

Mercian Law

Commercial Debt Recovery Specialists

CHOOSING THE APPROPRIATE COURSE OF ACTION

Pre Legal Action Considerations

Generally Mercian Law are instructed when your early attempts to recover your debt have failed. It is important to act promptly, efficiently and correctly. The better your credit control procedures, the more chance there is of a successful recovery. Although the debt amount and collection background may vary, our procedures are similar.

Firstly, we will require you to provide:

- The invoice or document upon which the debt is based.
- Any terms and conditions of trading
- Any pre-contract correspondence
- Post contract correspondence
- Up to date ledger account showing any monies received

Unless already undertaken by you, it may be necessary to undertake some searches. Enquiries from a knowledgeable and well informed enquiry agent may provide certain information at reasonable cost. If very little is known about your debtor, these searches or enquiries may be sensible and result in successful debt collection.

Searches

Land Charges Registry

This search is made against a debtor's full name and can reveal secured borrowing, particularly useful if you are considering a Charging Order. The search also reveals previous Charging Orders or pending bankruptcy proceedings or Bankruptcy Orders.

Land Registry

Mercian Law can search the Index Map for a title number, if you are unable to provide this information, but you may need to supply us with a plan of the land or property. If the land is registered, the result of the search will enable us to obtain copies of the entries on the register. Again this is useful if you are considering applying for a Charging Order.

Attachment of Earnings Index

By applying to the debtor's local County Court. This Index can be searched by any creditor who has obtained a Judgment or Order against a debtor in the Court's district.

If an Attachment of Earnings Order is revealed then consideration should be given to consolidating with this.

Register of Bills of Sale

This is a specialist register. To be effective all bills of sale must be registered at the Filing Department, Central Office, Royal Courts of Justice. The fee is £2 + £1 per additional name

Insolvency

An up to date confirmation of whether or not a winding up petition has been presented against a company. We would contact the local Court of the debtor company which keeps a Central Index of winding-up petitions.

Insolvency

Insolvency remedies should not be utilised as a debt collecting tool except as a last resort.

If insolvency proceedings are commenced then you could find you may only recover a small proportion of your debt for quite an expensive outlay. You will have to share any monies recovered with other creditors.

However, the threat of liquidation may well produce payment in full and we will always consider this particular remedy with you.

The appointment of a liquidator could lead to the activities of the directors in a debtor company being investigated. Leading to possible financial advantage to the creditors.

Statutory Demand

This is one of the methods by which a liquidation is triggered without a court judgment. It is absolutely vital that the correct form is used and filled in correctly.

Corporate Debtor

It is not necessary to utilise a Statutory Demand prior to issuing a winding-up petition. All that is required is an inability to pay debts as and when they fall due.

Best practice, to avoid a later dispute, we suggest a Statutory Demand is personally served at the company's registered office. If the debtor does dispute the Statutory Demand they will need to apply to the Court for an Injunction restraining the presentation of a Winding-Up Petition.

The grounds for compulsory liquidation:

- Company is unable to pay its debts as evidenced by not complying with a Statutory Demand or our Writ of Execution has failed.
- The Court believes it is just and equitable the company should be wound up
- The Company has by special resolution resolved that it would be wound up by the court

A Winding Up petition can be commenced in the High Court if the company's paid up share capital is over £120,000 or in the County Court local to the registered office by:

- Personal Service
- Person authorised to accept service

- Deposited at the registered office
- Last known business address
- Direct to Director or Company Secretary
- Substituted service

A Winding up Order is advertised in the London Gazette, at least 7 days after service upon the company of the petition and 7 days before the hearing. We are required to lodge a certificate of compliance with the Court 5 days before the hearing.

A compulsory liquidation hearing is heard in open court. The Official Receiver is immediately informed once a Winding-Up Order is made and will administer the estate pending the calling of a creditors meeting and the appointment of a liquidator, who is a licensed insolvency practitioner.

There is no right or wrong answer to what is the right procedure to use. It's all about knowing the debtor.

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