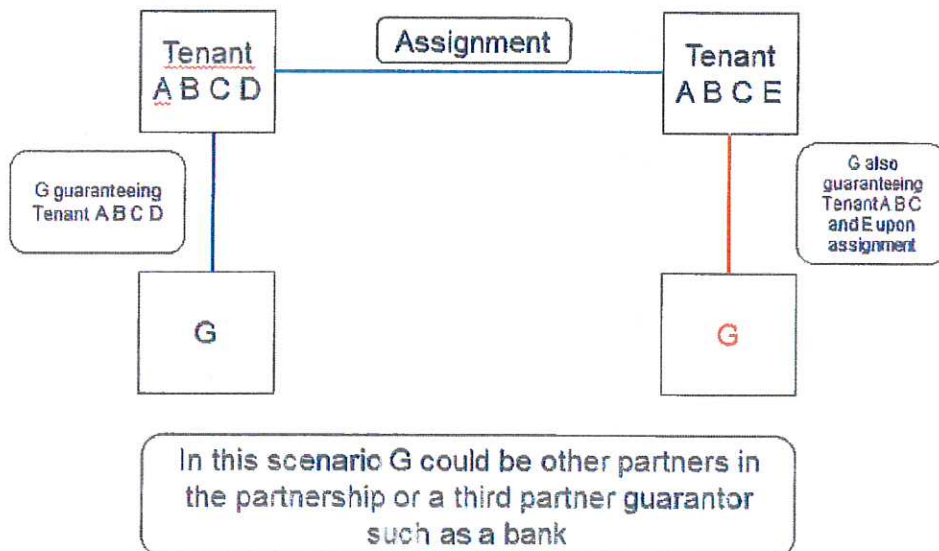
N.B. The above situation cannot be pre-agreed or arranged - i.e. it is not a construct.



## Illustration 7 - Repeat Guarantee Void where Intervening Assignment is Anti-Avoidance



## Illustration 8 - Partnership Repeat Guarantee is Void





## Appendix 2

### Proposed Amendments to the Landlord and Tenant Covenants Act 1995

#### 24 Effects of release from liability under, or loss of benefit of, covenant.

(1) Any release of a person from a covenant by virtue of this Act does not affect any liability of his arising from a breach of the covenant occurring before the release.

(2) Where—

(a) by virtue of this Act a tenant is released from a tenant covenant of a tenancy, and

(b) immediately before the release ~~there is a guarantor in relation to another person is bound by a covenant of the tenancy imposing any liability or penalty in the event of a failure to comply with~~ that tenant covenant,

then, as from the release of the tenant, ~~that other person the guarantor~~ is released ~~from the covenant mentioned in paragraph (b)~~ to the same extent as the tenant is released from that tenant covenant.

(2A) Where a guarantor is released from a covenant of the tenancy imposing any liability or penalty in the event of a failure by the tenant to comply with a tenant covenant by virtue of subsection (2), nothing in this Act (and in particular section 25) shall preclude him from—

(a) entering into or being bound by a covenant imposing any liability or penalty in the event of a failure by the said tenant to comply with his covenants under any authorised guarantee agreement entered into by that tenant under section 16, or

(b) entering into a covenant imposing any liability or penalty in the event of a failure by an assignee of the tenancy to comply with a tenant covenant where in the instrument containing the said covenant the guarantor and the assignor and the assignee of the tenancy each certify that:

(i) the assignor and the assignee are group companies of each other, or

(ii) the assignor and the assignee comprise individuals who are all partners in the same firm, or

(iii) either the assignor or the assignee comprise individuals who are all partners in the same firm and the other is a company in which that firm has a controlling interest, or

(c) taking an assignment of the tenancy at any time

(2B) References in this section to individuals who are partners in a firm mean individuals acting in that capacity.

(3) Where a person bound by a landlord or tenant covenant of a tenancy—

(a) assigns the whole or part of his interest in the premises demised by the tenancy, but

(b) is not released by virtue of this Act from the covenant (with the result that subsection (1) does not apply),

the assignment does not affect any liability of his arising from a breach of the covenant occurring before the assignment.

(4) Where by virtue of this Act a person ceases to be entitled to the benefit of a covenant, this does not affect any rights of his arising from a breach of the covenant occurring before he ceases to be so entitled.

