



PERSONAL GUARANTEES IN BUSINESS

In business dealings, it is common for the directors of a company to be asked to give personal guarantees for the company's financial commitments, such as loans, trade credit accounts, leases and other commercial agreements.

A personal guarantee means that the guarantor (usually the director) becomes personally liable for the debts of the company if those debts are not paid by the company. This can include the principal debt, interest, fees and legal costs involved in recovery of the debt the subject of the guarantee.

A guarantor exposes all of their personal assets (e.g. the family home, cash, cars etc) if the company defaults on its obligations. If the guarantee is enforced, there is a risk of bankruptcy if a guarantor does not have sufficient assets to repay the debts claimed under the guarantee.

Further, often there is no obligation to deplete all of the company's assets before pursuing the guarantor.

Of course, it would be better to avoid providing a personal guarantor in the first place. But in many instances, this is simply the price of doing business.

Before signing a guarantee, any potential guarantor should seek:

1. Financial advice as to whether the borrower has the capacity to meet the financial obligations being guaranteed; and
2. Legal advice on what signing the guarantee will mean for the guarantor personally. There may be an opportunity to negotiate the terms of the guarantee by limiting the amount that can be claimed from each guarantor, providing a bank guarantee instead of a personal guarantee, or requiring other parties to provide a personal guarantee to share the risk.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Author:

[Jeremy Chitty](#) (Senior Associate: Property & Real Estate)

jeremy.chitty@murfett.com.au

Directors:

[Jason De Silva](#) (Director: Business Advisory, Insolvency & Litigation)

jason.desilva@murfett.com.au

[Kelly Parker](#) (Director: Business Advisory, Commercial & Insolvency)

kelly.parker@murfett.com.au

[Peter Broun](#) (Director: Property & Real Estate)

peter.broun@murfett.com.au

Murfett Legal is a leading law firm in WA, providing services in litigation, corporate and commercial, employment and workplace relations, insolvency, debt collection, business restructuring, Wills & estates, property, leasing, settlements, liquor licensing and intellectual property.