A GUIDE TO THE RECOVERY OF DEBTS OWED TO YOU.

If you are owed money by a person (including a company) and they are not paying, there are various options available to you. The route that you take will depend on the amount due to you and your ability to prove that you are owed the money.

A key consideration for a person owed money when choosing a route of debt collection is how effective that route is likely to be in terms of overall recovery.

**Contractual Considerations:**
Protecting yourself and your company from debtors (particularly those getting into financial trouble or going insolvent (bankruptcy in respect of individuals or liquidation in respect of companies)) starts with the terms and conditions upon which you trade. There are a number of ways in which you can seek to protect yourself including:

(a) not relying on an oral contract but ensuring that the terms and conditions upon which you are providing goods or services are set out in a written contract signed by the customer

(b) that any changes to the contract are detailed in writing and signed by the customer

(c) undertaking due diligence on the person with whom you propose to trade as a little research could identify a person who has a history of bad debt. Consult the register of judgments established and maintained by the Chief Registrar which is available to view in electronic format at the Public Counter/Court Office of the Courts of Justice building, Deemsters Walk, Bucks Road, Douglas. You can also search Trust Online (www.trustonline.org.uk). Trust Online is a statutory public register run on behalf of the Ministry of Justice by Registry Trust Ltd, access to which is open to all. Registry Trust keeps separate public registers for money judgments in Scotland, Republic of Ireland, Northern Ireland, Jersey and Isle of Man

(d) terminating a contract when the other side is in financial difficulty.

Trading with a company that is in financial difficulty carries with it the risk of losing money. Most suppliers offer credit terms to their customers. If the customer enters a formal insolvency process, the outstanding debts will almost certainly rank as unsecured claims, and have very little commercial worth. To mitigate the risk of suffering losses in this way, commercial contracts usually allow one party to terminate the contract if the other encounters financial difficulties, or becomes insolvent.

It is critically important, therefore, that you understand how the termination clauses in your contracts operate and when they trigger.

(e) incorporating a retention of title clause in your contract.
Many contracts contain a provision that purports to prevent title to goods passing to a buyer until the buyer pays for them. Enforcing these clauses can be difficult in practice, but, if the clause works, the goods in question will not form part of the insolvent estate, so cannot be used to satisfy the claims of an insolvent company's secured and unsecured creditors. In practice, if you have an effective retention of title clause, you can get the insolvent company to return those goods that belong to you and are located at the company's premises. You are unlikely to successfully claim the proceeds of any sale of the goods in question.

(f) additional clauses:

- specify:
  - time for payment (for example, 30 days after invoice date); and
  - that time for payment is of the essence
- to encourage prompt payment, consider providing for:
  - interest on late payments; or
  - a discount for early settlement; and
  - in an instalment contract, the entire price to become due if a single instalment is paid late
- exclude the buyer's right to make deductions or withholdings
- provide for payment in cleared funds

**Preliminary Considerations / Steps:**

Before taking any court action it is advisable that every effort is made to obtain settlement of the outstanding debt informally.

Speak to the person who owes you money as you may be able to informally agree a plan to achieve repayment.

If talking to the person doesn't achieve settlement then write a letter including the following information:

- the amount of the debt
- what the debt is for
- what you have done to date to try to recover the debt

Consider delivering the letter personally or using a recorded / signed for service to ensure that you have proof of receipt. Alternatively it could flag up that the debtor has moved thereby potentially frustrating recovery. In the event that you are unable to locate the debtor consider (if the amount of the debt justifies the expense) engaging the services of an enquiry agent to locate the debtor. It is also worth bearing in mind that in respect of most debts if court proceedings are not issued within a period of 6 years from the date on which the debt fell due court action to recover the debt will be "statute-barred" and you will be denied the opportunity of enforcing the debt through court action.

Include the following information in your letter:

- the name and address of both you and the person who owes you money
- dated copies of all paperwork relating to the debt
- a date by which you expect payment (at least 7 days)
- a copy of the statement of outstanding account
- a request that the debtor puts in writing any issue or dispute that they have with your statement of outstanding account
- detail the steps that you propose to take if payment isn't received
- refer to any relevant contractual terms such as provision for interest
Insolvency proceedings:
The starting point is that insolvency proceedings are not intended to be used for debt recovery. However, the threat of insolvency proceedings may be sufficient to persuade some debtors to settle their debts. It can also provoke debtors to set out their reasons for failing to pay, including any dispute as to the amount payable.

