Four golden rules to avoid personal sequestration

By Thomas van Zyl

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The latest figures from Statistics South Africa reveal that South African company liquidations continue to rise. While this trend does not bode well for the economy as a whole, it could spell disaster for you in your personal capacity as you could be at risk if you are personally liable for your business.

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Personal sequestration is a risk too many business owners face. While business failures can't be avoided in some cases, personal sequestration can be avoided in most cases. Robyn Hey of HWD Attorneys says that most business failures are foreseeable and, personal liability can be limited if the proper precautions are taken to protect oneself. Here are four ways to do just that.

1. Don't hold business assets in your own name

The purchasing of assets for the company in one's personal capacity is a common mistake made by many new business owners. Everything from company vehicles, computers, specialised equipment, even smartphones, that are used for business purposes within the company must belong to the business and should be purchased in its legal trading capacity.

By following this simple advice, you protect yourself and your personal assets from debtors and the tax authorities, should your business find itself in distress.

2. Don't hold personal assets in your own name

Even though things might be going well, it's not possible to predict the future. Businesses often fail very suddenly, which is why it's so important to have all your ducks in a row should things go belly up.

As a business owner, it's never a good idea to hold any important personal assets in your personal capacity. Protect your assets (property, vehicles and high value assets) by placing them and other important assets into a trust. This is the best way to protect them in the event of sequestration and liquidation.

3. Don't get married in community of property

Without an antenuptial agreement, you and your spouse effectively become one legal entity, wherein all your assets are merged into one estate with each of you owning a full, undivided half share. One important footnote to keep in mind, however, is that while you share all your assets, you also share all your liabilities.

This means that if your spouse experiences financial difficulties which eventually involve debt collectors or the South African Revenue Service, and he/she cannot cover the debt and expenses, you will be held jointly liable and your assets are at risk of being attached to recover any money owed.

4. Don't overestimate your business savvy

It is said that some of the best engineers, lawyers, restaurateurs and hoteliers are great at what they do, but are awful businessmen. Retaining professional knowledge on all possible subjects around you is a great way of ensuring you won't fall victim to the common pitfalls that many business owners find themselves in.

To avoid sequestration it's best to have people like accountants, lawyers and tax advisers about who know what they're talking about and know what to do, when to do it and how you should go about it. If your business still fails, these professionals can assist in diminishing the risk you face.

ABOUT THE AUTHOR

Insolvencies practitioner, Mazars