

德汇美国破产法问答（系列之二） Dorsey U.S. Bankruptcy Law Q&A Series Two

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希望我们的美国破产法问答系列一“如何应对美国客户申请第 11 章破产保护”的文章（[点击这里](#)）对您有所裨益。本文为该系列第二篇文章，将针对破产申请对供应商及其供应合同产生的影响，以及与在破产程序中的公司继续进行业务往来的好处和注意事项进行讲解。

We hope that you enjoyed [Series One](#) of our Q&A regarding what to do when a U.S. customer files for Chapter 11 bankruptcy protection. This Series Two will address questions relating to how suppliers and their supply contracts are impacted by a bankruptcy filing and the benefits and concerns of continuing to do business with a company in bankruptcy.

1. 问题一：我们的客户在我们向其供货的几天或几周之后申请了破产，这是否会使我们在破产案件中享有任何特殊权利吗？

Question: We supplied goods to the debtor in the days or weeks leading up to the bankruptcy filing. Does that give us any special rights in the bankruptcy case?

会。美国《破产法》第 546(c)条赋予了供应商“货物召回权”，即，供应商有权召回其在债务人申报破产前 45 日内，向债务人提供的货物，但前提是根据合同管辖地的美国州法律或其他非破产法律规定，供应商有权拿回货物。该等适用的非破产法律可能包括《联合国国际货物销售合同公约》（CISG），该公约是为国际贸易建立统一框架的多边条约，向供应商提供了某些情况下要求返还货物的权利。截至本文发布之日，CISG 已得到了 94 个国家的批准，在国际贸易中占比很大。

Yes. Bankruptcy Code § 546(c) preserves a supplier's right to reclaim goods supplied to a debtor within 45 days of the bankruptcy filing, but only if the supplier has the right to do so under applicable U.S. state or other non-bankruptcy law. Such applicable non-bankruptcy law may include the United Nations Convention on Contracts for the

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International Sale of Goods (CISG), which is a multilateral treaty that establishes a uniform framework for international commerce and provides suppliers with a right of restitution of goods under certain circumstances. As of the date of this article, the CISG has been ratified by 94 countries, representing a significant proportion of international commerce.

无论供应商是否拥有非破产法赋予的货物召回权或货物返还权，美国《破产法》第 503(b)(9)条赋予了供应商“行政费用”优先权。若债务人在破产案件开始前 20 日内，在正常经营过程中收到的供应商所供应的货物，债权人对这批货物相对应的货款享有“行政费用”优先权。这意味着提供该等货物的供应商在破产案件中享有优先受偿权。

Notwithstanding whether a supplier has non-bankruptcy law reclamation or restitution rights, Bankruptcy Code § 503(b)(9) gives administrative expense priority status to a supplier's claim for goods received by a debtor within 20 days before the date of commencement of a bankruptcy case and within the ordinary course of business. This means that suppliers of such goods are entitled to priority of payment in the bankruptcy case.

2. 问题二：我们是否可以用债务人存于我司的现金保证金来冲抵债务，或暂停债务人的信贷额度？

Question: Can we offset the debt owed against a cash deposit we are holding or suspend the debtor's line of credit?

“自动中止令”禁止在破产程序启动后采取任何行动收回破产申请提交前的任何债务。自动中止令被广泛地解释为有利于债务人。未经法院事先批准而将现金保证金用来冲抵破产申请前债务的行为，可能构成违反自动中止令。因此，在决定是否使用启动破产保护的债务人的现金保证金或中止其信贷额度前，应当向美国破产律师进行咨询。

The automatic stay prohibits any act to collect against a prepetition debt after the commencement of the bankruptcy case and is broadly interpreted in favor of debtors. Applying a cash deposit to a prepetition debt without prior court approval may constitute an act to collect a prepetition debt in violation of the automatic stay. It would be worthwhile to consult with a U.S. bankruptcy attorney to determine whether to apply a cash deposit or suspend a line of credit to a debtor in bankruptcy.

3. 问题三：我们能否中止与债务人的合同或要求更有利的付款条件？

Question: Can we terminate our contract with the debtor or demand more favorable payment terms?

美国《破产法》原则上禁止债务人的合同相对方仅因债务人进入破产程序而终止或修改双方的合同。这一限制不适用于提供贷款或融资的合同。《破产法》规定，不得强迫债权人向进入破产程序的债务人继续放款。若您希望修改您与债务人的付款条款，请向美国破产律师咨询。

The Bankruptcy Code prohibits counter-parties to contracts with the debtor from terminating or modifying their contracts solely because a debtor has gone into bankruptcy. This limitation does not apply to contracts to make a loan or extend financing; rather, the Bankruptcy Code provides that a creditor cannot be compelled to continue advancing credit to a debtor in bankruptcy. However, a U.S. bankruptcy attorney should be consulted if you wish to modify credit terms.

