DORSEY
DORSEY + WHITNEY LLP

(德汇美国破产法问答系列之四）Dorsey U.S. Bankruptcy Law Q&A Series Four

by Samuel S. Kohn, Alessandra Glorioso, Catherine X. Pan-Giordano, Rachel P. Stoian, and Abby Fang

德汇 外国供应商破产法团队
Dorsey & Whitney Bankruptcy Team for Foreign Suppliers

希望我们的美国破产法问答系列一、系列二和系列三 “如何应对美国客户申请第 11 章破产保护”的文章（系列一、系列二、系列三的文章）对您有所裨益。本文为该系列第四篇文章，将针对在第十一章破产案件中权利主张的提起和处理进行讲解。
We hope that you found the three previous Q&A series regarding what to do when a U.S. customer files for Chapter 11 bankruptcy protection helpful. You can check them out here: [One, Two, and Three]. This Series Four will address questions relating to how claims are filed and dealt with in a Chapter 11 bankruptcy case.

1. 问题：在破产案件中是否应在某一截止日期前提出权利主张？如有，应如何确定该截止日期？
Question: Is there a deadline for filing claims and, if so, how do I find out that deadline?

在破产案件中提出权利主张的截止日期称为“申索截止日”。这是破产案件中最重要的时间点之一。超过规定时间提出的权利主张确实可能会被禁止。不幸的是，在第十一章破产案件中，申索截止日的确定不存在统一的标准。甚至，在一些州，第十一章破产案件债务人必须向法院提交申请设定申索截止日。而在另一些州，申索截止日在提交破产案件时便自动设定。虽然，法律要求必须向所有已知债权人送达申索截止日的通知，但聘请一名美国破产法律师监督整个破产案件的进程以便尽早确认申索截止日，甚至在债权人获得通知之前确认申索截止日是非常重要的。
The deadline to file claims in a bankruptcy case is referred to as the “bar date” and it is one of the most critical dates in the bankruptcy case. Indeed, if a claim is filed late, it may be disallowed. Unfortunately, there is no standard manner in which bar dates are set in Chapter 11 cases. Rather, in some judicial districts, Chapter 11 debtors must file an application with the bankruptcy court to have a bar date set. In other judicial districts, the bar date is set automatically when the case is filed. Although notice of the bar date must be served on all known creditors, it is important to have a U.S. bankruptcy attorney

Related People

- Samuel S. Kohn
- Alessandra Glorioso
- Catherine X. Pan-Giordano
- Rachel P. Stoian
- Abby Fang

Related Capabilities

- Banking & Financial Institutions
- Bankruptcy & Financial Restructuring
- Corporate Trust Services

monitor a Chapter 11 case to identify the bar date as promptly as possible, and even prior to when notice is sent to creditors.

2. 问题：提出权利主张应遵循何种程序?
Question: What is the process for filing a claim?

尽管权利主张证明的文件看上去相对简单且直观，但填写该文件需要大量信息，尤其是在美国域外的债权人，应当在律师的协助下准备文件，从而避免出现导致权利主张被禁止的错误，并更好地保护其作为破产案件债权人的权利。为了让您以及您的律师更好地填完权利主张证明文件，您需要提供债务人在提起破产申请之日所欠债务的金额的详细信息，包括利息和相关费用。提交权利主张证明的同时，您还需要提交支持性附件，或者解释您为何无法提交该等文件。虽然债权人必须在权利主张证明表格上注明债权数目、类型和本质等信息，我们建议您提交一份附录。该附录应详细地阐明所提权利主张之依据，并对有关您的权利主张做出重要的权利保留声明。
While the proof of claim form is relatively simple and straightforward, it requires a substantial amount of information and, particularly with respect to claims of creditors located outside the U.S., should be prepared with the assistance of counsel in order to avoid mistakes that could result in your claim being disallowed and to best protect your rights as a creditor in the bankruptcy case. In order for you or your attorney to complete the form, you will need detailed information about how much was owed as of the date the debtor filed its bankruptcy case, including interest and fees. You will also need to submit supporting documents along with the proof of claim or an explanation as to why such documents are unavailable. While the creditor must note the amount, type, and nature of the claim on the proof of claim form itself, it is advisable to include an addendum to your claim that sets forth in greater detail the basis of the claim and includes important reservation of rights provisions regarding your claim.

