

## Directors' liability - Personal guarantees.

Being asked to sign a personal guarantee is a common duty imposed on a director. They are used frequently when renting premises, applying for accounts with suppliers and when looking for bank finance.

A director may believe that as the company enjoys limited liability status, there is little risk personally. This is **WRONG**. Any guarantee given will be in a personal capacity. If the company cannot pay its debts, then the director will be liable personally.

It is vital therefore that directors take note and are aware of what it is that they sign. It is always responsible to seek legal advice in these cases.

### Key clauses.

Most guarantees are tailored to specific requirements. However they contain may contain standard clauses as follows:

1. **Payment on demand** means exactly this. If the company is either late in paying or fails to pay at all, you may be asked to find the cash to settle the whole outstanding amount instantly.
2. **Joint and several liability** means that if there is more than one director acting as guarantors, the creditor can choose whether to come after one or more of the directors and who to choose. It is entirely their decision.
3. **All monies** clauses are usually found in bank guarantees. In addition to honouring the debts of the company, the bank reserves the right to ask you to repay all outstanding personal loans. This may include your personal mortgage and any personal overdraft.
4. **Indulgent or waiver clauses** are generally included to cover the lender if it decides to vary the payment terms to allow, for example, extra time to settle debts. These clauses are necessary because without them, if the terms are varied, the guarantee may become unenforceable.

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### **Minimise the downside.**

You may be limited to the extent that you are able to negotiate. However it is important to understand what you are signing and as mentioned above, you should take legal advice before signing.

There are a number of areas that you could consider as follows:

1. Are there any other lenders that may not require such onerous terms? Try and get two or three banks to quote for the same work.
2. See if you can get the guarantee to include an upper limit. For example “the total amount recoverable under this guarantee shall not exceed £x.
3. Avoid giving an “all monies” guarantee.
4. Aim to limit the duration of the guarantee. Otherwise it could run indefinitely. For example, if you sold your company, you could in practice remain liable for its debts.
5. If your landlord insists on a guarantee, make sure you are only liable to pay rent for the duration of the original lease and not for any extended period that may arise under the Landlord and Tenant Act 1954.

#### **Disclaimer**

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