BRI
BUSINESS RECOVERY AND INSOLVENCY

## When Company Insolvency Becomes Personal

Personal guarantees (PGs) are now a common feature of SME borrowing in the UK. At BRI, we regularly work with directors who have personally supported company borrowing through guarantees, often without fully appreciating the potential consequences. From the outset, we help clients understand not only the options available to the company, but also the possible impact on them personally.

A guarantee is a legally binding commitment by an individual (typically a director or owner) to repay company liabilities in the event that the business is unable to do so.

A PG may be:

- Secured: such as a charge against their property
- Unsecured: based solely on their creditworthiness
- Joint and several: multiple guarantors liable for the full debt

It can put a director's home, savings, and personal credit profile on the line, which is why independent legal advice before signing is so important. Understanding the risks, negotiating caps or limitations, and ensuring clarity of terms at the outset can significantly reduce future exposure. Directors may also wish to consider Personal Guarantee Insurance, which in some cases can cover up to 80% of the liability if things go wrong.

### The Risks to Directors during Insolvency

In a formal insolvency process, such as liquidation or administration, an insolvency practitioner will realise company assets for the benefit of creditors. However, where there is a shortfall, creditors will often look to enforce any personal guarantees in place. This can leave directors personally liable for a range of obligations, including bank lending, overdrafts, asset finance, commercial leases, and key supplier agreements.

A critical early step is to confirm whether any PGs exist. This requires a detailed review of relevant documentation, including loan and facility agreements, security documents, leases, and supplier contracts. Guarantees are not always documented separately and may be incorporated within wider contractual terms. Understanding the scope, limitations, and triggers for enforcement is essential in assessing overall exposure.

It is also important to note that enforcement of a guarantee sits outside the corporate insolvency framework. Creditors are typically able to pursue the guarantor directly once a default has occurred, regardless of the ongoing insolvency process. As a result, directors can come under significant personal financial pressure, which in some cases may lead to consideration of personal insolvency solutions such as Individual Voluntary Arrangements (IVAs) or bankruptcy.

BUSINESS RECOVERY AND INSOLVENCY

## Preference Payments

The risks don't stop with enforcement alone... an additional area of risk arises in the period leading up to insolvency, particularly in relation to payments made to guaranteed debts. Where a company prioritises repayment of a PG-backed creditor ahead of others, this may give rise to a potential preference claim under insolvency legislation. If such payments are found, an insolvency practitioner may seek to challenge and recover those payments from the director personally. This highlights the need for directors to exercise caution and take advice from BRI early when managing creditor payments during periods of financial distress.

## The Importance of Early Advice

Given the potential consequences, clients should be encouraged to seek independent legal and financial advice both at the point of entering into a guarantee and when financial distress arises. Professional advice can help clarify the extent of liability, identify any potential limitations in the guarantee, and explore options for negotiation or settlement with creditors.

Furthermore, while each case will depend on its specific facts and documentation, there are circumstances where enforceability may be challenged or require closer scrutiny. These can include situations where:

- the guarantee was not properly executed;
- there is ambiguity in the drafting; or
- the individual did not fully understand the nature of the obligation at the time of signing.

In some cases, issues such as undue influence, misrepresentation, or failure to obtain independent legal advice may also be relevant. However, these are complex legal matters and should always be considered with appropriate professional guidance.

For professional advisers, early identification of personal guarantees is key to ensuring clients receive timely, coordinated support. Working together with BRI can help manage both corporate and personal risk, while giving clients clear, practical advice early in the process. In many cases, this leads to more informed decision-making and better overall outcomes.

Importantly, entering a formal insolvency process and closing the business may not always be the most appropriate outcome. Many companies experiencing financial distress still have viable underlying operations and, with early advice from BRI, there may be opportunities to restructure debts, improve cash flow, negotiate with creditors, and implement recovery strategies that allow the business to continue trading. Taking action early can, in some cases, help avoid defaults that may otherwise trigger personal guarantees.