



## 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). Court Proceedings
- (ii). Winding – Up

#### (i). Court Proceedings

Before issuing proceedings a creditor should usually write a formal letter of claim to the debtor containing details, of the debt and giving the debtor enough information to properly understand the threatened claim against it.

If after making formal demand, 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 there will follow a court set timetable for dealing with the case.

#### (ii). Winding – Up

The courts do not want creditors to use petitions for company winding-up as simply an aggressive alternative to debt collection through the 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.

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 \$2,000.00 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 Shane Mead or Rebecca Perry on 07 4662 2033 for more information, or email them on [info@carwin.com.au](mailto:info@carwin.com.au).