

Who is a Customer?

A seller (or its lawyers) must ask for, be given full details of and investigate the corporate status of a proposed buyer. This would include necessary due diligence of the buyer's corporate structure; years it has been trading; directorships; shareholdings and registered charges against assets. It is prudent to get trade credit references, personal directors' guarantees and written acknowledgements that a buyer's assets are charged to the seller until full payment is made.

Case Study

In this instance our client was a software vendor with longstanding arrangements with a particular customer. When they first began working together a detailed and formal agreement was entered into between the two businesses to cover all major technology licensing and support issues. Over some ten years the relationship developed and further software modules and services were requested by the customer, however the only documentation consisted of informal communications between the parties, purchase orders and invoices. Payment was generally made by the customer in accordance with our client's requirements.

More recently the customer simply stopped making payments. Our client, in pursuing the matter, discovered that the customer organisation was part of a group which had been extensively restructured approximately three years ago. Further investigations revealed that communications, purchase orders, invoices and payments had for some time been between our customer and various of the companies in the group – the original customer was no longer the sole legal entity our client was dealing with.

The payments which were due to our client were based on unpaid invoices – usually one of the easiest claims to pursue. In this instance however the relationship had become one between our client and various of the members in the customer's group. It was no longer clear who was responsible for paying the outstanding invoices, and there were even questions about who was entitled to the benefit of the software and services which our client was providing. This made a simple debt collection process much more complex (and therefore time-consuming and expensive).

We are now working with our client to develop their internal procedures so that this problem will be much less likely to recur. The key elements of that process are a regular customer review from a regulatory perspective (have there been any major changes to the company concerned, its directors or shareholders, have any corporate documents been lodged which may cause some concern?), from a credit perspective (does a credit check show anything new?) and from a customer feedback perspective (has there been any change in the use of the software or services by the customer that may have an impact on the initial contractual relationship?).

Had this regular housekeeping been undertaken by our client it would have saved many days of work and several thousand dollars in legal fees on this debt collection process. Getting to know their customer better may well have also assisted to maintain a stronger relationship with that customer which may have avoided the debt collection problem in the first place.