Before threatening or commencing insolvency proceedings, consider the following points:
- Be wary of threatening to commence insolvency proceedings if you do not intend to do so. The other party may call your bluff.
- If you know that the debt is genuinely disputed, it would be an abuse of process to issue a winding-up petition against a company, or issue a bankruptcy petition against an individual.
- If the debtor is put into formal insolvency proceedings, you may receive only a small proportion of your debt, or possibly nothing at all.

Court Proceedings:
There are a number of points to consider before commencing court proceedings:
- conduct a cost/benefit analysis before starting proceedings. Issuing a claim should always be your last resort. The court will expect you to have acted reasonably, such as exchanging information and documentation about the dispute and generally try to avoid the need to issue a claim. There is little satisfaction to be gained from winning your case if the defendant has no money to pay you. Before issuing a claim it is important to consider whether the person, firm or company you are claiming from is likely to be able to pay. If they are:
  - unemployed;
  - bankrupt;
  - have no money of their own;
  - have no personal property or anything of value belonging to them (such as a car);
  - have ceased to trade; or
  - have other debts to pay (trade debts will usually be “unsecured” and will generally need to give way to secured debts such as mortgages, bank loans, and monies owed to Isle of Man government in respect of rates and tax which may result in it being many years before your debt is repaid if at all)
the court may not be able to help you get your money. You may, however, be able to get your money if you are prepared to accept small, regular payments (instalments) over a period of time.
- be cautious about starting proceedings if you do not intend to see them through:
  - the other party may call your bluff
  - you will almost certainly be liable for your opponent’s costs if you discontinue and you will also need to take into account the impact that taking such steps may have on your relationship with the debtor
- your ability to recover costs will depend on the amount of the debt and the court procedure to which your claim is allocated (see below)

Pre action matters:
- is there in place any relevant agreement between the parties containing provisions requiring to attempt negotiation or alternative dispute resolution such as mediation or arbitration. If not, it is worth considering whether, in any event, it may be appropriate to attempt to resolve the dispute by one or more of these methods. Mediation is a flexible, voluntary and confidential form of dispute resolution in which a neutral third party assists the parties to work towards a negotiated settlement
of their dispute, with the parties retaining control of the decision whether or not to settle and upon what terms
• parties usually negotiate on a without prejudice basis. The without prejudice rule generally prevents statements made in a genuine attempt to settle an existing dispute, whether made orally or in writing, from being put before the court as evidence of admissions against the interest of the party which made them. It is intended to facilitate settlement. If you are involved in settlement discussions, it may be prudent to do so on an expressly “without prejudice” basis
• in most cases it is appropriate to send a letter before action

Allocation:
Making a claim is when you begin formal legal action against another party. You make a claim by filing with the court a completed claim form setting out the details and particulars of your claim. Upon receipt of a completed claim form and the relevant issue fee (see below) the court issues the claim form, the claim is allocated to a court procedure and a copy of the claim form is returned to you for service on the defendant. Service of the issued claim form happens when it is either sent or given to the defendant by the coroner, and they are officially notified of the action that you are taking.

Broadly speaking debts claims are allocated to a court procedure depending on their value:
• **small claims procedure** (generally for when the value of the claim is £10,000 or less);
• **summary procedure** (generally for the value of claims between £10,001 - £100,000);
• **ordinary procedure** (generally for claims in excess if £100,000 or where the amount is to be determined by the court);

The value of the claim will also determine the issue fee payable to the court upon filing the claim. The level of fees (including the issue fee) payable is periodically reviewed and can be found on the Isle of Man Courts of Justice website ([http://www.courts.im/](http://www.courts.im/)) along with general procedural guidance for claimants and defendants and the various forms required to pursue and defend civil claims. At the date of this Guide the issue fee payable upon filing a claim is determined as follows:

