



| Hot topic |

Funding – A growing crisis for suppliers and users of agency workers

The risk of funding being withdrawn from managed service and recruitment process outsourcing (RPO) companies is an issue for both suppliers and their clients.

Most suppliers have to pay their agency and contract workers before they have been paid by their clients, the end users of these workers. Most lenders have historically been happy to fund this cash flow by way of invoice discounting and factoring, effectively lending against the payment covenant of a wide number of clients with reasonable credit ratings.

However, some lenders now believe that this sector is relatively exposed to the recession, which has led to less enthusiasm about lending. Recent months in particular have seen some dramatic further developments in the attitude of some lenders to this sector, who now recognise:

- the risk concentrated in managed service and RPO companies, a few of whom are the sole payment counterparty for an increasing proportion of staffing company supplies. Many of these companies have very poor credit ratings, operating on narrow margins. The US has even seen a famous RPO business failure (Chimes). Previously, staffing company invoices would be spread across multiple clients, so that if one defaulted that was not too serious a problem. Now, complex monopolies are developing in some sectors, revolutionising the risk profile for lenders.

- RPOs are compounding this risk by introducing "pay when paid" clauses, or are at least pushing out payment terms which means that, effectively, the lenders are now being offered security of less, if any, value.
- there are instances where, in respect of a particular worker's timesheet, there can be up to three separate organisations looking for invoice discounting: where umbrella and RPO companies are added to the traditional supplier-client contract nexus then (if they all use invoice discounting) lenders could be providing cash flow funding to all three, which means lending three times against one time sheet!

As a result, funding is being withdrawn, and it may not be long before a major umbrella company, staffing company or RPO is unable to meet its payroll obligations. Inevitably, once one entity in the contract chain fails, others are at risk as well. In addition, if workers go unpaid, they are likely to claim against the client, asserting that, really, that is who their employer is. The client therefore faces risks as well, even if it has paid its suppliers.

There is no easy answer to this developing problem, which is a reflection of the increasing complexity (for tax and commercial reasons) of RPO and umbrella contract structures used when supplying agency and contract workers.

Recruitment sector experts at Osborne Clarke have developed and implemented supply contracts which are designed to avoid these risks. Implementing these new arrangements is not straightforward, but they are already in place in a number of large financial services companies, and offer a potential solution to this funding problem.

Osborne Clarke is also supporting the staffing company trade association, APSCo, in its efforts to encourage changes in contractual arrangements set up by major users of agency and contract workers, and is working with the Chartered Institute of Purchasing and Supply to promote the new contract models.

If you would like any further information on any of the issues raised, please contact:



Kevin Barrow
Partner
kevin.barrow@osborneclarke.com



Frances Lewis
Consultant
frances.lewis@osborneclarke.com

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