鉴于权利主张证明是在受“伪证罪”的规制下签署的，您应当确保，尽您所知，该权利主张证明文件是真实的。填写完该权利主张文件后，您需要将其提交。在一些案件中，权利主张文件是直接通过破产法院的电子提交系统进行提交的。但在大型案件中，破产法院指定的处理第三方索赔的管理人，既接受纸质版也接受电子版的权利主张文件。美国破产法律师能够确保您的权利主张文件正确且及时提交。一旦提交，该权利主张证明在某些情况下（甚至在申索截止日后）可以被修改。
You should ensure that the proof of claim is true to the best of your knowledge, because proofs of claim are executed under penalty of perjury. Once the proof of claim is completed, it will need to be filed. In some cases, claims are filed directly with the bankruptcy court through the e-filing system. But, in larger cases, a third-party claims administrator appointed by the court accepts the filing of claims either in hard copy or electronically. A U.S. bankruptcy attorney will be able to ensure the claim is correctly and timely filed. Once filed, proofs of claim may be amended (even after the bar date), in certain circumstances.

3. 问题：在第 11 章破产法案件中，不同类型的债权将被如何受偿？是否会有债权被优先受偿?
Question: How are different types of claims treated in Chapter 11 and are certain claims given priority over others?

第 11 章案件中的债权处理方法取决于该债权的类型。

How claims are treated in a Chapter 11 bankruptcy case depends on the type of claim:

- ***有担保债权***，在大多数情况下，不受破产申报的影响，享受在破产申报之前同样的担保。如果有担保债权人的抵押物价值低于其申报债权，则有担保债权人将被视为对不超过该抵押物价值的部分持有担保债权，对超过该抵押物价值的剩余部分持一般无担保债权。因此，有担保债权一般来说，在破产案件中，会被以现金或其他方式全额支付(不超过相关抵押物价值)，或者在破产过程中仍受担保，不受破产程序的影响。
  Secured claims, in most instances, remain unaffected by the bankruptcy filing and are deemed to be secured to the same extent as prior to the bankruptcy. If the value of the secured creditor's collateral is less than its claim, the secured creditor will be treated as having a partially secured claim up to the value of the collateral and a general unsecured claim for the balance. As a result, secured claims generally should either be paid in full (up to the value of the underlying collateral), in cash or other distributions, or the claims remain secured and pass through the bankruptcy case unaffected.
- ***行政费用债权***，是指在破产程序中被给予最优先受偿权的债权。这些债权一般是指破产财产会直接从中受益的那些债权，例如在破产案件期间向债务人销售货物和提供服务而发生的费用。尽管大多数行政费用债权产生在破产案件期间，但对破产申请递交之前的 20 日内，向债务人供货而产生的债权也被视为行政费用债权，会得到优先受偿。除特定的有限例外情况外，所有行政费用必须全额支付，第 11 章计划才能被通过。
  Administrative expense claims are those that are given first priority of payment in the bankruptcy case. These claims are generally for those that directly benefit the bankruptcy estate, such as the cost of goods and services supplied to the debtor during the bankruptcy case. While most administrative expense claims arise during the bankruptcy case, claims for goods sold in the 20 days prior to the bankruptcy filing are also given administrative expense priority. Subject to certain limited exceptions, all administrative expense claims must be paid in full in order for a Chapter 11 plan to be confirmed.
- ***优先债权***，是指发生于破产程序前，但应优先受偿的债权。该类债权包括对债务人的雇员工资和福利（受制于最高限额）、特定税收和特定客户存款。在资金充足的情况下，破产法要求这些债权必须在破产计划确认后不久或一段时间内全部偿付，以便第 11 章破产计划得以通过。
  Priority claims are those that arose prior to the bankruptcy case, but are entitled to priority of payment. These claims include claims for the debtor's employee wages and benefits (up to a cap), certain taxes, and certain customer deposits. To the extent there are sufficient funds, the Bankruptcy Code requires that these claims be paid in full, either soon after confirmation or over time, in order for a Chapter 11 plan to be confirmed.
- ***一般无担保债权***，是指那些发生在破产程序前，但是无法获得优先受偿的债权。这些债权包括那些债权人不享有担保权益的，在破产申请前向债务人出售货物或提供服务且在上述 20 天窗口期外而产生的债权。一般无担保债权只有在全部优先债权得到全额偿付后，才有权得到受偿，而且往往只能得到很小比例的受偿。
  General unsecured claims are those that arose prior to the bankruptcy case and not entitled to priority treatment. These claims include those for goods and services sold to a debtor prior to the bankruptcy filing and outside the 20-day window discussed above, and for which the creditor did not obtain a security interest. General unsecured claims are only entitled to payment after all priority claims are paid in full and often only receive a small percentage recovery.
- ***股权利益***，是归属于股东的，且在某些例外情况下，只有在所有债权人都得到全额偿付后才有权获得偿付。
  Equity interests are those belonging to shareholders and, subject to certain

exceptions, are only entitled to payment after all creditors are paid in full.

