



# PAYMENT DISPUTES GUIDE

Cash flow is a primary concern to businesses at the best of times. As the economic impacts of COVID-19 crystallise, businesses' cash flow will undoubtedly be tested and companies will be looking for the best ways to protect their position, whether this is through seeking to delay or avoid payments that are being sought, or through seeking to enforce contractual rights to receive money from a party trying to delay. At this crucial time many businesses will likely find themselves on both sides of the dispute.

This document provides an overview of the considerations likely to be relevant to many payment disputes.

# FIVE ISSUES TO CONSIDER

When pursuing a company for payment under a contract

1

## ENSURE THAT YOU HAVE COMPLIED WITH THE CONTRACT WHEN ISSUING YOUR REQUEST FOR PAYMENT

- Are you contractually compliant?

2

## WHAT IS THE OTHER PARTY'S REASON FOR DELAYED PAYMENT?

- Is there a legitimate dispute relating to the payment?
- Is the non-payment caused by Covid-19?
- Are the other party relying on Covid19-related arguments such as force majeure or material adverse change?

3

## ARE THERE ANY CONTRACTUAL ENTITLEMENTS THAT YOU CAN LEVERAGE?

4

## IS THERE SCOPE FOR NEGOTIATION?

- What are your commercial priorities and how can these be achieved most effectively?

5

## CONSIDER YOUR LEGAL OPTIONS FOR NEXT STEPS

- Look at any dispute resolution clause in the contract
- Consider the pros and cons of a statutory demand vs a legal letter



# FOUR STEPS TO CONSIDER

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When seeking to avoid or delay a payment that is being sought under a contract

## 1

### IDENTIFY THE GROUNDS ON WHICH YOU CAN SEEK TO AVOID OR DELAY THE DEBT

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- Contractual clauses including those relating to performance, breach and termination may be relevant here;
- There may also be common law arguments available

## 2

### COMMUNICATE YOUR POSITION TO THE PARTY SEEKING PAYMENT

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- Set out a legal basis for your actions to make your position defensible
- Consider the ramifications of your actions on your contractual and commercial position

## 3

### NEGOTIATE TO ATTEMPT TO ACHIEVE YOUR DESIRED OUTCOME

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- What concessions might you be willing to make?
- Consider the compromise positions available

## 4

### RESPOND TO ANY LEGAL OR FORMAL ACTION TAKEN BY THE PARTY PURSUING PAYMENT

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# THREE CONSIDERATIONS

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Regarding statutory demands

## 1

### HOW TO ISSUE A STAT DEMAND

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- In what circumstances is it appropriate, and what impact has Covid-19 had on the circumstances?
- What are the drafting considerations?
- What are the service requirements and how are they affected by Covid19?
- What are the next steps?

## 2

### HOW TO RESPOND TO A STAT DEMAND

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- Key factors to consider upon receipt
- Do you have grounds to dispute the debt or otherwise challenge the stat demand?
- In cases where publication of a winding up petition could be severely damaging, is an injunction appropriate?

## 3

### WHAT IS THE POSITION OF THE COURTS ON HEARING WINDING UP PETITIONS DURING THE COVID19 PANDEMIC?

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- Creditors can still issue winding-up petitions though legislation is awaited which is expected to prevent petitions being issued where non-payment is caused by Covid-19
- Many petitions are delayed beyond the usual 6 week period
- Lots of hearings of winding-up petitions have been adjourned to the summer
- Remote hearings



# CONTACT US

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**PROBLEMS. POSSIBILITIES.  
COMPLEXITY. CLARITY.  
OBSTACLES. OPPORTUNITIES.  
THE DIFFERENCE IS IMAGINATION.  
THE DIFFERENCE IS **AG.****

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