Debt Recovery of Judgments – Debt Collection and the Judgment Debtor

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Debt recovery can be quite confusing and while all debt collection will vary in complexity, here are some answers to a few of our most commonly asked debt collection questions. Hopefully these will help clarify the debt recovery process.

What is the best debt collection process to reduce outstanding invoices?

It may sound trite but the best way to avoid debt collection is not to become involved in the debt recovery process in the first place! Well established credit management procedures can minimise the chances of debtors delaying payment and avoid the need for formal debt recovery processes (including debt collection agents (or even debt recovery lawyers). If you are having difficulty with the volume or age of your receivables, it would be worth seeking legal advice on template contracts, terms and conditions and any other credit management procedures that are in operation, which might give you the edge on managing the debt collection process and avoiding formal debt recovery processes.

When should I consider outsourcing debt collection?

There is no standard timeframe on when you should consider outsourcing debt collection or debt recovery. However, in our experience, the sooner debt collection is commenced, the better chances of debt recovery. Delaying the formal debt recovery process often has an adverse impact on prospects for debt collection. As a general guide, you may wish to outsource the debt

collection as soon as the debtor has exceeded your credit terms and has failed to respond to your initial debt recovery contact.

Can I recover the costs of debt recovery?

In NSW, you will generally be entitled to recover some or all of the costs incurred as a result of the debt recovery process if:

- a contract exists with the debtor, and
- the contract contains a properly draft debt recovery clause.

However, under NSW legislation, if legal debt recovery proceedings are successful, there may be an entitlement to recover certain debt collection costs as well as interest, even if a contract does not exist between the parties.

What value of debt is worth outsourcing?

There is no minimum amount that the debt should be above before outsourcing the debt collection. The amount of the debt may influence the debt recovery action which is best to produce a commercially favourable outcome. However the main consideration in outsourcing debt collection is more likely to be the surrounding factual circumstances of how the debt arose or was incurred.

Should I outsource the debt to a debt collection agency or a law firm?

The professionalism of a reputable law firm can be a significant advantage over debt collection agencies in the debt recovery process. For instance, the use of a law firm's letterhead can often bring immediate debt recovery results, as debtors may be more conscious of the imminent commencement of legal proceedings. Additionally, you can mitigate your risk of delay or undue cost associated with the debt recovery process by outsourcing debt collection to an experienced law firm from the start. Law firms can undertake debt recovery efficiently and effectively and have duties and obligations which will ensure all your debt recovery matters must be treated with the highest professionalism. This can assist in protecting your reputation whilst efficiently undertaking the debt recovery process.

Obtaining proper debt collection legal advice can be an important factor in determining the length, difficulty and prospects of success of the debt recovery process. That is why it is crucial that from the outset you are informed of all the options and the most likely action to result in successful debt collection.

If you would like more information or advice in relation to debt collection, debt recovery, insolvency, or restructuring practice and procedure, please contact Stephen Mullette or Jeffrey Brown on (02) 9806 7459 or (02) 9806 7446, or email stephenm@matthewsfolbigg.com.au or jeffreyb@matthewsfolbigg.com.au.