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公司实务

## 如何防范和应对坏账

How to Prevent Bad Debt

### I. 企业坏账形成的原因

Reason for bad debt

企业在经营过程中，经常会碰到无法及时收回的应收账款。随着时间的推移，有些应收账款的收回机会越来越小，最终造成企业坏账损失。

In business operation, receivables which cannot be collected timely occur frequently. With time lapses, the chance of collection on some receivables becomes very little which finally leads to bad debt.

应收账款无法及时收回的原因很多，包括但不限于：

Various reasons which may cause failure in collecting receivables include but not limited to:

1. 购买方资金短缺或陷入财务危机；

the buyer encounters fund shortage or gets involved in financial crisis;

2. 销售方提供产品或服务存在质量问题导致购买方拒绝付款；

the buyer rejects to pay due to quality issue in relation to the product or service;

3. 因购买方或其他第三方原因导致付款条件未能满足；

the term of payment cannot be met due to reasons caused by the buyer or a third party;

4. 购买方项目暂停或取消导致其购买产品或服务需求消失；

the buyer's project is suspended or cancelled which makes the product/service useless;

5. 购买方进入非正常经营状态，导致财务运作暂停或瘫痪（例如涉刑事案件）；

the buyer goes into abnormal operation which leads to financial suspension or paralysis (e.g. criminal case is involved);

## 6. 购买方恶意不付款。

the buyer refuses to pay in bad faith.

## II. 如何防止应收账款恶化为坏账-企业内控制度的完整

### How to prevent the change of receivables into bad debt – enterprise internal control system improvement

#### 1. 销售部门应当及时跟踪和关注应收账款状态

The sales department shall timely trace and monitor the status of receivables

企业的销售部门和销售人员是直接面对购买方的前线，一般情况下，销售人员熟知销售合同付款条款，对于任何购买方不及时付款的情况都能在第一时间掌握。而且，在很多情况下，销售人员的业绩和收入也跟货款到账情况直接相关。因此，销售人员有动力解决应收账款问题。

The sales department and sales guys are usually at the front line and directly deal with the buyer. Usually, the sales guys know well of the term of payment and they are aware of any delay in payment. Furthermore, in most cases, the work performance and income of the sales guys are related to the collection of the sales amount directly. Therefore, they have good reason to resolve the collection of receivables.

但是，根据我们的观察，由于以下因素的存在，导致应收账款在销售人员层面解决的可能性降低：

However, according to our observation, the following reasons may probably lower the chance to resolve the receivables collection at the level of sales guys:

- (1) 销售人员基于维护客户关系的需要，拖延采取有效措施收回应收账款，导致错失最佳收回应收账款时机；  
due to the need to maintain the client relationship, sales guys may delay to take effective measure to collect receivables which may miss the best timing to collect;
- (2) 销售人员未能及时上报公司财务部门或管理层，公司管理层面未能采取必要措施（例如诉讼），导致时机错失；  
the sales guys fail to timely report to the financial department or management resulting that the management cannot take necessary action (such as litigation) which may miss the good timing to collect;
- (3) 销售人员更换（例如离职）导致跟踪不力。  
the change of sales guys (such as leaving) which results in the less efficiency in tracing and monitoring the receivables.

#### 2. 财务部门应定期监控和汇报

Regular monitoring and reporting by the financial department

企业的财务部门全面负责单位的进款监控，因此，有必要在财务部门的层面设置应收账款监控体系。

The financial department is responsible for monitoring the receivables. Therefore, it is necessary to set receivables monitoring system at the financial level.

根据销售合同及其执行情况，销售人员应预先向财务部门提供货款到账进度表。财务应定期监控并汇报管理层。

The sales department shall supply sales amount payment schedule to the financial department in advance, according to the sales contract. The financial department shall regularly monitor and report to the management.

为及时通过法律措施追讨欠款，我们建议对于拖欠时间超过 6 个月的应收账款应当预警并进入法律程序。

To timely collect the receivables through legal channel, we suggest any receivables with 6 months delay shall be alerted and go into legal proceedings.

