

THE LATEST ON LATE PAYMENT

The Late Payment of Commercial Debts (Interest) Act 1998 has been amended, again, implementing EU Directive 2001/1/7/EU, by the Late Payment of Commercial Debts Regulations 2013 (SI 2013/395). This revised version of the Act applies to all contracts made on or after 16th March 2013. Whilst there had been some discussion within European circles of 'simplifying' the compensation tariff to a flat £40.00 per invoice, the Regulations still provide for a tiered approach of £40, £70 or £100.

Of particular significance in the amended Act is the new position as regards Public Authorities who now cannot extend the payment period beyond thirty days.

Whilst the statutory entitlement to interest and compensation may have potential benefits to a trading company, there is a natural reluctance to pursue such claims at risk of disturbing a trading relationship. Once insolvent, there is no such relationship; hence there are considerable benefits to be had by an insolvent or soon-to-be insolvent company.

For the recently insolvent, the ability to go back six years and recover the compensation amount for each and every invoice which was paid but paid late, plus the interest, can amount to a very considerable sum into the pot. In our experience, the sum due by way of interest and compensation can exceed the book debt.

For the soon-to-be insolvent, particularly where there are on-going contracts which will be breached upon insolvency, the ability to make a claim for interest and compensation in advance of an impending insolvency can be a very useful tool indeed. If the claims are made, and are not paid, it may be possible for the Company to use this non-payment to terminate a contract pre-insolvency and on its terms and escape the on-going obligations and the likelihood of set-off. This is preferable to the Company committing wholesale breaches at the point of insolvency, thereby reducing recovery and potentially adding to the list of creditors diluting any dividend still further.

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