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<tr>
<th>Description</th>
<th>Fee</th>
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<tr>
<td>(i) Up to £300</td>
<td>£25.00</td>
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<tr>
<td>(ii) £300.01 to £500</td>
<td>£37.50</td>
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<td>(iii) £500.01 to £1,000</td>
<td>£52.50</td>
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<td>(iv) £1,000.01 to £1,500</td>
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<td>(v) £1,500.01 to £3,000</td>
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<td>(vi) £3,000.01 to £5,000</td>
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<td>(vii) £5,000.01 to £10,000</td>
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<td>(viii) £10,000.01 to £15,000</td>
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<td>(ix) £15,000.01 to £50,000</td>
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<td>(xiii) £200,000.01 to £300,000</td>
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<td>(xiv) £300,000.01 to £500,000</td>
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<td>(xvii) £5,000,000.01 to £10,000,000</td>
<td>£3,375.00</td>
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As well as the issue fee payable upon filing a claim court fees apply at various other stages of the court litigation process, including, amongst other things, upon filing an application for Judgment and Execution, an Order for the Defendant to pay by instalments, or for Attachment of Earnings (see below).

The Isle of Man Courts of Justice have issued a number of guidance leaflets which deal with the court processes applicable to different matters and which are available from their website (see link above).

The Small claims procedure:
The small claims procedure is a simplified procedural system for dealing with lower value claims. The rules and procedures are designed to be less formal and more accessible to litigants in person. However, except where certain rules have been disapplied, the court has the same powers to grant remedies in a small claim as it does for claims allocated to the summary or ordinary procedures.

In straightforward cases the small claims procedure provides a simple and informal way of resolving disputes. You should be able to process your claim without the need for an advocate.

Whilst an advocate may be instructed to act on behalf of a person in relation to small claims proceedings the advocate’s commercial rate costs will not be recoverable on successful conclusion of the proceedings and therefore it may be grossly uneconomic to conduct proceedings through an advocate.

However in some cases, particularly more complex cases and where there is likely to some dispute as to fact, it may save you a lot of money, time and effort if you obtain some legal advice before you start your claim. An advocate will be able to tell you:

- if it is worth taking out a claim
- if it is, how best to prepare for it
- what evidence you may need

It is generally quicker and cheaper to bring a claim in the small claims procedure, as there is no need for substantial pre-hearing preparation and the formalities of a traditional trial.

The procedure for the preparation of the case and the conduct of the hearing are designed to make it possible for a litigant to represent himself, further reducing the cost of bringing a claim.

Only limited costs are recoverable in small claims procedures.

Where a claimant or a defendant is company it may be represented in small claim proceedings by a nominated individual who is – (a) an offer or member of the company, and (b) authorised (either generally or specifically) by a resolution of the company, or of the directors or other person(s) managing the company’s affairs, to represent the company in the proceedings (the “authorising resolution”). An individual shall not be taken to be a nominated individual in relation to court proceedings unless a copy of the authorising resolution, verified by an officer of the company to be a true copy, has been filed with the court.

If the claim is defended you will need to take time to prepare your case; for example, you will have to put together copies of all relevant documents or spend time getting statements from witnesses. You will probably be required to attend a court hearing and you may have to spend more time completing forms to enforce your judgment. In respect of a disputed debt your position may be substantially prejudiced if you
seek to rely on an oral contract as opposed to terms and conditions contained in a written and agreed contract.

In respect of court proceedings where the value of the claim exceeds £10,000.00 it is generally advisable to seek professional legal advice unless you have relevant in-house expertise.

**Judgment and Execution:**
The aim of court proceedings is to obtain judgment in your favour against the debtor and this may be achieved in a number of ways; summarily, upon application, following the debtor having failed to file an acknowledgment of service or a defence to your claim within timeframes set out in the Rules of the High Court of Justice of the Isle of Man 2009 (the “Rules”) (the Rules, which are a detailed procedural manual applicable to civil (as opposed to criminal) court proceedings on the Isle of Man, are available from the Isle of Man Courts of Justice website (see link above)), where a defence has been filed but it appears to the court that it discloses no reasonable grounds for defending the claim, where the debtor admits the claim, or following a full hearing of the case on its merits.

Execution is an enforceable order giving authority for the money to be claimed. Execution enables a judgment given in favour of a party, typically the claimant, to be enforced by that party and gives the coroner (see below) the power to visit the defendant's home or business to:
- collect the money you are owed or;
- see whether the defendant has goods or land to the value of the money owed to you.

