

Issue 1
November 2003



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MACM Newsletter

A Comment by the MACM President

Mr Geoffrey D. Borg

More than two years have passed since we all joined together and launched this successful Association in June 2001. We have not looked back since then and membership has been steadily on the increase without any need to hard sell. Our efforts have come mainly through educational articles on a regular basis in all the leading business newspapers as well as a professional approach in all the aspects of information management and data processing.

Whilst, thanks to our membership, we have a significant representation of this country's GDP, we have ensured that this representation is used to continuously lobby Government, the Banks and other Public Authorities to ensure that adequate legislation, regulations and enforcement are in place.

We are all aware that so much more has still to be achieved in the area of controlling the abuse of the cheque payment system on the Island, overdue debtors, legal & court procedures, enforcement of judgements etc... This is the role of our legal sub-committee which is amply supported by contributions from the Association's members.

Similarly MACM has built up a wealthy database of information relating to dishonoured cheques and overdue debtors and in recent months continued to invest in order that all activity pertaining to defaulting debtors is co-ordinated in an integrated system.



The information sub-committee led ably by Victor Brockdorff has, I believe, delivered a new system which will help members in their day-to-day credit administration.

We have also started a new educational project which we hope will find the full support of all our members. Given that we are liaising with an international partner as well as one of the leading local educational institutions, we are programming to launch our educational program next Winter 2004.

On the whole, I can satisfactorily say that the success of the MACM can also be attributed to an efficient and effective secretariat who have supported all of us these last two years.

Last but not least, I must thank all members who have supported and co-operated with the MACM Council and Secretariat to make it what it is today.

MACM Newsletter

Published by the Secretariat

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Mr. Paul Bonnici

Mr. Michael Busuttill

Dr. Joseph Chetcuti, LLD., MA (Fin. Serv)

Mr. Michael Ellul Vincenti

Mr. Hugh Mercieca, ACIB

Mr. Simon Tabone

MACM Highlights

Dishonoured Cheques Act Seminar at the Mediterranean Conference Centre.

MACM proposed a Dishonoured Cheques Act to tackle the malaise of dishonoured Cheques in Malta.

9th May 2003

MACM joins the pan-European organisation FECMA — Federation of European Credit Management Associations.

MACM was unanimously accepted by all the FECMA members present at the meeting held in Oslo.

16th May 2003

MACM held the second Annual General Meeting

The Council Members were reconfirmed.

27th May 2003

Four sub-committees were formed to manage the operations of MACM.

*Legal & Enforcement Sub-committee
Information Management Systems Sub-committee
Education Programme Sub-committee
Credit Scoring & Insurance Sub-committee*

29th May 2003

Credit Management Working Group formed by the Parliamentary Secretary Hon. Edwin Vassallo M.P. to discuss credit issues.

24th June 2003

EU Directive: 2000/35/EC discussed

The EU Directive to combat late payment in commercial transaction was discussed with Maltese Authorities and Institutions at the Working Group chaired by Hon Edwin Vassallo M.P.

8th July 2003

Meeting with Hon. Dr. Carm Mifsud Bonnici LL.D. M.P.

The Judiciary and Court system were discussed.

11 September 2003

Seminar organised by IPSE

MACM was invited to deliver a speech for the Printing Industry during a Seminar organised by IPSE.

26th September 2003

MACM launched its Revamped Web site

In addition to the changes in the visual design and layout, the revamped web site features a wide variety of content and introduces new interactive and unique services to the members of MACM.

14 October 2003

The proposed Dishonoured Cheques Act Discussed

Feedback from various authorities including The Attorney General, The Central Bank of Malta, and The Malta Bankers Association was discussed during a Working Group Meeting chaired by Hon Edwin Vassallo MP.

21 October 2003

FECMA CONFERENCE

13 & 14 November 2003

Dusseldorf, Germany



"Credit Management in a European Context"

A Credit Management Conference is being held at Hotel Nikko, Dusseldorf, Germany on the 13 and 14 November 2003.

For further details, and a copy of the programme, please contact MACM or the organiser:

Jan Schneider-Maessen

E-mail: creditmanagement@strick.de

Member's Opinion

With the current trend of the Maltese economic situation, the role of the credit control department is increasingly becoming tedious and difficult especially when collecting debts from existing clients.

They are not honouring the due dates from the extended terms previously given and are constantly asking for further extensions, as well as still wishing to purchase further products from the Company.

Other excuses are given to delay payments -- non signed delivery notes, keep asking for statement of accounts etc.

Extra caution is to be given to new clients asking for credit terms and MACM has helped tremendously in obtaining added information regarding the potential client.

