

Directors Guarantees

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Often, forming a limited liability company is not the end of the story when it comes to the limitation of personal liability. When you incorporate your business, your bank, landlord or supplier will often respond by requesting directors' guarantees, enabling them to require the directors to repay money owed by the company out of their personal assets if the company is unable to pay. Requests for guarantees have become increasingly common since 2008 but landlords and suppliers, in particular, can validly be asked to justify their request if a guarantee seems unreasonable on the basis of your company's accounts and references.

Where there are two or more guarantors each guarantor signs a separate document taking responsibility for the whole of the amount owed. Before deciding whether to sign a guarantee it is worth considering the ability of your co-guarantors to pay. Are your fellow directors' net personal assets similar to your own? Is there a risk that one or more of them couldn't pay or may become bankrupt? Legal arguments aside, if a guarantor is bankrupt, the assets available to the bank or to his co-guarantors are likely to be limited. The bank has little incentive to attempt recovery from the bankrupt if there are other guarantors available and will probably look to the solvent guarantors to pay instead, increasing the amount each solvent guarantor pays.

Have you considered what happens if only some of the guarantors pay, following a demand from the bank? If you decide to sign a guarantee, we would recommend entering into a Contribution Agreement with the other guarantors, stating what percentage contribution each guarantor is expected to make if one or more of you is called upon to pay. The amount of each contribution would normally be linked to the amount of your shareholdings. That way, even if the bank approaches one guarantor for payment, he can reclaim the expressly agreed proportions back from the other guarantors.

Finally, are any circumstances in which you should be asking your own customers for guarantees? If you are offering credit terms, you may consider getting guarantees from the directors of limited company customers, which also provide reassurance to your own creditors, such as your bank, and are particularly useful if you factor your debts. As I have mentioned, a guarantee is only useful if the guarantors have the ability to pay so it's as well to consider the financial strength of the directors in question before deciding whether the guarantee is worth having. If your investigations demonstrate that your customer's directors are creditworthy in their own right, a guarantee provides you with additional security and is something to consider.



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