

Your Legal Questions



Stephen Soper
Partner & Solicitor

Q. I own a small company and have been asked by the bank to guarantee the company overdraft. What does this mean?

A. In the present climate banks are looking to have as much security as possible to minimise their risk before lending. Where a company borrows money the bank usually asks for a specific charge (mortgage) over any land and buildings owned by the company and a general charge known as a debenture over all other assets. Some banks may also ask the directors or shareholder(s) to personally guarantee the company's borrowings and to secure this by a mortgage over their own homes or other property.

A guarantee is the link between the company's debt and the individual's assets and is a personal promise to repay to the bank any sum owed to it by the company. Ideally, any guarantee should be limited to a specified amount so that liability under it is capped, otherwise the company could continue to run up further debt for which the guarantor will be responsible. Capped liability is particularly important for guarantors who have no day to day involvement in the business.

Often guarantees can be called upon without the bank first having to pursue the main borrower. Furthermore where the same bank with the benefit of the guarantee has a mortgage on residential property of the guarantor the bank could take steps to take possession should the guarantor fail to pay any sums due under the guarantee.

If a bank asks you for a guarantee you should be aware that this is a serious financial commitment for which you should take advice.

Stephen Soper is a Partner and Solicitor in the Commercial and Property Department, Powells Solicitors.

*Direct dial 01934 637915
soper@powellslaw.com*