



Fixed Fee Lawyers
Across 4 Cities

[READ MORE](#)

JHK LEGAL

Everything a Small Business Needs to know about Personal Guarantees

February 14, 2017

Written by JHK Legal Lawyer, Hayley Tibbie

What is a personal Guarantee?

A personal guarantee is a written promise to guarantee the liability of one party for the debts of another party. Commonly, personal guarantees are given by directors and shareholders of companies to personally guarantee the payment of money or obligations on behalf of their company.



How to secure your business?

In addition to your businesses contracts, personal guarantees provided by your customers, contractors or suppliers can be essential security to your small business.

This is exceptionally useful when it comes to enforcing a debt owed to your business as it allows your business to pursue the director of the company for all debts owed by that company. There are numerous benefits to obtaining a personal guarantee from a director of a company; those being:

1. When a person is being personally sued, they cannot hide behind the company and accordingly, they are more inclined to pay your debt as it may result in a personal default judgment recorded against their name, as opposed to the company's name;
2. Depending on the nature of your personal guarantee, you can lodge a caveat over real property which the individual director owns; and
3. In the instance of the company which you have a contract with going into liquidation, you are able to sue the director of the company personally.

What is essential to ensure a binding personal guarantee?

There are a number of things that are important to ensure that the personal guarantee provided is a binding guarantee:

1. Conduct a company search. That way you will be able to ascertain who the directors and shareholders are, as well as whether there are any unusual matters occurring (such as a strike off action) which might sometimes give you an idea of how the directors operate with their creditors;
2. Ensure that the clauses of the personal guarantee are clearly marked as a guarantee where the individual is held liable personally. We highly recommend that the guarantee be on a separate page and headed with the words "Personal Guarantee" so as to cause no confusion for the guarantor.
3. The personal guarantee should be produced to the company director/other guarantors along with your business contract. This way there is little room for the individual director to argue that he or she was not aware that they were signing a personal guarantee specifically referring to the obligations of the contract.
4. Ensure that there is a space for the personal guarantee to be dated, this allows for formality and certainty of the guarantee.
5. Ensure that the personal guarantor provides their date of birth and address. This allows you to conduct precise bankruptcy searches on the individual as well provides for an easier process for enforcement action against the individual in the instance that a court judgment has been sought.
6. If possible, it would be prudent to obtain a copy of the individual's driver's licence, which would allow for an easier process in the instance enforcement action against the individual becomes necessary.
7. Get the guarantor to sign in front of an independent adult witness.

8. Some personal guarantees require someone with authority in the company to execute the personal guarantee. If this is the case, ensure that the personal guarantee has been signed by a person with authority to sign a personal guarantee on behalf of the company in accordance with relevant clauses. In other cases, anyone may sign a guarantee on behalf of a company, but we recommend you stick to people with an interest in the company such as directors and shareholders.

What to be aware of if you are signing a personal guarantee on behalf of your company

While it is essential to ensure your business' process by creating a rock solid personal guarantee document for customers, contractors and suppliers to execute, there might come a time where you will have to sign a personal guarantee guaranteeing the obligations of your own company to another contracting company. Many people tend to sign personal guarantees on behalf of their company as part of the usual contracting process and they do not think twice. This can sometimes leave you being personally liable on behalf of your company, and you might not even know it!

To protect yourself when signing business documents, it is recommended that you read and understand every document you are signing and if you do not understand you should seek legal advice.

With respect to signing a personal guarantee, there are a few items that you should look out for so that you know your obligations under the personal guarantee:

1. The difference between a several guarantee or a joint and several guarantee

A several guarantee is when there may be more than one guarantor signing the personal guarantee (for example, a second director). In this instance a several guarantee would make each director separately liable for the debts of the company, dependant upon the terms of the guarantee.

A joint and several guarantee means that each guarantor (usually the directors of your company), are liable, both separately and jointly, for the full debt owed by your company and you will not be liable for 50% of the debt if there are two guarantors; you will be liable for the whole of the debt.

2. What does “all monies” mean?

Normally a personal guarantee secures a company by stating that the guarantor will be liable for “all monies” due and owing by the primary contracting party. However, the term “all monies” is quite broad and in essence could apply to anything. It is suggested that you negotiate and understand this term with the company you are contracting with and arrange the negotiation of what “all monies” means in writing so you are sure about the limitations of your liability.

If you are a small business owner and require expert assistance with preparing a rock solid process for your business’ contracts and guarantees, or you are regularly engaging in contracts on behalf of your company, and you have legal questions regarding your rights under a personal guarantee, contact JHK Legal and we can provide you with a tailored written advice to your needs.

Additionally, if there is anything further that JHK can assist you with that is not related to personal guarantees, please do not hesitate to contact any of our offices.