

Am I personally responsible for my Company's debts?

If you are a director of a limited company then any business debts are limited to the company and are not recoverable against the directors. This means that as a director personal finances should not be affected.

Whilst this is a fundamental principle of Company Law, there are exceptions.

Personal Guarantees

If personal guarantees have been provided for any line of credit obtained by the company; e.g. a bank loan, invoice factoring agreement or property lease, and the business is unable to meet the agreed payment terms, then the director will be personally responsible under their guarantee, meaning the creditor can pursue the director personally for the debt.

Overdrawn Directors Loan Account

Having an overdrawn directors' loan account when a company goes into insolvency also means that the directors will be personally liable for repaying that loan. The office holder handling the insolvency will demand repayment of the account as it is their duty to act in the interest of company creditors. If a director refuses to repay the loan, the office holder can take legal action against them to recover the debt. Ultimately this could result in obtaining judgement against the director or bankruptcy proceedings being taken against them.

Antecedent Transactions

A company is classed as insolvent if it is unable to pay its debts as and when they fall due or when its liabilities are greater than its assets. If you know that your company is insolvent and increase the level of net debt by continued trading, then as a director you can become personally liable for that debt. In a formal insolvency of the Company, the office holder has legislation available to pursue the directors personally if the Company debt increased whilst the directors knew or ought to have known that the company had no chance of recovery. Whether the office holder pursues an action for Wrongful Trading or the more serious Fraudulent Trading, if the director is found guilty they may become personally liable for any losses suffered by the Company.

Similarly, if a misfeasance claim is brought against the company, where the directors have knowingly acted in an inappropriate way and another party suffers as a result, then again directors may become personally liable.

HMRC Liabilities

HMRC liabilities generally take the form of an unsecured claim against an insolvent Company. However, the Finance Act 2007, Schedule 24 does provide powers for HMRC to personally pursue directors whereby they can evidence that an inaccurate return has been filed and the individual that filed the return acted either deliberately or carelessly. Whilst rarely used, directors must be aware of this legislation.

Schedule 24 Finance Act 2007- http://www.hmrc.gov.uk/gds/ch/attachments/sch24_fa07_v6.pdf

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require any clarification regarding insolvency law or procedure, please do not hesitate to contact us.