**SOME LEGAL TIPS DURING THE EFFICIENT RECOVERY OF BAD DEBTS IN VIETNAM**

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**WHAT IS DEBT RECOVERY ACTIVITY?**

Debt recovery is a requirement that a debtor pay the creditor of due/overdue sums of money/assets that the debtor has to pay to the creditor under a contract or a decision of a competent State authority. This is one of the professional services that lawyers, and law firms can support clients. This activity not only requires the debtor to pay debts to customers, it also helps customers have the most effective debt recovery strategy. At the same time, in the process of working and with the consent of customers, many other professional methods can also be applied to help the debt payment process taken place quickly.

**COMMON DEBT RECOVERY CASES**

In fact, all payments that are due or overdue are considered debt and need to be recovered. However, for corporate customers, the debt may include late payments such as late payment of contracts, late payment of interest or late payment of contract penalties, etc.

**SANCTIONS THAT MAY APPLY TO THE DELAY OF PERFORMANCE OF PAYMENT OBLIGATIONS UNDER THE CONTRACT**

**Forced to comply with the contract**

Under the provisions of Article 297 of the 2005 Commercial Law, "**Forcing to perform the contract**" is the aggrieved party to request the violating party to perform the contract strictly or to use other measures so that the contract is executed, and the violating party must incur arisen expenses. In practice, one party may force the other party to properly perform the contract through notice, email or other forms agreed specifically under the contract.

Regarding the relationship between the enforcement of contractual obligations and other sanctions, the current law provides, unless otherwise agreed, during the period of application of the enforcement of the contract, the aggrieved party has the right to claim damages and fines for violations.

In the process of negotiating to request the right to perform the contract or find a solution to settle the outstanding debt, many enterprises choose to denounce the violations of the violating party with the police in the form of a crime violating the provisions of the criminal law in order to pressure the opponent in the negotiation process. However, the practice shows that this option is not always effective as expected. Accordingly, for the denouncement to be effective, they must provide evidence of the alleged conduct of the accused. Those who intentionally denounce or report on untruthful crimes shall, depending on the nature and seriousness of their violations, be disciplined, administratively sanctioned or examined for penal liability according to the provisions of law. Namely, Article 156 of the Penal Code amended and supplemented in 2017 stipulates that a person who fabricates another person to commit a crime and denounce them to a competent authority may be subject to a fine of up to VND 50,000,000 or a prison term of up to 01 year.

**Penalty for violation of agreement**

The current law of Vietnam allows the aggrieved party in the contract to request the violating party to pay a penalty for breach of contract. Specifically, Article 300 of the Commercial Law 2005 stipulates that “A breach of contract is an act whereby the aggrieved party requests the violating party to pay a penalty for breach of contract if agreed in the contract”. In this regard, Article 418 of the Civil Code 2015 also stated that “a penalty is an agreement between the parties in the contract, whereby the violating party is obliged to pay an amount to the aggrieved party”.

However, unlike the compensation claim described in the section below, the contract penalty is not automatic application. Under the provisions of Article 300 of the Commercial Law 2005, the aggrieved party may only request a penalty for a breach if the contract signed between the parties has provisions that permit a penalty of the contract’s violation.

Regarding the level of penalties for breach of contract, the Commercial Law 2005 and the Civil Code 2015 have inconsistent provisions. While the Civil Code 2015 allows parties to agree on a level of violation without setting any limitation, the Commercial Law 2005, although it still allows the parties to pre-set a level of penalty violation in accordance with the agreement, it further stipulates that the level of penalty agreed by the parties must not exceed 8% of the contract value being violated.

**Damage compensation**

When a violating party causes damage, such as a breach of contractual obligations, causing damage, they are responsible for compensation for the damage. This liability to compensate for damage is recognized in Clause 1, Article 302 of the Commercial Law 2005, according to which: “Compensation for damages is the compensation of the violating party for losses caused by the breach of contract to the aggrieved party.”

The value of compensation includes the actual and direct value of losses suffered by the aggrieved party and the direct benefits that the aggrieved party would have been entitled to if it had not committed any violating act.

According to current regulations, liability for damages arising when all of the following elements are met:

* Having the violation of the contract;
* Having actual damage;
* Contract violation is the direct cause of damage.

If the aggrieved party would like to request the violating party to pay damages, the aggrieved party is obliged to prove its damages, the extent of the damage caused by the violation and direct benefits that the aggrieved party would be entitled to if there was no violation. In addition, before claiming damages, the aggrieved party must take reasonable measures to limit losses including losses on direct benefits that would be due to the breach of contract. If the party claiming damages does not take such measures, the party in breach of contract has the right to request that the value of the compensation be reduced to the extent that the loss would have been limited.

