

Options for Commercial Debt Recovery

Recovering debt quickly and cost effectively is often at the forefront of business operations, particularly during tough economic trading conditions. In this article, Dawn Sebbage from the corporate team at Dudley based law firm Hawkins Hatton, examines some of the options which will alleviate the need to engage in full court proceedings.

The starting point for recovering outstanding debts is a statutory demand – a formal demands for payment under the Insolvency Act.

In the event that the debtor does not satisfy their debt within a specified period the creditor will be entitled to petition for the bankruptcy or winding up of the debtor.

This threat is often enough to encourage the debtor to pay the sums due as the seriousness of the situation has been highlighted by the creditor instructing a solicitor to serve a formal demand. In our experience this is a highly effective method of encouraging payment of often long outstanding debts.

However, companies need to consider that statutory demands are only appropriate for debts in excess of £750 and can also only be used to demand debts that are not disputed.

The court has the power to set aside a statutory demand if the debtor applies to the court and disputes the sums demanded. For disputed debts creditors may need to consider opening negotiations to not only agree the sums they are owed but to resolve any wider issues which form the basis for disputing the payment.

The statutory demand must be brought to the attention of the debtor in a particular way and a creditor will risk the court refusing to seal a bankruptcy petition and/ or winding up petition against the debtor if the correct procedure is not followed.

Should the debtor not pay the debt within the time specified in the statutory demand the creditor can petition for the debtor's winding up or bankruptcy. However, the creditor's primary concern throughout must be the debtor's financial viability, so as to avoid incurring recovery costs in vain.

To evaluate this, a creditor will need to take into account the number and value of other secured and unsecured creditors all of whom will be able to join in the recovery process.

To find out more about these issues and the formal process / cost for petitioning for a debtor's winding up/bankruptcy, please contact Dawn Sebbage at Hawkins Hatton, Tel: (01384) 216840.