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Debt Management in Today's Climate

In today's economy, businesses of all sizes are struggling to maintain their lines of credit or are having issues with non-payment of accounts. In some cases, this is affecting cashflow and payment of debts due.

Debtor Management

As credit is tightened and cash flow restricted, debtors are taking longer to pay or are seeking to make part payments over time. In this climate, creditors must be vigilant about debtors who are late to pay invoices. Our primary advice is to act quickly before the debt becomes unrecoverable. The longer a debt is left outstanding, the less likely you are to be paid.

The first step should always be to personally contact the debtor and ask for payment on an outstanding invoice. This contact may provide you with information as to why the debt has not been paid. Debtors withholding payment because of concerns about quality of goods or

services provided by you will be prompted to deal with those concerns.

If you have not been paid because the debtor is experiencing financial difficulties, then you can decide whether to continue providing goods or services to the debtor and if so on what terms (eg: requiring cash on delivery).

If the debtor is in financial difficulties, you may agree to accept payment over time of the sum owed. In setting the terms for payment over time, bear in mind your interest and other associated costs and seek to ensure that the debtor meets these costs as part of any compromise.

If no suitable repayment arrangement can be achieved, you can engage the services of a debt collection agency such as Baycorp. Be aware of the costs involved with this process, and the proportion of the debt you will get back if successful.

If these non-legal options have been exhausted, you can take legal steps to recover the debt. You should consider the financial position of the debtor before you commence legal steps to recover debt.

There is no point spending money chasing a debt if it is unlikely there will ultimately be funds to pay you. If funds are available, formal recovery action can be commenced, for example a legal letter seeking payment or a statutory demand issued against a company for an undisputed debt.

An alternative 'self help' method if the debt is disputed is to take the debtor to the Disputes Tribunal. The Tribunal can make a binding ruling, and provide a quick and inexpensive process to resolve disputed claims. Lawyers cannot appear in the Tribunal, but you may wish to consult a lawyer to ensure that you present your best possible arguments and evidence at the Tribunal hearing.

The Disputes Tribunal jurisdiction will increase from \$7,500 or \$15,000 (and, where the parties consent, from \$12,000 to \$20,000) at a date to be announced later this year.

Steps to take when in financial difficulties

If you find yourself in financial difficulties and are having trouble paying your debts as they fall due, then we advise you to act quickly before formal steps are taken against you. Contact your creditor and discuss a payment plan with them.

If your company is served with a statutory demand, you have 10 working days from service to apply to set the demand aside (if you dispute you owe the sum claimed) or 15 working days from service to repay the debt owed or enter into a compromise with the creditor. Again act quickly. Once this 15 working day period expires, an application may be made to the High Court to put your company into liquidation. When dealing with

debts owed by a company, directors should be aware of their duties and ensure the company does not trade while insolvent.

If you wish to discuss debt collection or obtain further details on the above matters, please do not hesitate to contact Elspeth Horner on (04) 495 8932 or elspeth.horner@morrisonkent.com



If you would like more information, please contact **Elspeth Horner, Partner,** Wellington Office, (04) 472-0020.

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