

Strategic legal advice for survival in difficult times

Times of economic and financial difficulty bring to the surface a number of legal issues that are a constant feature of business generally, but which take on a greater significance when the economic difficulties create a more challenging business environment.

No matter how well a business is managed or how good the services or products are that it supplies, the looming economic slowdown is likely to present unforeseen and unwelcome challenges in commercial relationships. Some frequently recurring themes include:

- suppliers or customers finding themselves unable to meet their contractual obligations because of cash-flow or other financial difficulties
- businesses seeking to renegotiate or escape from unprofitable or loss-making contracts
- businesses seeking to raise emergency funding to cover their fixed costs during periods when revenues are down
- nervous lenders, investors and other creditors taking robust action to reduce their exposure by calling in loans, enforcing security, monitoring compliance with

- covenants or renegotiating terms to acquire greater control
- companies in administration or liquidation seeking to dispose of their businesses or assets, or buyers wishing to take advantage of "fire sale" prices
- internal tensions and divergences of opinion – e.g. between shareholders or between companies and directors
- businesses in difficulties wanting to "buy time" by fending off actions from creditors

Whatever specific situation you find yourself in, well-planned strategic legal advice, with a commercial focus on the right areas at the right time, can make a positive difference.

There are three principal areas where we can help:

- by strengthening the terms on which you conduct your business with customers, suppliers and other parties
- by optimising your business's internal management structure and procedures
- by avoiding, managing and resolving disputes

Strengthening your contracts

Time spent putting in place the

correct contractual framework, or on understanding the balance of existing obligations and risks, can be an invaluable investment in preventing disputes or avoiding costly errors.

We can help analyse and apply key clauses in existing agreements, as well as draft new terms to give better protection against the more difficult trading conditions that are to be expected in the foreseeable future. Practical examples of where we can assist include:

- taking security for loans (including converting an unsecured loan into a secured one), or advising on the enforceability of your existing security
- advising on guarantees and other security required by finance providers as a condition of making borrowing facilities available
- renegotiating and redrafting contracts to obtain more favourable terms (e.g. in return for granting further time for payment etc. to a customer)
- reviewing your terms of business to ensure they include properly enforceable provisions relating to retention of title, interest on late payments and termination for non-payment, non-performance or insolvency

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- advising you on the purchase of a business or assets from an insolvent company, including advice on appropriate due diligence where no warranties will be given by the administrator or liquidator
- ensuring that any further financial support you give to a business (e.g. as a director or shareholder) is properly documented to include adequate protections
- recovery of debts
- enforcement of performance of contractual obligations
- resisting statutory demands by identifying and raising arguments to dispute the debt being claimed
- exercising contractual termination rights against a non-performing party
- defending against allegations of breach of contract raised by the other contracting party as a pretext to withhold payment or terminate the contract
- exercising and enforcing "retention of title" clauses in contracts for the sale of goods (so that you can recover possession of goods delivered to your customer but not paid for) and defending against the exercise of such rights against you by your suppliers

Internal structure and procedures

The best time to review or put in place core "constitutional" documents such as shareholders' or partnership agreements is before difficult issues arise. We can advise you on suitable clauses to deal with deadlocks in decision-making, dispute resolution and "exit" mechanisms.

Avoiding or managing disputes

Although prompt payment and performance of obligations are always important, there are times when the ability to delay payment or to stretch the boundaries of contractual obligations can be equally vital. In all disputes and negotiations there are always two viewpoints – and we can help whichever side you are on. The same skills that are used in issuing a statutory demand or threat of litigation to recover payment can be applied in identifying areas of dispute to delay or defer action and secure you precious time. Typical situations where we can help include:

Especially when cash-flow is tight, the legal costs and management time of dealing with a dispute are the last expense that businesses wish to incur. However, it is important to bear in mind that disputes need not mean litigation. We place the greatest emphasis on steps to avoid issuing court proceedings wherever possible, by trying to clearly analyse the commercial situation and identify a pragmatic way to resolve any differences through negotiation, mediation or some other form of dispute resolution.

If you wish to discuss any of the matters referred to in this note, please contact either:



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October 2008