

# Creditors' Remedies – "getting paid"

<b>CHAPTER 1. INTRODUCTION</b>	1
<b>CHAPTER 2. CREDIT POLICY AND MANAGEMENT OF CREDIT RISK</b>	3
Introduction	3
Policy	3
Risk profile	4
Information needs	4
Information on exposure	5
Management approach	5
Responsibility structure	6
<i>Board of directors</i>	6
<i>Credit manager</i>	6
Reporting	6
Credit limits	7
<i>Maximum customer credit limits</i>	7
<i>Credit limit reviews</i>	7
<b>CHAPTER 3. WARNING SIGNALS</b>	9
Introduction	9
Watch for the warning signals	9
What happens when warning signs are detected?	11
<i>The first rule - act early and act fast</i>	11
<i>Call in the specialists</i>	11
<i>Get behind the numbers</i>	11
<i>An appraisal</i>	11
First signs	11
Summary	13
<b>CHAPTER 4. PROTECTION MECHANISMS</b>	14
Effective credit control procedures	14
Collection procedures	14
Deposits	15
Security	16
Retention of title ("ROT")	16
Duress	17
Various forms of administration of insolvent companies available to the unsecured creditor	18
<i>What should you be aiming to achieve?</i>	18
<b>CHAPTER 5. COMPROMISES WITH CREDITORS</b>	23
Introduction	23

Initiation of a compromise proposal	23
Procedures	23
Creditors' meeting	24
<i>Different classes of creditors</i>	25
Effect of the compromise	25
The role of the court	25
<i>Facilitation</i>	25
<i>Review</i>	26
Variation of the compromise	26
Impact of liquidation on the compromise	26
<b>CHAPTER 6. RETENTION OF TITLE CLAUSES</b>	28
Introduction	28
Legal basis	28
Proceeds of sale	28
Manufactured goods	29
Practical aspects for the unsecured creditor	30
<b>CHAPTER 7. COURT APPOINTED RECEIVERS</b>	31
Introduction	31
Procedure	31
Advantages and disadvantages of a receivership	33
<b>CHAPTER 8. SUMMARY OF PRE-JUDGMENT REMEDIES AVAILABLE IN THE HIGH COURT TO UNSECURED CREDITORS</b>	34
Set-off	34
<i>Requirements for set-off</i>	34
<i>Advantages and disadvantages of set-off</i>	34
"Freezing" assets	34
Pre-judgment charging orders	35
<i>Requirements for a pre-judgment charging order</i>	35
<i>Advantages and disadvantages of a pre-judgment charging order</i>	35
Mareva injunctions	36
<i>Requirements for a Mareva injunction</i>	36
<i>Advantages and disadvantages of a Mareva injunction</i>	36
Orders for preservation of property / payment of fund into court	37
<i>Requirements for a preservation order</i>	37
<i>Advantages and disadvantages of a preservation order</i>	37
Arrest of an absconding debtor	37
<i>Requirements for an order for arrest of an absconding debtor</i>	38
<i>Advantages and disadvantages of an order for arrest</i>	38
<b>CHAPTER 9. WHEN IS ADR RIGHT FOR YOU AND YOUR DISPUTE?</b>	39
ADR process selection checklist	40
Note that you should not use ADR when:	41
When to mediate	41

How does mediation work?	42
<b>CHAPTER 10. CONTAINING DISPUTES - AN OUNCE OF PREVENTION IS WORTH A TON OF CURE</b>	44
Mediation clause (short form)	44
Mediation clause (long form)	45
<b>CHAPTER 11. EXTRACTING THE BLOOD FROM THE STONE</b>	46
Principles	46
<b>APPENDIX 1 - Pacific Construction Limited: Module 1 - Background Information</b>	49