

FDL Business Health Check

A limited company is often described in legal terms as having a separate legal personality as the company has an existence separate from its shareholders.

In actual fact all businesses whether trading through the medium of a limited company, a partnership or a sole trader have personalities. A healthy personality is essential for the running of a successful business. A regular health check will ensure that your business is always running with maximum efficiency and any legal risks are reduced.

The most effective way to illustrate how businesses can suffer, and indeed how directors can incur personal liability is illustrated by consideration of various scenarios below:

Scenario A

Facts

A company has 2 directors who have no employment contracts and monies are paid by the company as "salaries" each year by reference to the amount of dividends declared in the annual accounts. In addition "expenses" that are incurred by the directors for their car repairs and petrol are also paid by the company. After 2 successful years the company loses a major customer and the company has no option except to proceed into voluntary liquidation.

Consequences

The Liquidator brings proceedings against both the directors seeking full repayment of 2 years "salary" and all "expenses" paid. The reason for this is that s330 of the Companies Act 1985 provides that as there were no employment contracts in place all the monies paid to the directors over the past 2 years were unauthorised loans by the company.

Solution

The directors should have had employment contracts and passed a board resolution approving the contracts.

Scenario B

Facts

Company A (registered in England) enters into a contract with company B (registered in Italy) to supply goods to Italy. Company B submits its purchase order containing a jurisdiction clause that in the event of any legal dispute arising Italian law will apply and proceedings must be brought in the Italian courts.

Consequences

The goods are shipped to Italy and company B refuses to pay as it is alleged that the goods were damaged in transit. Proceedings have to be brought in the Italian courts to recover the price of the goods.

Solution

Ensure that procedures are introduced to make sure that the terms and conditions that govern the contract provide that any dispute is referred to the English courts and that English law applies.

FDL recognise that many businesses neglect their health and often suffer disastrous consequences as a result. In the present economic climate no business can afford to be exposed to unnecessary litigation, no director of a limited company can risk being exposed to personal financial exposure and no partnership can afford an expensive divorce.

Now is the time to streamline your business and FDL has designed a Business Health Check which consists of a **free** audit of your business documentation.

The categories of documentation and legislation that will be considered are set out below:

Terms and Conditions

- Incorporation into contract
- Retention of Title Clauses
- Jurisdiction Clauses
- Agency agreements
- Late Payment of Commercial Debts (interest) Act 1998

Company Documents

- Memorandum of Association
- Articles of Association
- Members/Shareholders resolutions
- Companies House forms

Security Documentation

- Bank guarantees
- Legal charges

Company and Business Names

- Compliance with the Business Names Act 1985
- Compliance with sections 348 – 351 Companies Act 1985
- Use of trade names

- Protection of domain names

Directors

- Employment /Service contracts
- Shareholder agreements

Partnerships

- Partnership Deeds
- Limited Liability Partnerships

Debt Recovery and Management

- Debt recovery procedures
- Debt management procedures

Employment Documents

- Employment contracts
- Employee handbooks
- Policies and procedures

If you would like to make arrangements for a **free** Business Health Check please call or e-mail Martyn Caplan

T – 0161 833 0578

E – martyn.caplan@fdl-law.co.uk

W – www.fdl-law.co.uk