



WAYS TO AVOID BEING A PROFESSIONAL CREDITOR

Clearly the economy appears to be slowing in this region and some of your clients may experience a tightening of cashflow. This is going to make it harder for some to pay your outstanding fees.

You may find it interesting that with most insolvencies that come through our doors almost invariably one or both professional advisors (Accountants and Solicitors) find themselves on the creditors list.

Can this be avoided? **OF COURSE.** There are always ways and means.

Remedies at your disposal include:

1. Chase slow payers quickly and early
2. Where there is doubt as to viability take payment in advance to your trust account
3. Where there are corporate entities involved obtain guarantees from directors in your letters of engagement or credit agreement.
4. Take a leaf out of the big corporate and establish a caveatable interest over property through credit agreements.

None of the proceeding suggestions are fool proof and some may of course be unpalatable to you to have to implement. As a counter argument we would argue that large write offs are just as hard to stomach.

These suggested remedies are explored further:

With remedy 1 you need to be careful as to the method and manner of chasing in case there ends up being a formal insolvency appointment. This is because the more your efforts to chase the money are documented

the more likely you are to attract the interest of a liquidator or bankruptcy trustee for a refund of possible preference. Remember though the smaller the bill the less likely they will take you on, and the louder their bluster.

For remedy 2 requesting money up front is something we have to do when we are providing remedial advice. We use the argument of possible preferences in the event of failure. It is understood this may be hard to do but so is writing off fees and reconciling yourself to time wasted. If they place money in your trust account as long as your letters of engagement are appropriately drafted the Courts are more likely to support your resistance to repaying the money as a preference. Readers will claim that sometimes it may not be known that there are cashflow issues. It is however submitted that by being observant you will be able to spot the signs.

For remedy no.3 it is submitted that obtaining guarantees from directors as part of the engagement letters to corporate clients is not fool proof but it does add a little insurance. Of course where the business is such that multiple personal guarantees are given, you run the risk of being a participating unsecured creditor in a bankrupt estate.

A caveatable interest as one of your credit terms would no doubt be very hard to run by a client. But I can say that if the timing of establishing the caveatable interest and the wording are sufficiently precise they are hard to challenge thereby affording the creditor a priority ranking in an insolvency.

As ever we welcome all your insolvency related enquiries.



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Official Website

www.CloutAssociates.com.au

Contact Details

Tel: 02 6652 3288

Fax: 02 6651 9393

Email: admin@cloutassociates.com.au

Clout & Associates Senior Representatives

Morgan Chubb

Email: mjchubb@cloutassociates.com.au

David Morgan

Email: dmorgan@cloutassociates.com.au