

Pursuing a Commercial Debt Tactical and Legal Considerations

Introduction

Bad debt can be the undoing of any enterprise, and in the current economic climate the strains on companies' cash flows are a pressing concern. It can often be difficult to know how to approach the pursuit of debtors, and to know when legal proceedings are appropriate.

Credit control

It will normally be good practice to follow a full credit control procedure when debts become overdue.

Methods of pursuit

When there seems no alternative but to take formal action in relation to the debt, there are generally speaking two avenues.

- (i) County court proceedings
- (ii) Winding-Up

(i) County court proceedings

The court issues guidance, known as Protocols, in relation to the steps it expects parties to take before the issue of proceedings. Protocols provide that before issuing proceedings a claimant should usually write a formal letter of claim to the defendant contain certain prescribed details, and giving the defendant enough information to properly understand the threatened claim against it.

If after following the applicable Protocol, the dispute is still unresolved, a company can choose to file at court a claim form and particulars of their claim, and after service of the claim (either by the court or the Claimant) there will follow a

court set timetable for dealing with the case.

(ii) Winding-Up

The courts do not want companies to use petitions for debtors' winding-up as simply an aggressive alternative to debt collection through the county courts. However, it can be an effective method of forcing a debtor to pay an outstanding debt, due to the repercussions should they continue to withhold payment.

The first step would be to serve on the debtor a statutory demand, which will often provoke payment.

Where the debtor is an individual, or a partnership, the equivalent method would be to petition for the individual's bankruptcy.

If the debtor company is wound-up, the liquidator will collect in its assets and distribute to the creditors in prescribed order. The petitioning creditor will line up along with the other unsecured creditors.

Which route?

Which method is most appropriate will depend on several factors, including:

1. Whether, to the creditor's knowledge, there is any actual dispute of the fact that the debt is owed. If there is a genuine dispute, a winding-up petition will not be granted;
2. Further, if there is a substantial dispute, the debtor can choose to apply to court for an injunction preventing the presentation of a petition against the company.
3. What the size of the debt is. Only debts of £750 or more can be the subject of a petition. Also, presenting a petition can be more expensive, depending entirely on the circumstances of the case.

Our Litigation Team is experienced at pursuing commercial debts. We can provide specialist advice in a broad range of contentious commercial matters and would be happy to speak with you without commitment to see if we could help you, whatever your problem.

Please call Martin Stevens, Darren Thorneycroft or Marcus Self on 01233 625 711 for more information, or email them on ms@hallettandco.co.uk.