



### **The importance of initial financial planning at start-up**

It's a statistical fact that most new businesses fail in the first year which is usually due to lack of financial planning and cash flow. The importance of drafting a business plan with projected cash forecasts, identifying how a business may stand apart from its competitors, the strategy for marketing and judging anticipated revenue streams and expenditure, is often overlooked.

Following such a process, a business will immediately have financial receivable income targets: a debt owed will not pay the expenditure of the business. If the business permits a credit facility to one of its customers, this needs to be carefully monitored and where a creditor is in default of an arrangement, provisions in a contract ought to include interest in default.



If the ratio for debt to receivable income is too high, then the impact on your business may be that:

- ✓ the business is unable to pay its own suppliers causing problems in re-stocking;

- ✓ the advertising and marketing budget for the business may have to be cut or withdrawn altogether;
- ✓ payment of staff salaries may be delayed; and,
- ✓ further investment in the business is compromised.

Ultimately, cash reserves in the business may be such that it is trading insolvently - the business cannot meet its own debts as they fall due. As a result, the business will have to close which in turn will lead to:

- ✓ staff redundancies;
- ✓ a corresponding impact on third party creditors; and,
- ✓ the loss of all the initial capital investment by the business owner.

### **The first steps to recovering Business Debts**

It is crucial that a creditor engages with its debtor - you must be able to 'talk'. The debtor may be a long-standing customer who has previously operated an account without any problems and is just going through a temporary cash flow problem. It is worth reminding yourself how difficult it was to attract that customer in the first place and you do not want them seeking an alternative supplier unless there is simply no recovery in the business relationship.

## "Permitting another business to run up unauthorised credit is likely to impact on your own business needs....."

### A Letter of Demand

Prior to issuing legal proceedings, a formal 'letter of demand' should be sent to the debtor reserving the right to issue court proceedings in the event the debtor fails to pay the amount due in full. This will often prompt the payment when sent by an attorney.

### The Legal Process and Court Action.

Debt Claims are issued in both the Summary and Grand Court. In the former, proceedings for debts of up to CI\$20,000 may be issued and the process is considerably less expensive.

The following is a brief summary of the procedure in the Summary Court:

- ✓ Legal proceedings are commenced by filing a document known as a 'Plaint' (which is a standard form) together with Particulars of Claim. Together, these documents set out the background facts to the case and the cause of action upon which the Plaintiff (Creditor) is relying on. Currently, the costs of filing a Plaint is CI\$25.
- ✓ The Debtor responds to the Claim by filing an Acknowledgment of Service either admitting or giving notice that the claim is disputed. If the claim is going to be defended, the debtor will have to file a 'Defence'.

✓ The process then follows court ordered Directions as to timetabling the exchange of witness statements, evidential matters and then ultimately, all the requirements necessary to a given trial date.

✓ At the trial, the Judge will listen to the oral evidence of relevant witnesses and it is for the Plaintiff to prove that the debt is owed and the amount.

✓ In the event that the Judge is satisfied that the claim is 'proved', Judgment is entered in favour of the Plaintiff.

A judgment creditor is able to make an additional claim for interest and legal costs in bringing the proceedings. However, in the Summary Court, the maximum amount of costs which may be recovered from 'the losing party', is CI\$2,000.

Proceedings in the Grand Court are broadly similar but far more formal, detailed and costly (but without the above limit on costs).

*Diamond Law Attorneys can help you to recover your debts. Call us today on (+001 345) 746 3529*

Judgment has been obtained:

but the Debtor fails to pay

### Judgements and Enforcement

Even if a creditor obtains a court judgment, it does not necessarily mean instant payment. The Judge will usually give 14 days to pay but the 'Judgment Debtor' may not have available funds to satisfy the Judgment or is blatantly unwilling to pay. In such cases, Enforcement proceedings may be issued where the Court has at its disposal a variety of methods to secure payment.

Whilst not strictly a procedure of enforcement, a Judgment Creditor may seek an Oral Examination of the Judgment Debtor. This is a process whereby the judgment debtor is brought before the court on an application by the Judgment creditor and questions can be put to him/her to verify their financial circumstances and assets. This is a useful tool of enquiry which assists in the decision of which subsequent route to take in obtaining the sum of the judgement.

The following is a summary of the variety of options to enforce the judgement debt:-

✓ **Writ of Fieri Facias:** in essence, this is an authorisation from the Court for the court Bailiff to seize and sell the goods of the Judgment Debtor (either from residential or business premises).

✓ **Attachment of Earnings Orders:** This is an Order where the Judgment Debtor's employer is compelled to deduct regular payments from his salary until the debt (and any corresponding interest and costs) is paid in full.

✓ **Garnishee Order:** This is an Order which instructs a third party - who owes money to the Judgment Debtor - to pay that money to the Judgment Creditor instead: Typically, a bank where the Debtor has money in their bank account. You will need to know the bank account number (you may have received previous payments from that account or have requisite knowledge from a bounced cheque).

It should be noted that the failure of a Judgment Debtor to satisfy a Judgment is a potential contempt of court. Where the court finds such 'contempt', the following are other enforcement avenues which the court may Order:

**A Writ of Sequestration:** Rarely used in Debt recovery, the Court appoints 'Sequestrators' to enter the Judgment Debtor's land and seize personal property until the court order has been fulfilled.

**Order for Committal:** A debtor who willfully refuses to pay a Judgment debt but is capable of doing so, may be committed to prison.

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