

What is a deed of postponement between creditors?

It is very common for a company to borrow money from several different creditors for varying reasons and in varying ways. As a result, creditors may be classified as a senior or junior creditor, depending on their level of risk.

Junior creditors assume a greater risk as junior debt is less secure than senior debt, while senior debts are more secure and take priority over junior debts. Theoretically, senior debts must therefore be paid first if the company becomes insolvent.

Where a company has debts to more than one lender, the creditors may establish inter-creditor agreements between themselves by means of a deed of postponement. This agreement allows the creditors to determine how their competing interests will be handled in a case of dispute and establishes how proceeds from the enforcement of security will be distributed.

The deed of postponement is usually drafted by the senior creditor's lawyers who will then negotiate the terms of the agreement with the junior creditor's lawyers. Although the debtor will not partake in negotiations, he should be party to the agreement for practical reasons. The debtor should be aware of the terms of the agreement, particularly with respect to the creditors' security ranking, so that he can fully comply with said terms.

Typically, a deed of postponement states that the proceeds from the enforcement of security will first be used to settle the senior debt and then the junior debt.

Before finalising the agreement, the creditors will negotiate to determine whether the proceeds will be used to pay off the total senior debt or up to a

specified amount.

Importantly, covenants should be included in the deed of postponement that will prevent the debtor from undermining the provisions in respect of security rankings. This will ensure the debtor's cooperation in the event that the loan agreement between the debtor and its different types of creditors contains conflicting provisions.

Whatever the provisions of the deed of postponement, it should be noted that these can be varied by the creditors without seeking the consent or the input of the debtor.

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