Directors and personal liability for company debts



If you are the director of a private limited company in England or Wales you can take comfort from the fact that you will not generally be personally liable for any debts the company incurs while you are in post. However, as Pritti Amin, Head of Debt Recovery with Thackray Williams explains, there are exceptions and when they arise you need to seek prompt legal advice to contain the damage.

Exceptions to rule against personal liability

As a director you may become personally liable for company debts in a range of circumstances, including where you have:

- given a personal guarantee or other security on the company's behalf, for example under the terms of a loan arrangement or shareholder's agreement;
- entered a contract on the company's behalf before your company's incorporation;
- entered a contract without authority or without making it clear that you are acting as a corporate agent as opposed to in your personal capacity;
- breached your duties under the Companies Act 2006, for example by failing to declare an interest in a proposed transaction or arrangement;
- allowed a now insolvent company to continue trading when you knew or ought to have concluded there was no reasonable prospect of insolvency being avoided;
- disposed of company assets for significantly less than they were worth in the run up to the company's collapse into insolvency;
- paid money over to a company creditor before the company's insolvency to improve that creditor's position;
- knowingly been a party to company activities designed to defraud creditors or to achieve some other fraudulent purpose; or
- been guilty of wrongful or negligent acts which have caused harm or loss either to the company itself or to someone else

It is not just legally appointed directors who are at risk. People who assume the role of a director, for example by calling the shots from the sidelines, can also be brought into the frame as the 2018 case of Palmer Birch v Lloyd shows.

In this case, a shadow director was found guilty of intentionally orchestrating a series of events which forced a company into insolvency with the aim of avoiding a large company debt. Specifically, the shadow director was found guilty of:

- inducing breach of contract, by encouraging the company to break the terms of a contract it had with a construction firm and to which the company owed money; and
- unlawful means conspiracy, by colluding with the company's legally appointed director to then

bring about the company's liquidation in the hope of avoiding payment of the debt, thereby causing deliberate harm to the construction firm's business interests.

The directors' argument that they should be immune from personal liability was rejected by the court which said that the protection normally afforded to the directors of a company should not apply in this case because of their clear abuse of the corporate structure.

The role of early legal advice

If you are a company director facing the possibility of a personal liability claim it is important that you take legal advice early to find out where you stand. To do this you need clarity about what you are accused of, why it is you are said to have breached your duties as a director or otherwise fallen foul of the law, and whether what you are said to have done or not done points clearly to personal culpability being justified.

It is only by going through this process that you can determine if the claims against you should be disputed and a robust defence of your position launched, or whether they should be admitted, and active attempts made to reach a quick settlement.

Our commercial dispute resolution solicitors are skilled at investigating directors' liability claims and in quickly assessing the chances of you being successfully prosecuted or sued. We have experience of negotiating settlements with shareholders where there is the threat of proceedings being brought against you in the company's name, and of negotiating with aggrieved creditors where the company you worked for has been forced into insolvency. We also have experience of negotiating deals with company liquidators who may be looking to you for a personal contribution to company funds or who may be contemplating having you disqualified from acting as a director in the future.

In most cases we can keep disputes out of court but where proceedings are instigated, we can guide you through the process and ensure your case is presented in the best light to keep likely sanctions as lenient as possible. Where a personal contribution to company funds is sought, we can help you to formulate acceptable proposals to raise the money you need without risking your own insolvency and, where a director's disqualification order is being contemplated, we can explore the possibility of negotiating a voluntary agreement instead with less onerous restrictions.

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