**ISSUES ABOUT LATE PAYMENT INTERESTS**

Besides, when one party delays the payment as committed in the contract, apart from the penalties for breach and compensation for damage as stated, the other party may request additional interest due to the late payment. According to Article 306 of the Commercial Law 2005, “in case the party violating the contract is late in payment of goods or service charges and other reasonable expenses, the aggrieved party has the right to request for payment. Interest on such deferred payment is based on the average market interest of overdue debts at the time of payment corresponding to the time of late payment, unless otherwise agreed or provided by law.” The above provision deals with deferred payment interest and the scope of government is “late payment of goods or payment of service fees and other reasonable costs” to the relations covered by the Commercial Law 2005.

**STEPS OF DEBT RECOVERY**

The following basic measures are applied to debt recovery:

* **Reconciliation, negotiation**: is the method that creditor (through lawyers and legal experts) will directly negotiate, discuss, persuade and propose to the debtor to set up and agree a debt payment plan for creditors.
* **Court/arbitration proceedings**: is the method that will apply in cases where debtors are not willing to work, deliberately evade, repudiate liability, or have a payment plan but late payment, payment stretching.

Debt settlement and recovery term is influenced by many different factors but among them, the two main and most important factors are the legality of the case file and the solvency of the debtor.

**RECOMMENDATIONS AND SOLUTIONS IN EFFICIENCY DEBT RECOVERING PROCESS IN VIETNAM**

Debt management is a crucial step for the enterprise's existence and success. However, many enterprises still do not really have the resources and ways to recover in particular and limit in general all the debts in the most effective way. Here are some of our recommendations:

1. Preparing a clear payment policy to limit the arising problems: require the customer to sign the agreement, stipulate that the payment must be made on time and specify the penalty that the customer will incur if slow payment.
2. Expressing the specific date in the agreement. The phrase "payment deadline on dd/mm" will be more positive than "payment within xx days".
3. Establishing a clear debt recovery process: Determining who will be responsible for working with customers as well as specifying when and how to send reminders or phone calls. Personnel need to be aware of the importance of debt recovery, not merely consider it a minor job. In addition, if possible, having a system for tracking unpaid debts periodically.
4. Sending email reminders regularly. Please also note that the email requires payment to the customer instead of mailing it via courier to shorten the debt recovery process.
5. When a customer is late in paying, stop sending emails or reminders because they may not work anymore. Instead, a face-to-face meeting with the customer is essential.
6. Only working with people who are able to make payment decisions. If the company is unable to meet in person, briefly state the purpose of the meeting or the call and payment deadline. Please ask that person to note the call information and confirm the information.
7. Always keep calm and professional.
8. Requesting exact commitment. Do not let customers end the meeting by repudiating “I will send in the next few days”. The company should ask for exact numbers at an exact time. Then repeat the commitment to confirm, avoid any risk of misunderstanding and after the call send an email to confirm the content.
9. Always keep in writing of all transactions, contact contents of the company with customers such as emails, letters, calls, etc. These contents will be useful evidence if the company decides to perform the legal proceedings in the Court later.
10. Hiring a Law Firm with debt recovery practice. If the company feels unsafe, contact your lawyer so they can work with that client.
11. Consider initiating a lawsuit at the Court with customers who are too late in payment.

**RESPONSIBILITIES WHEN DELAYING IN PAYMENT UNDER INTERNATIONAL TRADING AGREEMENT**

From 2013 to 2017, it is estimated that foreign importing companies will not pay or delay payment to Vietnamese export companies of US$6 billion. The recovery of debts and late payment are extremely difficult for export companies in Vietnam.

Typically, international trade agreements often have the option of selecting the applicable law of the importing country. For foreign partners who are large enterprises, Vietnamese companies are less likely to negotiate the terms of choosing the applicable law as well as the terms of choosing a dispute settlement agency. The parties' choice of resolving disputes in the importing country or the third country (like Singapore or the UK) is a big disadvantage for Vietnamese sellers because the cost of the proceedings in these countries is often very high. In case the negotiation changes to require the purchaser to apply Vietnamese law to the contract or select Vietnamese court as a dispute settlement agency which is too difficult to accept, the Vietnamese seller may choose the option to be through intermediary systems. In particular, the parties may apply international conventions, such as the United Nations Convention on Contracts for the International Sale of Goods (CISG), and the dispute settlement body is international arbitration, for example, SIAC (Singapore International Arbitration Center).