**Marthese Attard
Infomate Ltd
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Recovering an unpaid debt is in theory a straight-forward process. Most businesses will recognise however that, in the case of a substantial percentage of their clients, a hundred and one different things will occur to hinder the settlement of their accounts. It is furthermore time-consuming and costly but it is also necessary.

It is occasionally necessary to follow up the various reminders and threatening letters with legal action. While commencing legal action is usually undesirable, it is nonetheless an important part of the credit-management of any business.

Legal action generally consists of three different phases. In the first phase the lawyer demands in writing full settlement of the debt while threatening further legal action. The second phase consists of the filing of the writ of summons, the trial of the cause, and the obtaining of a (hopefully) favourable judgment. The third and final phase consists of the execution of the judgment in order to collect the monies due together with all the legal fees incurred.

PHASE 1

The attorney on behalf of the Creditor sends a legal or a judicial letter demanding full payment within a specified time period.

A judicial letter differs from a legal letter in that it is filed at the court registry and is served on the Debtor through court. The details of the service effected are recorded in court and are occasionally necessary both as evidence that the Debtor has been duly warned about the possible legal action (though this can also be achieved through registered mail) and also has the effect of interrupting the running of time which could act as a bar to any subsequent legal action.

The legal or judicial letter is sometimes also filed to satisfy a legal requirement when precautionary warrants are going to be filed prior to the filing of the writ of summons itself.

The attorney will usually decide whether to send a legal or a judicial letter, or indeed both, according to the particular circumstances of the case.

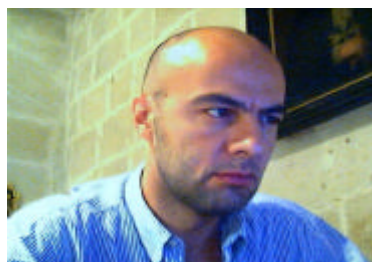
Precautionary warrants are court orders issued upon the demand of the Creditor, prior to the obtainment of a court judgment in his favour. They are authorised by the court to protect the Creditor's interests and are intended to prohibit the Debtor from doing something which could prejudice the Creditor's chances of enforcing his claim. The use of precautionary warrants does not come without risk and are allowed only provided certain criteria are met. The Debtor may claim damages and also a penalty in some cases, if it is proved that the Creditor's claim is malicious, frivolous or vexatious; if the claim has not been brought according to the provisions of the law; or if there was no real doubt regarding the Debtor's solvency.

The most popular precautionary warrants are the Garnishee Order, Warrant of Seizure, the Warrant of Impediment of Departure and the Warrant of Prohibitory Injunction. These warrants are described in detail further down.

PHASE 2

Notwithstanding the formal request for payment, a Debtor may still fail to honour his commitment with the Creditor. In this case, it becomes necessary to proceed with instituting a court case and obtaining a judgment to enable the enforcement of the claim.

A case is filed in the registry of the court or tribunal competent to hear the particular case. The Small Claims Tribunal hears



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money claims up to the value of Lm1500. The Court of Magistrates hears claims between Lm1500 and Lm5000, while the Civil Court, First Hall, will hear all other claims.

The type and form of pleadings to be filed varies according to the court or tribunal before which the case will be heard and might need to be confirmed on oath by the Creditor or his representative.

Debt collection cases are by their nature relatively simple from a legal point of view. One could therefore expect to obtain a favourable judgment within a couple of months, particularly in those cases where the Debtor fails to present a legal defence.

The main factors causing delays in delivery of the judgment are usually either problems connected with effecting service of the summons or a credible defence put forward by the Debtor which require further court hearings.

In its judgment, the court or tribunal will decide about the validity of the claim, the legal interest, as well as which party should pay the legal costs and professional fees.

PHASE 3

Assuming that the Creditor has obtained a favourable judgment, the next step is to collect the money due, if necessary by enforcing the judgment. The law provides various means of enforcing a judgment, the most common being the executive garnishee order and the warrant of seizure followed by a judicial sale by auction.

These warrants can be issued within a short period following the delivery of the judgment. The Creditor may want to allow the Debtor some time to effect payment, especially since the court has confirmed his legal responsibility. If notwithstanding a court judgment ordering payment, the Debtor still refuses to do so, then the Creditor has no other option but to enforce the judgment by issuing the necessary executive warrants.

WARRANTS

As already mentioned, warrants can be either precautionary (those filed prior to the court action to safeguard the Creditor's rights until a court judgment is obtained), or executive (those issued as a means of enforcement a court judgment). The following are the most commonly used warrants for the recovery of a debt.

