

SECURED CREDITOR CHECKLIST

Advantage Partnership Lawyers

Secured and Unsecured Creditors

An unsecured creditor is a creditor who is owed money, but has no security from the debtor for the debt. The creditor does not have the right to take possession of any property if the required payments are not made. Unsecured creditors are at a risk of losing everything, especially if debtor becomes insolvent.

A secured debt is a debt where the creditor has a right to claim to an asset until the debt is paid.



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This information is provided as a guideline only and should not be relied on as a substitute for legal advice.

WHAT CAN BE DONE TO AVOID THE CREATION OF A DEBTOR/UNSECURED CREDITOR RELATIONSHIP?

Obtain security

- By obtaining valid security before advancing funds, a creditor will not become unsecured.
- Security in personal property can be over physical assets, such as inventory or plant and machinery, or over non-material items such as intellectual property rights.

Deal on cash on delivery, or cash in advance

- By supplying goods or services either at the same time as receiving payment, or after receiving payment in advance, a creditor/debtor relationship will never exist.

Supply on a retention of title (ROT) basis

- Inserting a ROT clause in the sale contract indicates that the goods sold to the company continue to be owned by the seller until the goods are fully paid for, or until the company has paid all its debts to the seller.

Get paid by a third party or under a bank guarantee or letter of credit

- A creditor may also seek security by receiving payments from a third party or by obtaining a bank guarantee or letter of credit

Get paid out of a trust established pre-insolvency

- By having the debtor company set up a trust to pay a creditor(s), the assets of the trust cease to be the property of the debtor and become instead assets of the trustee(s).

Naturally, not all of these options are completely fool-proof. They must be properly set-up, while the debtor company is solvent, in order for them to be effective.