

Changes Coming to Business to Business Payments

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The Ministry of Business, Innovation and Employment (MBIE) has recently produced a discussion paper aimed at improving business-to-business payment practices in New Zealand. Specifically, the paper looks at reducing the timeframe for business-to-business payments.

The Discussion Paper

MBIE is concerned that late payments from large organisations to smaller organisations can be “crippling” for small businesses and that the late payment of invoices creates unfairness in the market. Late payment affects the cash flow for the payee and leads to business inefficiency because businesses waste time chasing unpaid invoices. Given current technology, there is no technical reason for slow payment.

While MBIE’s research indicates that many payers who had paid an invoice late had simply forgotten to make payment on time or think they have already paid, the evidence suggests that some organisations impose delayed payment terms on other businesses. Delayed payment essentially means that the payee is providing the payer with cheap or free credit.

Proposed Solution

MBIE proposes a two-pronged approach to tackle late payments between businesses:

- a. A statutory limit of 20 days for payment; and
- b. A statutory right to charge interest on late payment (without the need for a Court proceeding).

20 day timeframe for payment

MBIE proposes a short legislative timeframe of 20 days for payment. At this stage, the 20 day limit is simply a proposal on which the Government seeks submission.

Submissions are also sought on when time should start from and whether there should be some limits or exceptions to the proposed 20 day payment timeframe. Should the provisions only apply:

- i. where one of the parties is a small business (which could be defined by annual revenue of the business or number of employees in the business);
- ii. where the contract falls under a specified monetary limit (eg \$250,000);
- iii. where standard form contracts are used; or
- iv. in some specified industries?

MBIE also suggest an exception should apply where the 20 day timeframe would be "grossly unfair".

Mandatory interest

MBIE also proposes introducing a statutory interest provision to allow payees to claim interest without going to Court even when there is no interest provision in the contract. The rate is likely to be higher than the interest rates which apply when a claim is taken to Court to ensure that payees are recovering the costs of delayed payment. MBIE suggests that there would need to be a corresponding cultural change to ensure that the provisions actually take effect but it is not clear how this would be achieved.

The proposal does not consider how interest will be dealt with where there is a payment dispute, save to suggest that it may be appropriate to also introduce an implied dispute resolution clause.

Will the Proposals Work?

The proposals have some merit, given the difficulties faced by businesses that are not paid within a reasonable time. Currently, it can be costly and time consuming to enforce the payment of invoices, which means that few businesses take action if payment is delayed by a matter of weeks (or in some cases, months). The proposals are intended to address this.

However, what remains to be seen is whether legislative change will bring about change to current practices.

A statutory timeframe is likely only to be effective if there is an incentive for payers to comply and/or consequences for non-compliance.

While a mandatory interest provision is intended to provide an incentive for timely payment, that provision alone is unlikely to be enough. Our experience suggests that once a payee is paid, they will not want to spend further time and energy in issuing a second invoice for interest and enforcing it if the payer refuses to pay.

Even if legislative change comes, a payee's position will still be best protected by a contractual clause which enables them to recover the costs of debt recovery. Where a payee can get back the costs of enforcement, they are much more likely to take enforcement action and it is usually much more economic to do so.

If enforcement remains too costly for payees then payers will continue to have the upper hand and the legislation will have little, if any, impact.

Submissions on the proposals are due 9am on Tuesday 14 April 2020. We invite clients to send us their thoughts and comments before then so that we can incorporate the views of our clients into a submission. The full discussion paper is available here: <https://www.beehive.govt.nz/sites/default/files/2020-02/Improving%20Payment%20Practices%20Discussion%20Document%20final.pdf>

Further Advice

Gallaway Cook Allan has a team of solicitors who are experienced in debt recovery and in drafting appropriate contractual provisions to protect your ability to recover the costs and interest associated with delayed payment. Please get in touch with Jenna Riddle, Kate Logan or Sam Wells if you need some further guidance in this area.

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