

CLIENT GUIDE 6 : BUSINESS DEBT RECOVERY

It is important that you have adequate controls in place to eliminate debt as, without adequate cash coming into the business, your company may well run into difficulties.

Before taking on a customer

Before you do business with a customer, especially when the customer wants to place a large order on credit, it is worth looking at their company's latest filed accounts to check whether they have any assets and what their other outstanding liabilities are.

Before you enter into any agreement with a customer, you need to have thought about how and when you will get paid. There should be a written agreement in place which sets out the payment terms.

Before taking legal action

You should look again at the financial status of the debtor before taking action. Early enquiries about the status of a potential defendant are often essential to ensure that good money is not thrown after bad in pursuing hopeless debts. Once you have taken the decision to go ahead with legal proceedings, send a 7 day letter before action to the debtor. This can produce an immediate result because of the possibility of an adverse judgment which would damage the company's credit rating.

Statutory demand

If the debt is at least £750, an alternative to sending a 7 day letter that may be worth considering is to send a statutory demand to the debtor threatening bankruptcy or insolvency. This can secure prompt payment. If the debtor does not dispute the demand within 18 days of receipt he will not be able to dispute payment if you do take winding up proceedings. If you do not receive payment through this route, however, you will have to consider whether to go ahead with bankruptcy or insolvency proceedings. Such proceedings can be expensive and the procedure itself has serious defects, as the nature of bankruptcy is to bring all creditors forward and in the end a particular creditor may receive only a modest proportion of the debt owed, depending on the assets available.

Court proceedings

If you do not receive a satisfactory reply to your 7 day letter before action, the next step is to start court proceedings. You can claim interest on the amount owed to you from the date it was due. If no defence is received within the prescribed period of time, it is possible to obtain judgment in default of defence and then to proceed to take enforcement action. If a defence is filed, you may wish to consider taking legal advice, particularly if the defence contains a counterclaim.

Note that you can now commence proceedings on line at www.hmcourts-service.gov.uk,

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Money Claim Online, which is the Court Service's Internet based service for claimants and defendants.

Methods of enforcement

Civil judgments are never enforced by the courts automatically. If you have obtained judgment and the debtor still does not pay, there are several methods of enforcing money judgments.

You can apply for an order to obtain information about the debtor's means. The debtor is then ordered to appear in court to be cross-examined as to its means and assets so that the court can assess the debtor's ability to pay. It is, however, a time-consuming and often frustrating procedure, which should not be pursued where you already have some idea about the debtor's likely assets and are already able to commend one or other method of enforcement.

If you know that the debtor owns property, then you can apply for a charging order over that property equivalent to the amount you are owed. This would mean that the property can not be sold without clearing that charge and you would then be paid in full if the property is sold (as long as the proceeds of sale are sufficient). The disadvantage is that you will have to wait until the debtor sells the property to obtain payment, although you could apply for a court order to force the sale of the property. Charging orders are therefore not strictly speaking a method of enforcing a judgment but rather a means of obtaining security for it, which can subsequently be turned into enforcement by an application for an order for sale.

If you know the debtor has money in a particular bank account or has money due to be paid to them, you can obtain a third party debt order. This is where the court orders a freeze on money held by a person, institution or organisation, which might otherwise be paid to a defendant against whom you have a judgment. Thus the holder is the third party and they will prevent withdrawal of the money until the court decides whether all or part of it should be paid to you. The order will only apply to whatever is in the account on the date of the order. You will therefore need to choose the date carefully, especially if you know that the debtor is due to receive money into an account on a particular day.

You could also instruct court bailiffs to attend at the debtor's premises to see what they can collect. This is only of use if you have good grounds to believe that the assets at the premises are likely to be worth more than the value of the debt.

If you require further information or advice or more detailed information on the steps to follow, please contact **Judith Long**.

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