



MINISTRY OF
FINANCIAL SERVICES,
COMMERCE & ENVIRONMENT
CAYMAN ISLANDS GOVERNMENT



STRATEGIES FOR EFFECTIVE DEBT RECOVERY

PRESENTATION: 21ST OCTOBER 2015

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Topics to be covered

1. Initial financial planning at start-up
2. The need for good financial management
3. The first steps to recovering business debts
4. The legal process and court action
5. Judgments and enforcement



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Initial Financial Planning at Start Up

- ✓ Before starting any business, it is crucial to make sure it is viable and adequately funded from the beginning.
- ✓ Most businesses fail in the first year
- ✓ Consider drafting a Business Plan
- ✓ Identify target market
- ✓ Check out any competitors
- ✓ Identify how you can stand out from competitors
- ✓ Identify how you can best market the business – clients/customers need to know you exist
- ✓ How much cash do you need to start the business – revenue streams are difficult to calculate without a business history
- ✓ Cash flow forecast will assist in realising initial capital requirements – expected income over expected expenditure





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- ✓ How is the business going to be funded – Banks, other lending institutions, friends & Family etc



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The Need for Good Financial Planning

- ✓ Following the process above, the business has financial income targets to meet
- ✓ Companies/individuals owing you money impacts on the business' financial planning – “a debt owed will not pay the expenditure of the Business”
- ✓ How long can the business ‘afford’ to provide credit to another business: 30, 60 or 90 days – does a written contract permit additional interest in default
- ✓ What is the debt to income ratio?
- ✓ The possible impact of running a high debt to income ratio:
 - the business is unable to pay its own suppliers – purchasing stock becomes increasingly difficult;
 - the advertising and marketing budget for the business has to be cut or withdrawn altogether
 - payment of Staff salaries may be delayed
 - further investment in the business is compromised





- ✓ Once the cash in the business has depleted, it is likely that the business is insolvent – it cannot pay its financial obligations as they fall due. Unless further cash can be raised, the business will have to close; causing:
- Staff redundancies
 - a corresponding impact on third party suppliers
 - the loss of all the initial capital injection by the business owner





The First Steps to recovering Business Debts

- ✓ You must be able to 'talk' to the debtor
 - the debt may arise from a good long standing customer who you do not want to lose in the long term
 - The debtor's business may merely be having a short spell cash flow problem
- ✓ Depending on your own business' finances, you may be able to:
 - restructure the debt – negotiate a defined monthly instalment plan to include interest
 - If the debtor business is potentially a 'good business with prospects', you may be able to swap the debt for equity
- ✓ If the above are not viable options, make strategic attempts so that the debt admits the amount of the debt
- ✓ Letters of Demand - advise the debtor that unless the debt is paid in full, legal proceedings will be issued





The Legal Process and Court Action

- ✓ Debt claims up to CI\$20,000 may be issued in the Summary Court – above that amount, proceedings must be issued in the Grand Court which is a more expensive route
- ✓ Useful guide to such claims can be downloaded from the Judicial Website:
<https://www.judicial.ky/wp-content/uploads/pdf/OCC-Small-Claims-Handbook-5th-Edition-2015-Vol1-FINAL.PDF>
- ✓ Brief details: Legal proceedings are commenced by filing a Complaint – this is a standardised form – and Particulars of Claim (which sets out the background facts to the claim and the cause of action the Plaintiff (creditor) is relying on)
- ✓ The costs to file a Complaint is CI\$25
- ✓ The debtor then has to file an Acknowledgment of Service either admitting or defending the claim + a Defence (which may contain a counterclaim)
- ✓ The matter is ultimately decided by a Judge at a trial (unless the parties come to a settlement beforehand). This involves a trial - oral evidence is given on oath – and it is for the Plaintiff to prove that the debt is owed and the amount of the debt.
- ✓ If the Judge is satisfied that the Claim is ‘proved’, then there will be a Judgment in favour of the Plaintiff





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- ✓ A Judgment Creditor is able to make a claim for additional interest and legal Costs up to a maximum figure of CI\$2,000
- ✓ Proceedings in the Grand Court are broadly similar but more formal, detailed and costly.



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Judgments 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 the money to satisfy the Judgment.
- ✓ Enforcement proceedings may then have to be issued. The Court has at its disposal a variety of methods to enforce payment:
 - (a) *Oral Examination*: although not strictly a procedure for enforcement, the Judgment Creditor may seek an Oral Examination of the Judgment Debtor – an exercise to verify the financial circumstances and assets of the Judgment debtor.
 - (b) *Writ of Fieri Facias*: in essence, 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).
 - (c) *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.
 - (d) *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).

- (e) *Charging Orders*: This is an Order by the court placing a 'Charge' on the Judgment Debtor's property – thereby giving the Judgment Creditor a right of payment from a future proceeds of sale. Once an Order is made 'absolute', you can then proceed to enforce the Charge whereby the court Bailiff is authorised to seize and sell the property by a *Writ of Fieri Facias (as above)*.

✓ 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*: These are rarely used in Debt recovery due to their more complex procedural requirements; for example, a final order would have to be obtained in the Grand Court.

The Court appoints 'Sequestrators' to enter the Judgment Debtor's land and seize personal property until the court order has been fulfilled.

- (b) *Order for Committal*: A debtor who wilfully refuses to pay a Judgment debt but is capable of doing so (thereby being in contempt of court), may be committed to prison. This is highly draconian and the court requires a high threshold to make such an Order





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