

Debtors Check – Beware of the ‘Zombie’ Business

2020 has seen significant disruptions to people and businesses throughout Australia and across the World. Between the bush fire crisis and the Covid-19 pandemic, every Australian has been affected in some way.

And now, as we slowly ease out of the Covid-19 restrictions, we are faced with another threat – the ‘zombie’ businesses. You may have seen recent media coverage of this trend – the business that has continued to exist by virtue of Government assistance packages and regulations, rather than being allowed to enter insolvency.

There are widespread concerns that insolvencies and bankruptcies may increase once those Government assistance packages and regulations (including tenant protections) end or are wound back, which may start as early as late June 2020.

So, what can your business do to protect itself against the risk of a zombie business becoming a bad debtor?

All businesses should assess the nature and extent of their existing debtors and book debts, and consider (among other things):

- whether payment terms are being met;
- whether periodic payments are being made, even if they are not the full amount owing;
- whether the debtor has made contact to negotiate a payment plan;
- whether the debtor is responding to invoices or correspondence;
- whether the debtor has exceeded its agreed line of credit, or a credit limit acceptable to your business (if one was not agreed); and
- whether the debtor is in default under your business’ contract or terms and conditions.

After reviewing your debtors list, another consideration is your business’ exposure to its debtors, and whether it has any security in place.

For businesses that supply goods on credit terms, it is very common (and generally advisable) to retain title to those goods until the business is paid the purchase price of those goods (and in some cases, all other monies owing to the business).

In order to be enforceable, it is crucial that such security interests are registered on the Personal Property Securities Register, as soon as possible.

The following are some of the most common and crucial periods within which registration is required to ensure maximum priority or enforceability:

1. where your interest is in goods you have supplied that are inventory (eg, stock of your customer) – before your customer (or its agent) takes possession of the goods; and
2. where your interest is in goods that are not inventory (eg, if you lease equipment to your customer) – before the end of 15 business days after the customer (or its agent) takes possession of the goods.

Importantly, and generally speaking:

1. security interests not registered at the time a person or company commences the insolvency or bankruptcy process become void; and
2. security interests not registered after the latest of the following times become void:
 - a. 6 months before the company commences the insolvency process; and
 - b. the time that is the end of 20 business days after the security agreement that gave rise to the security interest (ie, the contract) came into force, or the time the insolvency process was commenced, whichever is the earlier.

It is therefore very important to review all customer contracts, and your registered security interests, to ensure your business won’t lose its interest if its customer enters insolvency.

For further information, or assistance with debt collection or security registration and enforcement, please contact:



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