

Cash Flow & The BCIPA

The inflow and outflow of cash is one of the most important aspects of running a successful business, especially during growth periods. Increase in turnover and profit are important indicators on how successfully your business is progressing, however the inability to adequately monitor your cash flow can force many businesses to close their doors.

Some factors that may lead to cash flow constraints include:-



- **Poor debtor follow up** – make sure you have adequate measures in place to ensure your debtors pay on time. This includes checking that your paperwork is clear and concise and you have open communication with debtors should problems arise.
- **Inadequate credit limits** – if you are providing credit terms to your debtors such as 15 or 30 day terms, you should try to find creditors with similar terms. If you are paying suppliers on COD terms and providing credit to your debtors, you run the risk of eventually running short of cash. Negotiate credit terms with your suppliers that meet both your needs and theirs.
- **Statutory requirements** – being aware of your statutory requirements for outlays such as GST, pay-roll tax, income tax and other state and federal government levies will ensure you have sufficient cash to meet these obligations.

You should also be aware of statutory requirements that might impact the way you deal with debtors and creditors. One piece of legislation that can affect your cash flow is the *Building and Construction Industry Payments Act 2004 (BCIPA)*.

The BCIPA was introduced in October 2004 in an effort to provide an alternative to the building and construction industry to resolve payment disputes quickly. (Note: The Act currently excludes builders in the residential sector if they are contracted with a resident owner). This legislation provides a statutory process called *adjudication*; for those operating in the building and construction industry in Queensland to resolve disputes using a quick and relatively simple process.

How does it work?

A claimant (person/entity owed money under a construction contract) serves a payment claim on the respondent (person/entity who received the benefit of the work under the construction contract), outlining the work performed, amount of the progress claim and also state that it is a payment claim made under the *Building and Construction Industry Payments Act 2004*.

Should the respondent dispute the claim, they have ten business days from service of the payment claim to respond with a payment schedule, which should refer to the payment claim served, state amount they are paying (even if it is nil), and if less than that claimed, state the reason for deducting any monies from the amount claimed.

Any disputed or unpaid claim can then be referred to adjudication, a process through which the BCIPA provides a quick dispute resolution system, decided by an independent third party called an *adjudicator*.

The adjudicator will then determine the amount, if any, owing to the claimant. The adjudication decision is an enforceable decision which will enable the claimant, if awarded monies, to suspend work and enforce the decision through a judgment debt.

It should be noted that any judgment is completely separate from any other legal rights each party may have. As a result, you should consider contacting Master Builders who can, where necessary, direct you to a consultant or legal advisor prior to embarking on this path.

Impact on cash flow

The use of this legislation may mean the service of a payment claim and responding with a payment schedule will encourage negotiation between a claimant and respondent without the need to use the adjudication process, thus resulting in timely cash flow.

Therefore, as either a claimant or respondent, it is important to be aware of your obligations in relation to BCIPA.

For claimants, it may be that being unaware of this legislation means you are unable to adequately compete in the industry as your competitors are using this legislation as an effective debtor controlling tool to settle disputes.

For respondents, you may get caught out by not responding to payment claims within the specified time limits, even where you have valid reasons to withhold monies. The cashflow impact for you is that you may be required to pay monies under an adjudication decision.

If you require assistance implementing some of the above ideas, call the team at MGI Brisbane on (07) 3002 4800 or email to info@mgibris.com.au.