## 28 Interpretation.

(1) In this Act (unless the context otherwise requires)—

“assignment” includes equitable assignment and in addition (subject to section 11) assignment in breach of a covenant of a tenancy or by operation of law;

“authorised guarantee agreement” means an agreement which is an authorised guarantee agreement for the purposes of section 16;

“collateral agreement”, in relation to a tenancy, means any agreement collateral to the tenancy, whether made before or after its creation;

**“company” includes any body corporate;**

“consent” includes licence;

“covenant” includes term, condition and obligation, and references to a covenant (or any description of covenant) of a tenancy include a covenant (or a covenant of that description) contained in a collateral agreement;

**“guarantor” in relation to a tenancy, means any person who is bound by a covenant imposing any liability or penalty in the event of a failure by another person to comply with a covenant of that tenancy;**

“landlord” and “tenant”, in relation to a tenancy, mean the person for the time being entitled to the reversion expectant on the term of the tenancy and the person so entitled to that term respectively;

“landlord covenant”, in relation to a tenancy, means a covenant falling to be complied with by the landlord of premises demised by the tenancy;

“new tenancy” means a tenancy which is a new tenancy for the purposes of section 1;

**“partner” means a partner for the purposes of the Partnership Act 1890;**

“reversion” means the interest expectant on the termination of a tenancy;

“tenancy” means any lease or other tenancy and includes—

(a) a sub-tenancy, and

(b) an agreement for a tenancy,



but does not include a mortgage term;

“tenant covenant”, in relation to a tenancy, means a covenant falling to be complied with by the tenant of premises demised by the tenancy.

(2) For the purposes of any reference in this Act to a covenant falling to be complied with in relation to a particular part of the premises demised by a tenancy, a covenant falls to be so complied with if—

(a) it in terms applies to that part of the premises, or

(b) in its practical application it can be attributed to that part of the premises (whether or not it can also be so attributed to other individual parts of those premises).

(2A) For the purposes of this Act, a body corporate shall be taken to be a group company of another body corporate if and only if one is a subsidiary of the other or both are subsidiaries of a third body corporate or the same person has a controlling interest in both and—

(a) "controlling interest" has the meaning given by section 46(2) of the Landlord and Tenant Act 1954 (as amended),

(b) "subsidiary" has the meaning given by section 1159 of the Companies Act 2006,

(c) "body corporate" in this Act and section 1159 of the Companies Act 2006 shall include a limited liability partnership, and

(c) in the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:

(i) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and

(ii) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

(3) Subsection (2) does not apply in relation to covenants to pay money; and, for the purposes of any reference in this Act to a covenant falling to be complied with in relation to a particular part of the premises demised by a tenancy, a covenant of a tenancy which is a covenant to pay money falls to be so complied with if—

(a) the covenant in terms applies to that part; or

(b) the amount of the payment is determinable specifically by reference—

(i) to that part, or

(ii) to anything falling to be done by or for a person as tenant or occupier of that part (if it is a tenant covenant), or

(iii) to anything falling to be done by or for a person as landlord of that part (if it is a landlord covenant).

(4) Where—

(a) the landlord, or

(b) the tenant, or

(c) the guarantor

in relation to a tenancy comprises two or more persons jointly ~~two or more persons jointly constitute either the landlord or the tenant in relation to a tenancy~~, any reference in this Act to the landlord or the tenant or the guarantor is a reference to both or all of the persons who jointly constitute the landlord or the tenant or the guarantor, as the case may be, as if they were a single entity rather than a reference to each of those persons individually (and accordingly nothing in section 13 applies in relation to the rights and liabilities of such persons between themselves and nothing in this Act shall preclude one or more (but not all) of those persons from entering into or being bound by a covenant which by virtue of this Act they would be precluded from entering into or being bound by jointly).

(5) References in this Act to the assignment by a landlord of the reversion in the whole or part of the premises demised by a tenancy are to the assignment by him of the whole of his interest (as owner of the reversion) in the whole or part of those premises.

(6) For the purposes of this Act—

(a) any assignment (however effected) consisting in the transfer of the whole of the landlord's interest (as owner of the reversion) in any premises demised by a tenancy shall be treated as an assignment by the landlord of the reversion in those premises even if it is not effected by him; and

(b) any assignment (however effected) consisting in the transfer of the whole of the tenant's interest in any premises demised by a tenancy shall be treated as an assignment by the tenant of those premises even if it is not effected by him.