4. 问题四：我们是否应当继续向进入破产程序的债务人供应货物和提供服务？

Question: Should we continue to supply goods and services to the debtor while it is in bankruptcy?

第 11 章要求债务人在破产程序进行期间继续履行其合同义务。债权人向债务人在破产案件进程中继续供货的，享有主张优先受偿的权利，在破产法中被称为“行政费用”优先权。在大多数情况下，即使在破产程序中，“行政费用”仍会按正常流程以现金支付。“行政费用”未能以正常流程获得偿付的，在破产重组计划的施行过程中也会得到全额偿付，这是第 11 章破产重组计划的确认要求之一。

A Chapter 11 debtor is required to continue performing contract obligations during its bankruptcy case. Claims on account of goods supplied during a bankruptcy case are entitled to administrative expense priority and will, in most instances, be paid in cash in the ordinary course notwithstanding the bankruptcy filing. To the extent such claims are not paid in the ordinary course, they must be paid in full in connection with a plan in order to satisfy Chapter 11 plan confirmation requirements.

在一些第 11 章破产重组未能成功，且债务人没有足够资金偿付所有行政费用的案件中，即使是行政费用也可能得不到全额偿付。因此，当您在破产案期间继续向债务人供应货物和提供服务时，有必要让一名美国破产律师审慎跟进破产案件进程。

In some instances where the Chapter 11 case does not successfully reorganize and the debtor does not have sufficient funds to pay all administrative claims, even holders of administrative claims may not be paid in full. Accordingly, as you continue to supply goods and services to the debtor during its bankruptcy case, it is worthwhile to have a U.S. bankruptcy attorney carefully monitor the bankruptcy case as it progresses.

5. 问题五：供应商与非债务人实体签订的合同是否会受该非债务人实体关联公司或母公司的破产申请的影响？

Question: Does the bankruptcy filing of an affiliate or parent company impact the contract a supplier has with a non-debtor entity?

只要债务人不是合同一方或为合同提供担保，破产申请一般不会影响非债务人关联公司或子公司实体与供应商之间的关系。并且，即使债务人是您供应合同的一方，您在破产案件中也有很多权利，例如，就破产申请前夕及破产程序期间的供货，主张“行政费用”的权利。

So long as no debtor is a party to or has guaranteed the contract, the bankruptcy filing will generally not affect the relationship of a non-debtor affiliate or subsidiary entity with its suppliers. And, even if a debtor is a party to your supply contract, you have many rights in the bankruptcy case, such as administrative expense claims for goods supplied immediately before the filing and those supplied during the bankruptcy case.

6. Question: Do we still need to file a claim in the bankruptcy case if the debtor listed our debt in its bankruptcy schedules?

问题六：若债务人把我们的债务列于其破产明细表上，我们是否还需要在破产案件中递交索赔申请？

视具体情况而定。第 11 章破产案件中，若债务人将您的债务列于其破产明细表中，但未将此类债务指定为或有债务、未清算债务或有争议债务，并且您认可所列债务的金额，那么您无需提交索赔申请。基本上，该债务将按债务人破产明细表中所述被确认。但是，由于递交索赔申请是一个相对不复杂的过程，我们建议在任何情况下，即使您的债务被确认，也最好递交索赔申请。如果债务人确实将您的债务列为或有债务、未清算债务或有争议债务，或者如果您不认可您的债权金额或分类（例如有担保、无担保或优先级），则需要提交债权申报，以便主张您认为到期应付的金额。

That depends. In a Chapter 11 case, if the debtor lists your debt in its schedules, does not designate such debt as contingent, unliquidated, or disputed, and you agree with the amount of the debt listed, then you do not need to file a claim. Rather, it will be recognized as described on the debtor's schedules. In any event, because filing a claim is a relatively uncomplicated process, we recommend you file a claim even if so recognized. If the debtor does designate your debt as contingent, unliquidated, or disputed, or if you do not agree with the amount or classification of your claim (such as secured, unsecured, or priority), then you need to file a proof of claim in order to assert the amount that you believe is due.

若债务人未将您列入其破产明细表，但您对债务人有索赔主张的，您应当在破产案件中递交索赔申请。

If the debtor does not list you in its schedules, but you have a claim against the debtor, you should file a claim in the bankruptcy case.

请您密切关注本系列的第三篇文章，该文章将继续对有关破产程序的问题进行广泛讨论，包括债务人必须做出的披露，在破产程序启动之初，债务人一般会寻求何种救济，以及“关键供应商”将被如何对待。

Please keep an eye out for Series Three which will return to questions relating to the bankruptcy process more generally, including what disclosures debtors must make, what relief debtors will generally seek at the outset of the case, and how “critical vendors” are treated.

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