

mlm insight

Business Debt Arrangement Scheme

Background

An increase in consumer debt prompted the Scottish Government to establish a debt management tool to support individuals, with one or more debt, without the strain of going through the court system. The Debt Arrangement Scheme (DAS) was introduced in 2004 (through the Debt Arrangement Scheme (Scotland) Regulations 2004) allowing individuals to repay their debt(s) through a Debt Payment Programme (DPP) (usually no more than 10 years) without the threat of court action from creditors. Further amendments were made in 2007, 2011 and 2013. The innovative application, by some advisers, of the DAS for sole traders and partnerships has inspired the Government to develop a “Business DAS” and this technical update provides an overview of The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014.

What you need to know

Businesses, like individuals, can suffer from too much debt and this is often exacerbated by the lack of access to finance. A number of factors, such as high borrowing, high overheads, onerous credit terms, variable costs and bad debts, can lead to significant cash flow challenges for small businesses. Once creditors are chasing for payment the small business owner(s) has two options: try to save the business while attempting to settle outstanding accounts or allow the business to fail by implementing an exit strategy that minimises the financial consequences.

The Debt Arrangement Scheme (Scotland) Amendment Regulations 2014 came into effect on 11 December 2014 providing the support and guidance to allow small businesses to fulfil their obligations to creditors and continue to trade: a win win scenario for the economy.

The Business DAS has limitations in terms of what businesses can apply and it defines debtors as being:

- a legal person
 - a partnership
 - a limited partnership within the meaning of the Limited Partnerships Act 1907(7)
 - a corporate body other than a company registered under the Companies Act 2006(8)
- a trust
- an unincorporated body of persons

Limited companies and LLP's do not qualify for the Business DAS.

Key Facts

- The applicant's business must be in Scotland or have been formed under Scots Law.
- Unlike the traditional DAS, Business DAS Money Advisers must be qualified Insolvency Practitioners.
- Business DAS proposals must receive relevant consents from interested persons such as each partner in a partnership, each general or limited partner in a limited partnership, the majority of trustees in a trust and, a person authorised to act on behalf of an incorporated or unincorporated body.
- All qualifying debts must be included at the time of application. However on-going liabilities, such as supplier debts, will not be considered a debt unless they become "due" and remain unpaid.
- A declaration of viability must be submitted with a Business DAS application.
- Where a debtor is a charity the Office of the Scottish Charity Regulator (OSCR) must be notified of the application; acceptance, rejection, revocation, completion of the DPP.
- Insolvency Practitioners must review the viability of the business every 12 months and must apply for revocation where no longer viable.
- All cases must be completed within 5 years and no payment breaks are allowed.
- No offer of composition may be made.
- The DAS register has been updated to allow for searches for Business DAS cases.

Summary

The Scottish Government has recognised that the DAS model has been successful in tackling consumer debt and has a role to play in addressing business debt. As such, the new introduction of the Business DAS now provides a formally recognised debt support tool for a sector which is paramount to the economy and local community. The Business DAS not only allows small businesses to survive, it also ensures that creditors are paid which can only be good for the economy. The success of the Business DAS rests on the commitment of the debtors to work with Insolvency Practitioners to demonstrate the continued viability of the business throughout the duration of the case.

About mlm Solutions

Prior to the launch of the Business DAS mlm Solutions, as a market leader, adapted the DAS to help small businesses, experiencing financial difficulty, to manage their debt and survive. This experience led to mlm Solutions being invited to represent the Insolvency Practitioners Association in the Scottish Government's Business DAS working group. The specialist team at mlm Solutions currently manages over 250 cases, a third of which relate to small businesses and have preserved around 450 jobs. A number of the DAS cases set up by mlm Solutions have now completed with all of the debt repaid and this continues to grow year on year. With an in-house team of highly experienced Insolvency Practitioners mlm Solutions is well placed to be appointed to, and advise on, Business DAS cases.

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