

17th June 2010

Unpaid Bills - What are Businesses to do?

Thousands of businesses and subcontractors throughout the country have been left unpaid for services and goods supplied. What options do these creditors have?



15th June 2010, Dublin:

- When a company goes in to receivership or liquidation where do creditors stand?
- What actions can creditors take to protect themselves?
- Is our legislation practical and effective in the current economic climate?
- What protections can be put in place by creditors now?

Many of these issues have been raised recently by creditors left out in the cold as developers and building contractors have been wound up.

“When a company is wound up, the priority of creditors is determined primarily by legislation and in particular The Companies Act 1963” says Brendan O’Donoghue, Corporate Restructuring Director at Russell Brennan Keane.

“First in line are secured creditors, (primarily banks and financial institutions) who have upon advancing funds to a borrower obtained a legal charge or mortgage over its assets”.

Section 285 of The Companies Act outlines the next category of creditors who rank in priority. These creditors, classed as preferential include Revenue Commissioners for outstanding PAYE / PRSI, VAT in respect of the 12 months prior to receivership / liquidation, Corporation Tax /CGT in respect of any complete 12 month accounting period prior to winding up, employees Redundancy, Arrears of Wages, Holiday Pay and Municipal Rates.

“The remaining creditors are classed as unsecured and in the current climate may have little leverage over their debt” said Brendan.

Sean Gallagher of Dragon’s Den has been calling for a change in legislation to include a requirement for developers to put bonds in place to shield sub-contractors from the risks inherent in speculative development projects.

Senator Fergal Quinn has recently introduced the Construction Contracts Bill 2010 to the Seanad. The Bill, which is open to amendment until October 19, sets out new regulations defining the timelines for payment in the industry as well as the terms for adjudication in cases of disputed payments. It is envisaged that the Bill if approved will improve payment practices and therefore much needed cash flow in the construction industry, particularly aiding sub-contractors. It will also provide for an alternative dispute resolution mechanism.

So what can businesses do to protect themselves before undertaking such work? Brendan outlines the key points to consider including:

1. **Retention of Title** – Ensure that your terms and conditions of sale provide that you retain title in goods supplied until payment of all sums due to you are discharged. Retention of Title cannot be utilised in respect of services / labour undertaken but can be effective for tangible good. Where goods supplied have been incorporated into other products e.g. formed into the fabric of a building (installed ventilation/heating systems, ducting piping etc), retention of title may be difficult to assert.
2. **Know your customer or potential customer**- Where a business is engaging with a new customer it is prudent to check creditworthiness. Avail of companies Registration Office searches to ascertain charges securities over company lands/property. Undertake credit checks with trade/credit agencies.
3. **Agree and stick to credit terms**- Where appropriate, establish a standard policy that requires partial payment up front, a practice that's becoming more common. "The up-front payment is usually based on a percentage of the estimated project fee. This policy can also help to defer out-of-pocket costs that occur during the course of a project" said Brendan.
4. **Invoice quickly**- The quicker you seek final settlement, the better the chance you have of getting paid when the client still remembers what you did. The longer the period between work completion and billing, the greater the chance of problems with recovery on debtors. Consideration should also be given to agree with customer that when material is delivered to site, that immediate payment be made for that material.

"It's well worth the effort to protect your business before engaging and investing resources in a new project particularly where you really don't know your customer. Unpaid bills have a critical impact on cash flow and in turn can quickly destabilise the overall business very quickly" concluded Brendan.

About RBK

Russell Brennan Keane is one of Ireland's leading business advisory and accountancy firms. With 50 years experience providing professional advisory services to a range of clients in the mid to large corporate market in Ireland, from offices in Dublin, Athlone and Roscommon.

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