



“Are you a Company Director ?”

Many small businesses are run through a company. In most cases, directors and shareholders can not be held personally liable for the debts of the company. Director liability can arise however in a number of ways including-

- If the company has been trading insolvently (that is, creating debts it can't pay when they fall due) then a liquidator can go after the personal assets of directors to pay the company's creditors; and
- In particular circumstances, directors may be held personally liable for the company's tax debts both under State and Federal laws.

The risk of being held personally liable for the debts of a company is not limited to people who are formally appointed directors of a company. Under the provisions of the Corporations Act, the definition of a “director” includes other people who participate in the management of the company at a high level. These other people are often referred to as “de facto” or “shadow” directors.

In one case a Ms Hamad was the sole director and shareholder of a company that ran a duty free shop. Mr Yasseen, her de facto husband managed the shop. The shop failed, and the company was put into liquidation. Subsequently, the liquidator of the company sued Mr Yasseen for breach of director's duties. Mr Yasseen argued that he was merely acting as a consultant, but because of the extent of his involvement in the running of the company (negotiating with the landlord, hiring staff, and negotiating the eventual sale of the business) the Court found he was a de facto director, and could be sued personally by the liquidator for breaching his duties as a director.

If you are closely involved in running a business that is operating through a company you should carefully consider whether you are at risk of being held personally liable for the debts of the company, even if you are not a formally appointed director.

At Everingham Solomons we have the expertise and experience to assist you with all your business matters because *Helping You is Our Business.*



Everingham Solomons
SOLICITORS
Incorporating Thomas & Hogue and Creagh O'Brien & Co.

Consultant: Ted Heazlett	Level 3, Ray Walsh House, 437 Peel Street, Tamworth NSW 2340 Ph: 6766 1066 Fax: 6766 4803 Email: solicitors@eversol.com.au
Directors: John Boag Terry Broomfield Ken Sorrenson Terry Robinson Mark Grady Jennifer Blissett	
Associate: Lesley McDonnell	Previous articles available at www.eversol.com.au