The **Garnishee Order** can be either precautionary or executive. It is a court order requesting any third party to hold on to money or other moveable property belonging to the Debtor, which is currently in the third party's possession. The garnishee (the third party notified by the garnishee order) will inform the Creditor whether he is in possession of money or other things belonging to the Debtor. He will eventually deposit these belongings in court if requested to do so by the Creditor. The Creditor may then request authorisation to withdraw such effects from court on account of his claim. It is usual to notify banks and the Debtor's employer with a garnishee order since they are the third parties most likely to hold monies belonging to the Debtor.

Debt Collection in Malta — continued

However the law imposes certain restrictions particularly on part of the Debtor's salary.

The **Warrant of Seizure** is also either precautionary or executive. It is a court order to seize movable items from the Debtor's possession. The order is carried out by a court official at the Debtor's residence or other location, as indicated by the Creditor. On doing so, the court official lists an item or items totalling in value the amount being claimed by the Creditor. The items that are listed as seized by the court official can then be physically removed from the Debtor's possession and sold by auction (**Judicial Sale by Auction**) under the court's authority once the Creditor has obtained a favourable court judgment. Money recovered from the forced sale by auction is paid to the Creditor in settlement or on account of his claim.

The **Warrant of Impediment of Departure** is a court order prohibiting a ship or vessel from leaving the country. It is issued when the Creditor can show the court that such order is necessary because the departure of the ship or vessel can frustrate the Creditor's debt or claim.

The **Warrant of Prohibitory Injunction** is a court order to restrain a person from commencing or continuing a particular action which might be prejudicial to the Creditor requesting such court order. When the Creditor's claim is of at least four thousand Malta liri, this warrant can be used to restrict a Debtor from selling or transferring property to third parties when such transfer would prejudice the rights of the Creditor. Both this warrant and the previous one are precautionary measures intended.

CONCLUSION

Legal action can be costly. Apart from the obvious monetary cost, it will also cost the Creditor a substantial amount of time. Furthermore it usually means that good relations with a client will sour, although arguably, a non-paying client is hardly worth having in the first place. Ultimately, it is worth considering that the cost of not pursuing one's rightful claims can be the greatest cost of all.

Note: The above is a very generic and simplified description of the legal process to recover a debt. It is not intended as legal advice and it is recommended that a Creditor consults his lawyer before deciding what action should be taken in each particular case.

Two years of Solid and Reliable Assistance.

To tell the truth I was quite surprised when I received an electronic mail from Josef Busuttil, asking me if I would be prepared to talk of our Company experience within The Malta Association of Credit Management.

I remember it was sometime during the month of June 2001 when I was reading an interview held with a local newspaper of the now President of The Association Mr Geoffrey D. Borg. Being a person involved in Credit Management for a number of years, first in the Aviation Industry, then in the Motor Car Industry and now in the Telecommunications Industry, I could not just leave this interview pass by unnoticed. And that was it, as in the following weeks our Company became a member in The Association.

In our Country lot of things have happened which in turn have changed the whole spectrum of how to deal with the debt problem. Companies and Individuals that were considered as solid as a rock went bust and left their Creditors wondering about of what could they have recovered. This is why I strongly believe in such an Association, which with the help and collaboration of each and every member can promote and protect the Credit Interests pertaining to all local businesses.

More than two years have passed now but we have still a long and tough way to go. First of all, in our country, there is still the need to eradicate the perception that Credit Management is all about Debt Collection. This is wrong, as Credit Management is more than just merely collecting outstanding dues. Credit Managers need to pre-act rather than react, prevent rather than cure.

Thus collection and dissemination of accurate and reliable Credit information remains one of the Association's top priorities. And that is where our Organisation has extremely benefited from. Reliable and accurate information can be easily and quickly accessed from The MACM web site. We found the System so reliable and easy to use that we decided to make it part of our credit control procedure. All credit applications/contracts whether individuals or Companies are vetted for:

- Identity Card and/or Company registration number
- VAT registration number
- Dishonoured Cheques History
- Overdue Account Balances
- Court Cases Information

The direct links that are also available from The MACM web site are very useful and helped us to save a lot of time going out from one site and enter into another.

At our Organisation we really believe that as a result of all this, we have saved money by turning down bad business, which without such a pool of reliable information, it could have not been possible.

I would like to conclude this article by thanking all those involved in the set up and administration of The Malta Association of Credit Management for their solid and reliable assistance that they have provided in the last two years.

Joseph Dimech
Credit Controller
MobIsle Communications Limited

From the Editor

MACM members are welcome to submit articles and comments for publication in future MACM Newsletter, which for the time being will be published twice a year November / May.

Please note that your feedback is greatly appreciated and if you have any suggestions on articles of particular interest pertaining to credit management please let us know and we will commission a relevant author to write an appropriate article.

