Carter Clark
Financial Recovery

Briefing Sheet

Creditors' Legal Actions

If the warning signs of company difficulty are ignored for too long, action can be taken by creditors. The importance and the potential severity of such actions needs to be assessed so that the appropriate response can be put swiftly in place.

Potential actions by creditors are summarised below.

County Court Summons

This will tend to occur when a creditor has tried to recover a debt from your company without success. Whatever the reason for non-payment – which might include a dispute over the actual debt – the creditor has issued an action to commence recovering the money in the County Court.

The claim can be disputed if it can be proven the debt is not correct. If it is simply a case that there are no funds for payment, it is necessary to check whether this means that the company is insolvent: if this is so, you need to take appropriate actions before the court has the opportunity to get involved.

County Court Judgment

Having pressed for payment the creditor has court agreement that there is a valid claim for the money. If the debt is not paid in full within 14 days of the date of the Judgment - plus any costs incurred - the Judgment will be registered at the courts and with credit reference agencies. This will be taken as proof of a company's insolvency and can allow a creditor to petition for the company to be wound up.

If possible the debt should be paid within the specified 30 days. If not it may be worthwhile calling the creditor or other parties involved - solicitors or bailiffs - to try to agree a phased payment. Often a creditor will judge the benefit of being paid eventually against the possibility of losing all money if the company is wound up and will agree to payment over a period of time.

Warrant

If a creditor has not been paid, even after a County Court Judgement, application can be made to the court for a warrant of execution. A notice of warrant is then issued to the debtor and, if payment is not made, a bailiff of the court can be sent to collect payment or seize goods.

There is still the possibility to try to agree a deal with the creditor and/or bailiff to repay over time. With small debts this is often acceptable.

Executive summary

Creditors have access to a variety of legal actions to help in recovering debts. These range in severity and in the implications for the company. Where actions are taken that are neither fair nor appropriate, responses can be prepared accordingly. However, where actions accurately reflect monies owed, the only appropriate response is to make arrangements for payment. Staged payment may be possible by negotiation with the creditor or agent acting on the creditor's behalf.

The fact that a creditor turns to legal action to recover debts is usually a sign that all is not well with the company. This means that action beyond payment is necessary, to determine whether the company is viable and some form of rescue package should be put in place. An honest assessment of the company's prospects – preferably aided by an expert in such matters – is required without delay.

Have a question?

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Creditors' Legal Actions

Statutory demand

This usually follows when a Judgment has been obtained and it is a formal demand for payment of an undisputed debt over £750. The debt must be paid within 21 days of the demand or this may lead to a winding up petition being issued. The creditor has to pay to issue this document and it is now becoming much more serious. If it is not possible to pay the debt, advice should be sought immediately from a professional who can judge the severity of the problems faced by the business.

A plan for survival may require a CVA, Administration or urgent refinancing to be put in place. If survival seems out of the question, recovery action can be taken at the request of the company rather than at the demand of a third party.

Walking possession

This follows the visit of a bailiff (for the County Court) or Sheriff (for the High Court) to request payment of the proven debt. If the debt - plus the court and the bailiff's costs – are not paid he can take possession of goods, equipment, fixtures, stock, etc. on the premises. While this may not involve physical removal at the time, the identified assets can then be removed and sold in five days. The bailiff can force entry to recover the goods after the five day period: for the company to try to sell the assets after they are covered in this way is a criminal offence.

While there are simple actions to avoid the process being undertaken – such as keeping the doors locked and denying entry on the bailiff's first visit – this is not advisable since it does not address the underlying situation. Even though walking possession is in place it is still often possible to do a deal with the bailiff to keep the goods while making regular payments, although they will be quickly removed should there be any default.

Distraint

This is a popular tool for landlords where rent or other payments are not made. It gives the landlord – or agent – the right of entry to remove goods or assets for sale to pay for the debt due. There is no need to wait for a qualifying period for this to happen, nor for a Judgment.

If it is not possible to pay the debt it is necessary to take some form of action that will give credibility to the company's claim to be addressing the situation. Proposing a CVA or entering administration is a solution, so long as there is confidence that the company is viable.

Winding Up Petition

This is the most serious action that can be taken against the company. A typical petition costs over £1200 to issue, so the creditor is obviously serious about recovering the money owed and is prepared to put the company out of business. Once a petition hearing is published it is likely that the company's bank will find out and will freeze the company's bank account. A court appointed liquidator will take over the company's affairs.

If the petition is unfair or an abuse, legal advice should be sought immediately: the solicitor will determine an appropriate response. If the petition is fair, the debt and any additional costs should be paid where possible. However, it is likely that this will indicate serious problems with the company and some significant form of restructuring will be required.

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