

Legal News: June 2005

"How to avoid bad debts"

Prevention is better than cure

The most effective system of debt recovery is to ensure that debts do not arise. Therefore, effective steps should be taken at the outset with a view to preventing problems.

Preventative and pro-active steps

Before undertaking a contractual relationship you should always have some background knowledge of the person, company or organisation with whom you wish to deal to help in assessing the risk of non-payment...

We suggest you use a standard pro-forma questionnaire for personal and/or company details of your potential customer. This has considerable advantages as some of that information can be used at a later date if problems develop and you need to take advice with regard to debt recovery.

Bank references

The effectiveness of Bank references is sometimes questionable. The information given by the Banks is usually limited and it is therefore often more important to analyse what is not stated than what is.

Trade references

A trade reference may be of more use particularly if the customer is himself a trader or has contracts in that field. Care should be taken to check authenticity of such references and you should try and take references from firms already known to you if at all possible.

Credit references

It may be worthwhile to consider using a credit reference agency. For a prescribed fee an agent would supply known information on the creditworthiness of a customer e.g. details of any County Court Judgment or any other matters which are revealed concerning the customer.

When dealing with a Company, a Credit Reference Agency would often combine this information with a full company search. Care should be taken to ensure that more money is not expended than is necessary in obtaining this information as credit reference and company search information can often be duplicated.

The Register of County Court Judgments

Surprisingly enough it is only County Court Judgments that are registered. The Register is kept pursuant to the County Courts Act 1984 and is maintained under the control of the Registry Trust Limited, 173/175 Cleveland Street, London W1T 6QR (Tel: 0207 380 0133). Upon payment of a fee (approx. £4.50 per name and address) and a form supplied by them the Registry will be searched against specific named persons and addresses and the amount of any Judgment debt, the date of the Judgment and the Court details will be revealed. Judgment details remain registered for a period of up to 6 years even if they have been paid by the Debtor. The only exception is where a Judgment is satisfied within 1 month of its date of entry, whereafter the Debtor is entitled to have the Entry in the Registry cancelled. Fees for searching the Registry are approximately £4.50 per name and address.

Company Searches

When dealing with a company, a Search of the Companies Register through a reputable company agent is almost a pre-requisite of entering into a contract or other dealings with a company. A fee of approximately £30.00 is normally charged, but this could be money well spent.

A Company Search would reveal details of the company's registered offices, Secretary, shareholdings and details of any Charges or Debentures together with a full copy of the latest filed accounts.

Points to Watch out for in Company Searches

Has the Company's accounts been filed? Companies Act 1985 provides strict filing requirements for the filing of accounts at Companies House. If up to date accounts have not been filed, ascertain the reason for this.

What do the Profit and Loss Account and the Balance Sheets show?

Are the current figures better (or more importantly worse) than in the previous years of trading?

Have there been recent and/or numerous changes of Director. If so, try and ascertain the reasons why.

If a Bank Debenture or Charges are revealed, how recently were these taken? Obviously the larger your contact and potential debt the more important this information becomes.

Finally, a Company Search will reveal whether or not a company is in Receivership or Liquidation.

Terms and Conditions of Trading

One of the most common pitfalls is a failure to incorporate Terms and Conditions of Trading at the outset of a trading relationship. These obviously avoid any future misunderstandings in the trading relationship between the parties. It is important to have effective Terms and Conditions at the outset. It is not good enough simply to reveal Terms and Conditions of trading at the delivery of the goods stage or in any invoice that is delivered as this is considered to be "after the event".

For the avoidance of doubt, the best solution is for a copy of your Terms and Conditions to be re-produced on the Contract and signed by the client and/or customer on confirmation of the order.

Effective Terms and Conditions could include:-

- (i) Price and Payment Clauses
- (ii) Provision for payment of contractual interest in default of payment of the account within a specified period i.e 21 days
- (iii) Specific credit terms, i.e. 28 days, before interest becomes payable
- (iv) Preservation of Title Clause. That is to say, that the recipients ownership of the goods will not pass until such time as the customer has paid for the goods in full. This will also allow recovery of the goods in the absence of payment with a view to preventing the customer and/or any third party from disposing of them.

Personal Guarantees from Directors

If dealing with a limited company for the first time or say the history of the company is not at all promising, consider obtaining personal guarantees from the Directors or, as an alternative, a cross-guarantee from another company perhaps within the same group. The desire or otherwise from the Directors to give such a guarantee may be indicative of the status of the company. Therefore, if a company fails to pay its liability you could look to the guarantors for settlement.

Commencement of Debt Recovery proceedings

(i) County Court Small Claims Track

The Small Claims Track is the normal Track in the County Court for any claims up to £5,000 excluding interest and court costs. The problem in claiming sums less than £5,000 is that the "no costs rule" applies. This means that even if you instruct a Solicitor to act no order for costs can be made in favour of the party who ultimately succeeds. Each party have to meet their own legal costs. Court fees and reasonable witness expenses are recoverable by the successful party.

(ii) Fast Track

Fast Track is used for cases with a value between £5,000 and £15,000 and allows the successful party to claim their legal costs limited to all costs up to and including a 1 day hearing. If the case runs longer than 1 day, further costs are not recoverable.

(iii) Multi-Track

Multi-Track is used for claims with a value over £15,000 and relates to claims which are likely to be dependant upon Expert or Oral evidence and likely to last for greater than 1 day in Court. The successful party can recover its legal costs subject to order by the Judge in the case.

If you would like any further information or help with preparing suitable Terms and Conditions please telephone Michael Legister or Neil Carson for an appointment or contact the by e-mail: mlegister@huggins-law.co.uk
ncarson@huggins-law.co.uk

This article is not intended to be a definitive analysis of legislation and professional advice should be always taken before any course of action is pursued.