Josef Busuttil

MACM and Data Protection

Protecting the rights of data subjects but also the legitimate interests of data controllers

The introduction of the Maltese Data Protection Act (DPA) saw the creation of a new information landscape within which personal data must be processed. Finally, the Maltese legislator laid down in law that any personal data is the property of the data subject and every person who comes in contact with such personal data must process this in accordance with the processing principles as found in the law.

The DPA has also introduced various rights to which data subjects are entitled as well as a number of obligations on each and every data controller who is processing this data.

The Malta Association of Credit Management has, much before the DPA effectively came into force, studied in depth any obligations that the Association may have under this Act. It has undergone a data protection audit as well as organised a data protection seminar to its members in order to understand clearly how will this new information landscape impinge on the functioning of the Association.

As a result of such audit, MACM has during the last year issued a number of recommendations to its members in order that any personal data that is collected and processed in connection with the Association is compliant with the data protection legislation. These recommendations include new caveats wordings that the Association has proposed to be inserted in the members' invoices and credit application forms in order that data subjects are aware of the possibility of MACM members to circulate any information relating to dishonoured cheques and overdue accounts with the Members of the Association.

Whilst any data controller must ensure that personal data is processed lawfully, the scope of the DPA is not solely to create onerous requirements on the data controllers. The DPA lays down that processing of personal data is permissible when the data subject has unambiguously given his consent or, amongst others, where the processing is necessary for a purpose that concerns a legitimate interest of the data controller or of such a third party to whom personal data is provided, except where such interest is overridden by the interest to protect the fundamental rights and freedoms of the data subject and in particular the right of privacy.

The principles for the setting-up of the MACM reflect the need of the members of the Association to be able to protect their legitimate interests. Notorious events within the past few years have showed that the circulation of information on dishonoured cheques and overdue accounts is very important in order to have the members of the Association aware of any defaulters and fraudsters which might hit any one in the business community.

The introduction of the DPA has meant that such circulation of data must be done according to law and the principles of processing but data protection law should not be construed as being legislation which is protecting data subjects in anything they do. As much as the law endeavours to protect this personal data belonging to the data subjects, it also tries to create a balance whereby the legitimate interests of Associations like MACM are also protected and safeguarded.

The recent revamped website of the Association circles around the new information landscape and the protection of privacy. The proper checks and balances have been introduced in order to safeguard the personal data which is being processed by MACM and that is solely used for the purposes of processing to which it was collected.

The appointment of a Personal Data Representative by MACM is also a direct result of the recognition of the Association for the protection of privacy.



Dr. Antonio Ghio B.A., LL.M. Info. Tech. (Strathclyde), LL.D.

Personal Data Representative of MACM

PDR services are being provided to MACM by Fenlex Corporate Services Limited, in association with Fenech & Fenech Advocates. Apart from the informative workshops and the DP audits which Fenlex have started offering during the last year and which MACM made avail of with positive results, MACM has strongly believed that professional PDR Services were also required in order to further assist the Association in the notification requirements as well as full compliance with the newly enacted Data Protection Act.

The Personal Data Representative (PDR) is a person appointed by the data controller and has to ensure that personal data is processed in a correct and lawful manner.

The PDR holds an independent office and can be compared to an 'auditor' of personal data processing. He serves both as a link between MACM and the Data Protection Commissioner as well as between the MACM and the data subjects on whom personal data is being processed.

The main functions of the PDR are of ensuring that the data controller who has appointed him processes personal data in accordance with the Data Protection Act and according to good practice.

The Personal Data Representative has also to assist data subjects in matters relating to the protection and proper usage of their personal data advising data subject in cases when personal data is incorrect or incomplete. MACM, together with its PDR, is making sure that it has all the systems in place in order to enable each and every data subject on who personal data is being processed an effective way of using their rights created by the DPA.

Surely, PDRs are more fluent in Data Protection issues and jargon and the relationship between controllers and the Data Protection Commissioner can result in being more efficient with the introduction of a Personal Data Representative in the picture as they can provide professional help in DP matters.

MACM looks at data protection in a pro-active manner. Together with Fenech & Fenech Advocates, the Association is currently researching on any sectoral regulations found at international level on the protection of personal data in credit management in order to arrive to a set of guidelines which could then be proposed to the legislator in order to further protect and regulate personal data processed by organizations like MACM.

Dr. Ghio has been recently been appointed as Personal Data Representative of MACM. He holds a Masters with distinction in Law and Information Technology from the University of Strathclyde, Scotland. He works within the E-Commerce and IT Law Department of Fenech & Fenech Advocates, which, together with Fenlex Corporate Services Limited, are providing assistance and consultancy services in the fields of Data Protection Law, including Personal Data Representative Services. Dr. Ghio can be reached at antonio.ghio@fenlex.com

