

BANK GUARANTEES

The proprietors of limited liability companies are often required by their banks to guarantee their company's borrowing.

Sometimes guarantees are required to support the account of an individual.

Guarantees should not be given lightly.

You should certainly be warned of the following:

1. The effect of giving such a guarantee is that, so far as you and the bank are concerned, you no longer have the benefit of the company having limited liability. If the company defaults on its liability to the bank, you will have to pick up the tab and you cannot look to the company for payment until the bank has been paid in full.

2. If you are to pick up the tab, what about your fellow shareholders (if any)? We advise that if there are other shareholders you should have a formal agreement with them, in writing, confirming that each will pick up or repay to you his due proportion of whatever liability you may have to settle with the bank. Similarly, you should seriously consider the possibility of the company entering into a Charge of its property in your flavour. That will probably have to be a second Charge, with the bank taking a first Charge. Such a Charge could well put your claim in advance of the claims of other creditors, should the company fail.

3. A guarantee of the account of another individual is so often required when that individual is already in difficulty, so may be particularly hazardous. You will certainly have no control over how that other person (even if your own spouse or child) conducts the account. **We advise that all guarantees, particularly if not given for a company which you wholly own and control, must be limited to such modest amount as you can afford to lose.**

4. You will be liable not just for any fixed amount shown on the Deed of Guarantee, but also for any costs and interest that may accrue, and they could escalate rapidly. If no fixed amount is shown the liability will be entirely unlimited. Always try to agree a cap on the guarantee.

5. In signing the Guarantee to a bank, you are guaranteeing not just the present liability of the borrower to the bank but all future liabilities incurred by the borrower, however and whenever incurred. In the light of this you should keep a very close eye on what the borrower is doing: but that may be almost impossible! In any event, you should certainly make arrangements to ensure that no substantial liability is to be incurred without your signature. For example, we suggest that all company cheques for more than a modest amount should be signed or countersigned by you, and that a formal and irrevocable notice be given to the bank that no

guarantees are to be entered into by the borrower without your written authority.

6. At any time you may give notice to the bank that you are no longer to be bound by the guarantee. In giving such notice you may be giving the bank three months in which to ascertain whether there is any liability. That may be on cheques which have not yet been cleared, or even not yet drawn, or on guarantees which the borrower may have given to third parties, even without your knowledge. At any time, if asked, the bank must tell you how much the liability then is, but that is not much help if other liabilities come to light within the three-month period.

7. We advise you to give notice withdrawing the guarantee as soon as you are satisfied that there is no large liability and none is likely to arise in the next three months. More importantly, we advise that you give that notice if it appears that the liability could increase after the next three months, so that you do not find yourself liable for more and more, or even for the final liability after all other debts have been paid. Do try to give the notice when the liability is small and before it rises again three months or more later.

8. You should appreciate that as soon as you give the notice the bank will very possibly then call in its loans and overdrafts owed by the borrower. Even then, you remain liable. The bank will almost certainly call in the guarantee and require you to make immediate

These notes relate only to the law in England and Wales. They are by no means exhaustive but we hope that they will help to avoid some of the difficulties which may arise. Please raise above any queries as soon as possible.

payment. You cannot require it to do otherwise by, for instance, having it call in other guarantees or any security that it may have on property owned by the borrower.

9. What is more, if you have escaped making payment because the bank has obtained payment from the company, but the company then goes into liquidation and the liquidator obtains repayment from the bank, you will be liable to the bank for the amount repaid. The same applies to an individual who goes bankrupt.

10. Should you die the liability continues against your estate, and your death could very easily trigger a demand by the bank for payment out of your estate. One effect is that it is possible that your estate could not be finally administered for up to five years following your demise. Please ensure that a copy of the Deed of Guarantee is kept with your personal papers where it will come to light and be given to your personal representatives in the unhappy event of your demise.

We emphasise:

- **By guaranteeing the liability of another, you will have to pay up if that other defaults**
- **Guarantees should not be given lightly and without careful consideration of the risks involved**
- **Limit your liability to a fixed amount**
- **Guarantees should be limited to such modest amounts as you can afford to lose**

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