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Top tips for creditors of an insolvent company

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Top tips for creditors of an insolvent company

2022 looks like a challenging year faced with significant inflationary and supply chain pressures. When a company/individual cannot pay its debts, this can have a significant impact on the cashflow and the survival of those who are not paid. Here are our top tips for weathering the storm.

1. Know your debtors, monitor and tighten up on credit

Ask questions to assess creditworthiness and keep asking those questions. It is not unusual during a trading relationship for credit to increase, often without taking any further information or security. This increases the risk to your business. If you are asked to extend more credit; consider why the request is being made and on what terms you may be prepared to grant credit. Is there a legitimate business reason for the request, or can they simply not afford to pay you? Does the request afford you the opportunity to de-risk the debt/a proportion of it by taking security? Don't be afraid to say no; be prepared for the consequences if you say yes.

2. Check your contract documents

Your trading relationships should be governed by clear contracts. These will normally set out your rights on insolvency, or give you are right to limit credit or terminate supply.

You should check which contract governs the trading relationship; as this can be overlooked during the trading relationship. You may not be trading under the terms you think you are. Sometimes terms and conditions are not properly incorporated into the "contract", or the customer has imposed their own terms.

Contracts may enable you to "retain title" of your goods if they remain identifiable and not irreversibly mixed with other goods. This may, if properly drafted and utilised, enable you to recover stock that has not been paid for. Beware, delivering goods direct to a third party though as this may frustrate your ability to retain title.

The contact may also give you the right to terminate before a formal insolvency event takes place. New legislation was introduced in 2020 which prevents suppliers from terminating contracts simply when insolvency proceeding commence, therefore you should check whether your contract permits you to terminate for other reasons and consider whether you wish to or simply use the breach as an opportunity to re-configure the contractual arrangements.

3. Consider options to reduce your exposure

The marketplace can be quite competitive, but increasingly creditors are looking at ways to manage risk. You may be in a position to reduce credit or obtain a personal guarantee from the director/shareholder, or obtain a charge over certain assets of your customer. You would need to check what other security the customer/director may have given to check whether it has value; whether the customer can grant a charge to you (as prior registered charges may prevent that). To ensure the guarantee or security is valid and enforceable you will need to ensure the proper processes are followed. If properly taken, the security should increase your prospects of recovering the debt.

Also consider credit insurance. Credit insurance will provide comfort that if a debtor doesn’t pay you will recover most of the debt, or a significant proportion of it (providing the terms and conditions have been complied with). If payment terms increase your need for working capital, consider obtaining Invoice Finance. Whilst both these options attract additional cost, together they may bring greater protection and a smoother cashflow for you

4. Maintain a dialogue

Dialogue is critical. Whilst email communication is quick it is often less effective than maintaining a more personal dialogue either over the phone or in person. Conversation can both enhance your relationship with your customer and give you better oversight of your customers ability to pay. A conversation will enable a dialogue around how and when a debt can be paid, and challenges to payment, as well as give you a better opportunity to evaluate the undertones or any change of demeanour.

5. Keep an eye out for unusual behaviour

Do monitor the accounts of your key suppliers, and routinely consider credit searches.

In addition to maintaining a strong dialogue, changing patterns of behaviour may alert you to problems. Have you visited your customers site? Are you seeing changes in levels of staffing or stock, or is the premises looking tired. These may be signs of cashflow difficulties. Has the customer recently changed supplier, or have they asked you to source stock that previously they would have sourced? This may be a sign that lines of credit have been withdrawn by other suppliers.

Would you like to know more?

Please contact one of our expert lawyers in this sector:

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