Doron F. Eghbali Business Planning

How Could You Protect Your Business Assets Against Personal Guarantees?

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In this business environment, obtaining business loans is very challenging. Even if a business entrepreneur is successful at securing such funds, then the lender most probably asks for a personal guaranty. The personal guaranty would most likely defeat the corporate shields builds into corporate entities such as corporations, limited liability companies and limited partnerships. However, there could be ways to mitigate one's exposure to loss of personal assets. Let us analyze this important topic further.

NEGOTIATION IS KEY

Negotiation with lenders should be done on a variety of key provisions including but not limited to:

1. REDUCING THE NUMBER OF YEARS YOUR PERSONAL ASSETS ARE AT STAKE

Probably, you should try to build into your contract with lenders a provision that allows you to protect your personal assets after some years, if you pay your monthly loan payments on time for some time. Although this concession might be harder to secure from banks, this strategy might work if you can assure the lender your history of on-time payment continues even if your personal assets are not stake. The lending company might ask you to put up some business-related collateral after your personal assets are freed. This is a negotiation and the objective is to free your personal property to the extent possible. You do not want your home, personal car or bank accounts invaded if you default on your payment.

2. REDUCING THE NUMBER OF PEOPLE SIGNING THE PERSONAL GUARANTEE

Probably, the other negotiating tactic you can use is try to reduce the number of people personally guaranteeing the loan. For instance, you can ask the bank to let you sign the loan without your spouse signing it, if you are married. This strategy theoretically MIGHT protect SOME of the joint assets. However, this negotiating strategy could prove futile depending on your agreements with your wife at the time of marriage and lack thereof.

Banks could resist putting you as the only signatory on the account, since you could practically put everything in your spouse's name and avoid personal liability. To address this, you could ask for more leniency if you relatively have some equity in your business. This solution might not work for start-ups with relatively more debt than equity in the business.

3. REDUCING YOUR PERSONAL LIABILITY EXPOSURE BY CARVING OUT ASSETS

Probably, you could ask lenders especially banks to phase in some kind of carving out provisions as you accumulate business assets and equity. This means the lender would place certain liens on certain groups of your business assets as your company grows in lieu of personal liability or exchanging your personal liability with such business assets.

However, this is very important to note your negotiating power is predicated on how badly you want the money and how good your credit history is. If you have just launched your start up, you do not have much equity in your business and your credit history is not excellent, then probably, your negotiating strength would relatively be at its lowest level.

__DORON EGHBALI__ is a Partner at the Beverly Hills Offices of Law Advocate Group, LLP. He Primarily Practices Business, Real Estate and Entertainment Law. Doron Can be Reached at: 310-612-6201. For More Information, Please, Visit: www.LawAdvocateGroup.com.