



## When might voidable transactions affect you?

If you owe money.

One of the main reasons that individuals run their businesses through a company structure is that of limited liability.

## What does limited liability mean?

Basically this means that the company is trading as a separate entity to its owners/directors and the liability of the company to pay its debts is limited to the unpaid share capital of the company.

For example:

### Company A

Assets	50,000
Liabilities	100,000
Uncalled Capital	5,000

In the first instance if the company is liquidated the only money that can be called on from the owners personally is the uncalled capital.

This would leave the company \$45,000 short to pay its creditors .

## Voidable transactions

Although the owners have limited liability in the above scenario they could be liable for debts personally if they are “voidable transactions”.

### 1. Insolvent Trading

Looking at the above figures the company is actually trading insolvently. Its liabilities are more than its assets ( a very simple example).

If a company trades while it is insolvent then the transactions that occur during this period can be voidable and could then become a liability of the owners personally. There is no time limit on this.

One common example is where the company borrows to keep the company operating and this borrowing may be secured over personal assets. If the company can no longer pay its normal creditors and its balance sheet is insolvent then they liquidator will come after those personal assets.

**To ensure that you retain your limited liability your company must be solvent.**

## 2. Specified Period

A liquidator will look at all transactions that occur within a certain time frame to ensure that there has been no preferential payments or payments for the owners benefit during the period.

### **Supplying goods to company which is looking shady.**

The liquidator goes under the assumption that if you are trading with a company within six months of it going into liquidation you should have known it was trading insolvently and you may have to repay any monies that have been paid to you.

If you ever get one of these liquidators letters, please pass on to your advisors to reply to the wording needs to be clear about what you knew and how you traded with the company.

Be very careful if you change your normal trading terms with a company which you know is in trouble.

eg. Start asking for cash payments up front when you usually were giving them 30 days credit. This is a sure sign that you know the company is in trouble.

The other way to protect yourself in this situation is to have a security over the supply so that you are a preferred creditor.

We discussed last month about PPSR (Personal property security register) and romalpa clauses.

### **What to do**

- Advise your accountant or lawyer as soon as you feel you are getting into trouble. They can advise on methods to ensure you don't lose your limited liability
- If you are dealing with a customer who you believe is in trouble then put processes in place to protect yourself – get advice.
- Have good credit controls in place.
- Sellers - Insist on personal guarantees from all your customers.
- Buyers - Don't give personal guarantees to your suppliers if you can help it.
- If your accountant sends you a letter saying that you are trading insolvently be aware of what this means and fix it.



***Ensuring your future is clear!***

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