### 3. 通过法律措施追讨欠款

To collect receivables through legal channel

通过法律途径追讨欠款是司法救济最终手段。一般情况下需要有企业内部法务人员或外部律师协助处理。

To collect receivables through legal channel is usually the ultimate way, which shall involve in-house legal expert or outside lawyers to handle.

## III. 法律措施追讨欠款应注意的几个问题

### Several issues in collecting receivables through legal channel

尽管诉讼或仲裁是司法救济的最终手段，但这并不意味着任何欠款均能成功通过法律途径追讨。

Although litigation/arbitration is the ultimate way to collect receivables, this does not mean all receivables can be collected successfully through litigation/arbitration.

特别是，如果法务人员或律师未能及时提前介入纠纷的处理，导致重要证据无法获得，或者诉讼要素缺失，则司法手段成功的可能性将大大降低。

In particular, if the legal professionals are not able to get involved in handling the dispute timely, which results in the failure to obtain important evidences, or lack of element for litigation/arbitration, then the chance of success may become very little.

从法律角度，企业应当注意以下方面：

From the legal perspective, the following aspects shall be noted:

1. 诉讼时效。任何欠款的追讨都将面临诉讼时效的考验。通常，诉讼时效为 2 年，一般从应当付款之日起算；2017 年 10 月 1 日之后，诉讼时效延长为 3 年。企业应当及时关注欠款时间，避免错失诉讼时效；

Statutory period for litigation/arbitration. All receivables collection shall run the risk of lapse of statutory period for litigation/arbitration. Usually the statutory period for litigation/arbitration is two years, starting from the due date the receivable should have been paid. Since October 1, 2017, the statutory period has extended to 3 years. The enterprise shall note this statutory period otherwise there is no chance to resolve through legal channel;

2. 催款函。催款函具有打断并重新计算诉讼时效的效力。但催款函的准备和发送应以书面形式并应保留对方签收记录。一般情况下，以对方在催款函上签字盖章确认收到为佳，如预估对方不会配合，则应当以一等快递（如 EMS 或顺丰）递送催款函并保留物流签收记录；

Dunning letter. Dunning letter can be used to interrupt and restart the statutory period for litigation/arbitration. However, dunning letter shall be prepared and sent in written form and receipt of the letter shall be kept properly. Usually the receipt of such letter by signing/chopping company stamp by the other party can be good practice. However, if it is estimated the other party will not cooperate, then the letter shall be sent through first-class courier (such as EMS or Shunfeng). The logistic record showing the receipt of the letter shall be kept;

3. 证据保全。一般情况下，法务人员或律师越早介入越好。例如，根据财务部门的监控，超过 6 个月的应收账款进行预警后，即应当进入法律处理程序。此时尚有很大空间进行证据保全和采取补救措施，以便在未来的诉讼或仲裁程序中取得优势地位，获得较好的结果；

Preservation of evidence. In all cases the legal professionals are encouraged to get involved as early as possible. For instance, any receivables which have been late in payment for 6 months shall go into the legal proceedings immediately. This is because at this time point, there is still much room to make evidence preservation and make remedy if necessary, and enable to have a good position in the coming litigation/arbitration for a good result;

4. 选择诉讼或仲裁时机。发生应收账款未及时支付的情况后，应当密切关注对方的公司运营和财务状况。一旦有迹象证明对方公司有能力和支付欠款（例如对方公司账户收到款项）或者可能出现进一步财务恶化的情况，应当及时启动诉讼或仲裁程序，进行财产保全（例如冻结对方银行账户），以便在胜诉以后确保执行的成功。

To find a good timing for litigation/arbitration. In case of delay in receivables payment, the operation and financial status of the buyer shall be closely monitored. As long as there is any proof the buyer has ability to pay (such as arrival of cash into the buyer's bank account), or on the other side, the financial status of the buyer may become worse, litigation/arbitration proceedings shall start immediately. Property preservation (such as freezing of the buyer's bank accounts) shall be done to enable a successful enforcement after the case wins.

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