

WEBINAR COVID-19 & BUSINESS DEBTS

Wednesday, 15th of July, 2020
11:00 am - 12:00 pm

Organized by

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Objectives

In this webinar, we will discuss:

- Approach towards debt recovery (negotiation, settlement);
- Debt recovery actions: Civil claim and payment order proceedings; and
- The pre-action steps to be undertaken prior to initiating legal action.

Approach towards debt recovery

➤ Identify if debt fell due prior to COVID-19 or during COVID-19

1. Debts prior to COVID-19

- Recovery proceedings to be initiated at the earliest.
- Time is of the essence as the cash flow of entities has been substantially impacted.
- For certain debts, expedited proceedings through court are recommended, which are effective and time efficient (to be discussed in later slides).

Approach towards debt recovery

2. Debts during COVID-19

A more rationale and detailed approach will be required prior to initiating action for debts which have arisen as direct impact of the pandemic.

Key considerations include:

- **Nature of the business relationship:** the nature and tenure of the business relationship, the contractual performance prior to Covid-19 and the Respondent's capacity to survive and perform post this period.

Approach towards debt recovery

- **Renegotiation and settlement:**
 - Assess if the payment default is due to a direct impact of COVID-19;
 - Impossibility and partial impossibility;
 - Consider a variation of payment schedule and terms;
 - Demand further payment security;
 - Enter into a settlement

Debt Recovery Action

- **Initiate Debt recovery action:** Following the pre-action steps, if it is found that the debtor's financial standing is unsound and there is a high possibility of the operations ceasing permanently, a debt recovery action should be initiated:
 - a. Filing a criminal or civil legal action; and
 - b. Payment order proceedings.

Amendments to Civil Procedure Code (“CPC”)

Expedited Court Proceedings for Payment Orders and Execution

- Resolution No. 57 of 2018 concerning the Executive Regulation (“Amendment”) of the Civil Procedure Law No. 11 of 1992 broadened the scope of expedited payment orders.
- Payment Orders are a mechanism for immediate ex parte judgment (i.e. without notice to the debtor).

Amendments to Civil Procedure Code (“CPC”)

Expedited Court Proceedings for Payment Orders and Execution

- A key change brought about by the Amendment was to extend Payment Orders to disputes in which there is a written acknowledgment of debt (Article 62 of the Amendment) whereas previously this was restricted to financial instruments such as promissory notes and bills of exchange.
- Additionally, the Amendment provides that a claim for interest can be made under a Payment Order, whereas previously interest could not form part of such a claim.

Key Requirements for Payment Order Application

Under Article 62 of the Amendment, for the competent court to approve a payment order application, the following requirements must be met:

1. An outstanding debt of a specific quantified amount.
2. The creditor's right must be confirmed by the debtor (although the Amendment does not provide specifics, generally, an unconditional written admission of liability is required).
3. The creditor's right must be due and payable.

Expedited Proceedings for Payment Order

A written demand for debt (Legal Notice) to be issued to debtor (Article 63)

The Court's decision on the Payment Order claim is to be issued within 3 days of the claim submission (Article 63)

The rules of 'immediate enforcement' will apply to the Payment Order.

After 5 days, an expedited Payment Order claim can be made for any written admission of debt (Article 63)

A debtor who is notified with a Payment Order (once issued) has only 15 days in which to appeal a Payment Order (Article 66)

Pre-Action Steps

- Creditors should always conduct a thorough analysis of: risks; the likelihood of recovery; and the costs associated with litigation.
- Ensure that the claim is not time barred;
- Check with the Authorities (such as Dubai Economic Development authority) that the Respondent has a valid trade license;
- Check with the Chamber of Commerce for additional company documents of the Respondent;
- Check if the manager/shareholders are in country;
- Check if other criminal cases have been lodged against the manager/signatory of the Respondent;

Pre-Action Steps

- Check the address on which the Respondent will be served and it will be prudent to verify the same by a physical visit;
- Check the dispute resolution clause to ascertain the forum for dispute resolution; and
- Verify whether you hold any security documents from the Respondent such as a post-dated cheque, promissory note or a bank guarantee.

600+

clients

100+

professionals

3

offices in the UAE

2,000+

CSR hours invested

20+

nationalities

15+

awards

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