

Company Directors - Limit Your Liability

Personal guarantees

It is common for directors to provide personal guarantees, such as for company credit cards, car leases or trade supplier arrangements.

There may be potential to negotiate a cap or time limit on the extent of liability.

Number of directorships

Many businesses have only one key person but still have two or more directors, as was required under the old Corporation law. The additional directors may not be necessary, and relieving them of directorships may remove further exposure from the requirement for personal guarantees and other directorship-related liabilities.

However, someone who holds themselves out to be a director or informally acts in the position of a director can be liable as a director. This can extend to people whose instructions or wishes the appointed directors are accustomed to following.

Ownership of assets

If a director does not have a significant level of assets in his/her own name at all relevant times (including well after any judgment has been made against the company), then the company liquidator may be less inclined to pursue them to recover assets from the company creditors.

Avoid insolvent trading

Failure to prevent a debt being incurred while the company is insolvent may give rise to a director being personally liable to the company or the creditor.

Be aware of director duties

Directors have numerous responsibilities under common law and various statutes. Being aware of these duties, attempting to perform them adequately and ensuring the company meets its tax, trade practices and other obligations can reduce personal liability risk.

Consider loans and other personal transactions with the company

A liquidator can void certain transactions with a company by a director or related entity of the company (including director's relatives) - generally where they are favorable to the director or related entity.

Of course, a loan owed by an individual to a company will generally be a company asset available to a liquidator.