

Mitigating and managing increased disputes and insolvencies

Mitigating and managing disputes during the continuing COVID-19 environment is critical and effective risk mitigation strategies should form part of every business' protection plan.

Several strategies can be implemented to avoid and resolve disputes and maximise the return on recovery. The following tools and strategies can be utilised to avoid disputes and to ensure the best outcome in the event disputes arise.

1. Review of your potential disputes

Identifying early which customers could potentially dispute their account and/or the goods and services supplied is crucial in this current economic climate. Once any potential dispute has been identified it is important that you undertake a thorough review of all executed contractual documents to identify any potential problems before they arise, and then proceed with the relevant protection and enforcement strategies.

2. Communication

Effective communication with your customers is key to understanding cash flow or trading concerns and identify early any potential payment delay or default. Understanding your customers position at the earliest possible moment, will allow you to adapt strategies and make effective commercial decisions. If you become concerned at any point regarding your customers financial position, consider whether you should stop supply, recover your stock and take action. Alternatively consider whether cash on delivery is appropriate.

3. Do not be afraid of litigation

Creditors should be taking action now to ensure that they maximise their opportunity for recovery, particularly in circumstances where a customer has provided a notice to enter into small business restructuring or alternatively having cash flow issues. Businesses who have a proactive approach to litigation and recovery actions have a higher rate recovery of monies owed.

4. Effective credit agreements and deed of guarantee

A properly drafted credit agreement is the most effective recovery tool. Effective credit agreements are self-contained and incorporate credit applications, terms and conditions of trade and personal guarantees.

Credit agreements and guarantees should be reviewed regularly, particularly in the current economic landscape, to ensure terms are effective in avoiding disputed claims and suitable to your business strategies. Review of your credit agreement and guarantee, either by a lawyer or conducting an internal review, is the most simple and cost-effective strategy to mitigate risk.

If you have not had your credit agreement and guarantee reviewed recently, you should do so. We can review your credit agreement and personal guarantee at no charge to make sure that it is setting your business up in the best position possible. If you wish to take up this service offering, please email us a copy of your credit agreement and personal guarantee to creditagreementreview@resultslegal.com.au

5. Regular reviews of suite of contractual documents

Like the review of your credit agreement and guarantee you should take steps to review all your other contractual documents to make sure they are accurate and consistent with one another. You should ensure that all contractual documents in place reflect the current trading position with the customer.

6. Security over real property

Utilising security or charging clauses in an agreement will allow you to take security at the time in which the agreement is executed. In response to the recent insolvency reforms and current economic environment serious considerations should be given to security arrangement with your customers to protect your exposure in the event of an insolvency.

7. Security over personal property

Utilising the Personal Property Securities Register can be an effective recovery tool, particularly for businesses who lease, rent or hire goods. Registering your interest in goods for which payment has yet to be received, can mitigate the risk of loss in the event the customer defaults or becomes insolvent.

It is important that your registrations are free from defect and correct to avoid any potential risk.

8. Guarantors and additional guarantors

Adopt a requirement for all credit agreements to require a personal guarantee. To further mitigate risk of non-payment, a requirement for guarantees to be executed by more than one guarantor, with joint and several liability can be adopted.

If you have identified a customer as a potential customer with risk, consider requesting an additional guarantor be provided.

9. Payment arrangements should be documented

By incorporating various terms into your payment arrangements with your customers you are able to increase your rights and included certain provisions which may allow for consent judgment upon default, or further security or costs and interest which may not be included in the original agreement. Payments arrangements allow for an opportunity for you to improve your position or rectify any contractual issues which may be present.

For assistance with any potential disputes, review of your credit agreement, further information or strategic advice, please contact:



Anna Taylor

T: 07 3234 3205

T: 1300 1757 534

E: ataylor@resultslegal.com.au

