

## Personal liability of disqualified directors

Section 15 of the Company Directors Disqualification Act 1987 states that a disqualified director is personally liable to creditors for all company debt incurred during the period that the disqualified director was involved in the management of the company.

It is worthwhile pointing out that this is enforceable regardless of the disqualified directors status in the firm i.e as a de facto or de jure director.

Section 15 also imposes personal liability on individuals involved in company management and acting on the instructions of a disqualified director.

### What happens if a debtor sends part payment in “full and final” settlement?

If you are satisfied with and willing to accept this offer the payment can be cashed. However, if this is not the case, **do not** process the payment and advise the debtor that the sum presented will not be accepted in “full and final” settlement. State clearly that the cheque will be accepted in part payment or returned, giving the debtor a period of time to elect.

### Is bankruptcy now an easy option for debtors?

The Enterprise Act 2002 has been held responsible for making bankruptcy an easy option and in particular criticism has been heaped upon the reduction in the periods between bankruptcy and discharge from three years to just one.

However, there are several significant and lasting problems for some bankrupts. In some instances an individual will be subject to a “Bankruptcy Restriction Order” (BRO) which prohibits the bankrupt

from becoming a company director or a member of a limited-liability partnership and more importantly from obtaining credit exceeding £500 without previously making the lender aware of the BRO. It is most unusual for a lender to give credit to people subject to a BRO.

The order can last for up to 15 years, lasting well beyond the date of discharge and therefore making bankruptcy not such a soft option.

### Reducing the risk

There is always an element of risk but there are ways of reducing the possibility of trading with bad debtors.

Before commencing trading complete a credit check – especially if you have no previous knowledge of the company – and impose a credit limit which should not be exceeded. This will be dependant on the outcome of the credit check (eg if the credit rating is low give a low credit limit) and affected by the size of the company, nature of the business and length of their trading period.

New customers should be given a copy of your trading terms and conditions **to sign and return before the first sale**. Invoices should also state your payment terms and when they should be paid, eg 14 days.

Once these have been established it is vital to keep track of the customers payment history – this will highlight any potential issues and give you time to make enquiries with the customer, before debts spiral out of control.

## Charging Orders...the next step

The nature of a Charging Order means it is unlikely you will be able to realise your money immediately. In practice they provide a safety net for the future. As such, it is imperative to keep a record of all Charging Orders you obtain.

It is advisable to ensure regular communication with the debtor, reminding them of their obligations, keeping copies of all correspondence for your records.

If, however, you are not willing to wait until the debtor sells their property you can follow a more pro-active approach by applying to the court for an Order for Sale. This should serve as a wake-up call and can push the debtor into proposing a re-payment schedule.

If the debtor continues to avoid payment

the court can make an Order for the property to be sold. However, this is not a automatic right – the Court must be persuaded that your entitlement outweighs that of the debtor. Offers he makes for payment on account – and family rights – will be taken into account. There are also further complications if the property is owned by more than one person.

If you are concerned about any existing Charging Orders please contact us for more information.

## What if execution is not an option?

In reality sending in a Bailiff or High Court Enforcement officer may not be a feasible solution. They may not be able to gain access to the property. The debtor may not have sufficient funds to cover the cost of removal, sale and initial debt.

If the debtor is in an individual and in paid employment it may be worthwhile seeking an attachment of his earnings.

The debtor is given one final opportunity to propose a payment schedule and if this is not implemented the court can Order the employer to disclose salary details. The court will then make a decision on how much the employer must deduct from the debtors salary until full payment is made. The money deducted by the employer is then sent straight to you.

**For more information on the Clough & Willis approach to Debt Recovery please contact Joanne Singleton or Carol McGilligan**

This newsletter contains general information. It is not, and should not be seen as, a substitute for legal advice regarding any particular issue.