**The Coroner:**
The Isle of Man is divided into six administrative districts, called sheadings. The six sheadings are Ayre, Glenfaba, Garff, Michael, Rushen and Middle. Each sheading has a coroner. The coroners exercise a number of functions the most relevant for the purposes of this guide are: service of process and other documents, and the enforcement of executions in respect of court judgments. The Coroners powers with regard to the enforcement of court judgments is largely contained in the Administration of Justice Act 1981 which can viewed on the Isle of Man Government On-Line Legislation website (http://legislation.gov.im/cms/en/). Coroners are assisted in their duties by Lockmen. Coroners hold public office, they are appointed by the Chief Registrar by a delegation from the Lieutenant Governor, and are ultimately accountable to the Chief Registrar for their conduct and activities. In the exercise of their functions the Coroners are subject to a written Code of Conduct issued by the General Registry which provides a framework that sets out for Coroners and for those who use their services the standards that are reasonably to be expected when a Coroner carries out their functions.

The Coroner has a range of powers available to him/her to secure satisfaction of a judgment and execution which he/she must exercise reasonably, particularly with regard to judgment debtors who may be deemed vulnerable.

If the judgment debtor does not have the money, the coroner will look at his/her belongings and decide whether he/she has anything that can be sold at an auction to clear the debt. To find out the judgment debtor’s financial situation following the court issuing judgment and execution in your favour both the court and the coroner have powers to summon and examine the judgment debtor as to his/her means.

To secure satisfaction of a judgment the Coroner may:
- arrest and sell the judgment debtor’s personal property and / or land
- arrest debts due or accruing to an judgment debtor from any person within the Island
With regard to enforcement the High Court, on application by the judgment creditor or in some cases the Coroner (with the judgment creditor’s consent), may make the following orders:

- **Instalment order** – is an order which requires the judgment debtor to discharge the debt by way of periodic instalments to reflect the debtor’s financial means

- ** Arrestment order** - is issued by the court against a third party, e.g. a bank, to seize money in their keeping. The order will require the third party to pay to the judgment creditor:
  - the amount of any debt due or accruing due to the judgment debtor from the third party; or
  - so much of that debt as is sufficient to satisfy the judgment debt and your costs of the application.

- **Attachment of earnings order** - is sent to a judgment creditor’s employer. It directs the employer to take money from the judgment creditor’s wages each pay day and send it to the appropriate Coroner who then sends the money to the claimant.

- **Charging order** – involves the court placing a ‘charge’ over or against an judgment creditor’s interest in an asset such as stocks and shares or an interest under a trust. The order gives the judgment creditor rights similar to those of a mortgagee over the asset. Before making a charging order the court must consider all the circumstances of the case and, in particular, any evidence before it as to — (a) the personal circumstances of the judgment debtor; and (b) whether any other creditor of the judgment debtor would be likely to be unduly prejudiced by the making of the order.

- **Appointment of a Receiver** - is where a person, usually a qualified professional, is appointed by the court on the application of the judgment creditor as a method of enforcing a judgment. The Receiver is a neutral person (often a professional trustee) appointed by a judge to take charge of the property of the judgment debtor and realise assets and available monies to satisfy payment of the judgment debt.

**Foreign debtors / off-Island debts:**

Contracting with persons off-Island has its own specific risks and if you do so it is worth considering contracting on terms that seek to reserve exclusive jurisdiction for resolving disputes to the Isle of Man courts with Manx law as the applicable law.

Where a judgment debtor is not on the Isle of Man you will need to obtain the court’s prior permission to serve the claim on the debtor outwith the jurisdiction. Application for service outside of the Isle of Man is made in accordance with the Rules using Form HC8C (Application Notice (permission to serve outside of the jurisdiction) available from the Court’s website [http://www.courts.im/formsandguidance/claims.xml](http://www.courts.im/formsandguidance/claims.xml)). You will need to satisfy the court that the claim has sufficient connection with the Isle of Man to justify the Isle of Man court assuming jurisdiction in relation to the matter.

Enforcing a judgment against a person who is outside the Isle of Man and who has no assets on the Island can be complicated and may necessitate the issuing of fresh proceedings on the back of the Manx judgment in the debtor’s local court. However, where the judgment debtor is resident in either Guernsey, Israel, Italy, Jersey, the Netherlands, the Netherlands Antilles, Surinam, or the United Kingdom, there is a procedure available whereby it may be possible to register an Isle of Man judgment in the debtor’s local court for enforcement. This is an area where it may be prudent to obtain professional legal advice.

23/10/15

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