

Director Liabilities – Protecting your Assets

When going into business with individuals for which you share assets with (e.g spouse) it is important that your shared assets (e.g the family home) are protected should anything go wrong. Protecting your assets begins with a business structure that prevents them from ever being at risk in the first place.

When starting a business with a family member it may seem like a good idea to appoint multiple parties as directors to keep it in the family.

However, this is not the case.

If the company that you are director of does not comply with their obligations, you may become personally liable for their debts.

Although it is uncommon for the debtors to go after an individual personally for debts owed by the Company, it does happen if the company's assets are insufficient to pay the debtors.

This can have a devastating effect if you have assets such as a family home in your name.



HOW TO PROTECT YOUR PERSONAL ASSETS

When starting up a company with someone for which you share assets with, it is not wise to have the party for which the assets name is under to be a director of the company.

For example, if mum and dad decide that they want to start up a company and both are named as directors of the company, if the company was to not meet their obligations or become insolvent, debtors may pursue mum or dad and subsequently take the family home in payment of the debts.

HOW TO AVOID ASSETS BEING TAKEN

In these events it would be wise to structure your business in a way that the party for whom is a director does not have any major assets in their name.

For example, if mum was the director of the company, the family home should be put into dad's name, to save the family home from being taken should the ATO decide to prosecute mum personally for offences committed by the company.

WHAT IF I JUST BECAME DIRECTOR OF AN EXISTING COMPANY AND THE COMPANY HAS DEBTS, AM I LIABLE?

As a new director you have 30 days before you become liable for director penalties for the company's unpaid PAYG withholding obligations and Superannuation Guarantee obligations. After these 30 days you then become liable for all outstanding debts of the company.

HOW DO I AVOID BEING LIABLE FOR PREVIOUS DEBTS OF THE COMPANY?

If within 30 days of being appointed as the director of a company, the company either pays their PAYG Tax and Super Guarantee debt, appoints an administrator or the company gets wound up, you will not be personally liable for pre-existing debts.

However, even if you resign within that 30 day period you will still be liable for the debts that were due during your appointment if none of the above mentioned actions were implemented.

If you are unsure as to whether your assets are properly protected, contact Adam Robinson.

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