以上是在一件破产计划得以通过的第 11 章破产的成功案件中，对不同债权的预期处理方式。如果第 11 章破产案件未能成功，那么各种债权的偿付顺序可能会改变。我们会在之后的系列中讲解在第 11 章确认计划无法形成的情况下对各种债权的处理。
The foregoing treatment is what can be expected in a successful Chapter 11 case that results in a confirmed plan. In the event a Chapter 11 case is not successful, the priorities may change. We will address what happens in unsuccessful cases in a future series.

4. 问题：供应商是否能阻止其债务的清偿?
Question: Can a supplier seek to bar the discharge of its debt?

可以，但允许其这么做的法律依据是有限的。《破产法》规定了阻止债务清偿的若干理由。为基于债权产生于欺诈、挪用、或者故意或恶意伤害的理由而确认一项债务为不可偿还的债务，债权人必须向破产法院提起诉讼以寻求前述确认。如果您认为存在阻止债务清偿的理由，您应该尽快咨询美国破产法律师，因为一项不可清偿债务的动议应当在第一次债权人 341 会议之后的 60 日之内提起（点击查看系列三中关于债权人 341 会议的内容）。
Yes, but permissible bases for doing so are limited. The Bankruptcy Code sets forth a number of grounds for preventing a debt from being discharged. In order to have a debt determined to be non-dischargeable on the basis that it arose from fraud, defalcation, or willful or malicious injury, a creditor must commence an action in the bankruptcy court to request such a determination. You should consult a U.S. bankruptcy attorney if you believe there are grounds for barring the discharge of your debt as soon as possible, as the deadline for commencing a non-dischargeability action is 60 days after the first Section 341 meeting of creditors (see Series Three for more information on such meetings).

5. 问题：如果债务人不同意供应商主张的金额和类型，怎么办?
Question: What happens if the debtor disagrees with the amount or nature of a supplier’s claim?

如果债务人，或受托人，或其他被授权维护债务人权利的人，不同意您在权利主张证明中所述的权利主张（无论就索赔金额还是索赔类型），债务人可能直接找您协商解决争议，也可能向破产法院提起异议，说明为何债务人认为您的权利主张是错误的，被禁止的或应该被禁止的。无论如何，谨慎的做法是聘请美国破产法律师，通过非正式协商或者正式回应债务人异议的方式，代表您解决任何索赔纠纷。提请您注意，《破产法》或《破产法规则》没有规定提出异议的最后期限，且通常，第 11 章计划允许在计划确认后提出异议。
If a debtor – or a trustee or other party authorized to object to claims asserted against the debtor – disagrees with what you have asserted in your proof of claim (whether the amount of the claim or its type), the debtor may either reach out to you directly to resolve the dispute or it may file an objection with the bankruptcy court setting forth why the debtor believes the claim is incorrect or barred, or should be disallowed. Regardless, it is prudent to retain U.S. bankruptcy counsel to resolve any claims dispute on your behalf, either through informal negotiations or by formally responding to an objection. Keep in

mind, there are no deadlines for filing objections to claims in the Bankruptcy Code or Bankruptcy Rules and, often, Chapter 11 plans will permit the filing of objections to claims after confirmation.

6. 问题：无担保债权人是否可以出售其债权?
Question: Can an unsecured creditor sell its claim?

当然可以。与案件一样，破产案件中不存在任何保证，尤其是无担保债权人的受偿。因此，如果您持有无担保债权，您可能希望自己至少可以考虑将您的债权打折出售给第三方，以获得一定有保障的赔偿，而非干等到结案且已完成了对该等债权人的分配（如有）。
Yes, absolutely. As with anything, there are no guarantees in bankruptcy, particularly with respect to recoveries for unsecured creditors. Accordingly, if you are holding an unsecured claim, you may wish to at least consider the option of selling the claim to a third party at a discount to obtain some guaranteed recovery rather than wait until the conclusion of the case and the distribution, if any, to holders of such claims.

***

请密切关注本系列的第五篇文章，该文章将解答关于破产案件中无担保债权人正式委员会的作用，以及是否需要参加该委员会还是与其他债权人一起非正式地参与联合行动。
Please keep an eye out for Series Five which will address questions relating to the role of official committees of unsecured creditors in bankruptcy and whether to join such a committee or to informally join forces with other creditors in a case.

德汇律师事务所是一家拥有超过百年历史的国际律师事务所，在美国、加拿大、欧洲和亚洲（包括北京、上海和香港）设有 21 家办公室。德汇为各行各业的企业提供全方位法律服务，并被《钱伯斯美国》评选为“领先律师事务所”以及被 U.S. News 评选为“最佳律师事务所”。
Dorsey & Whitney is an international law firm with more than 100 years of history and 21 offices in the U.S., Canada, Europe, and Asia, including Beijing, Shanghai, and Hong Kong. Dorsey serves business organizations across a wide range of industries and is recognized by Chambers USA and U.S. News Best Law Firms.

外国供应商破产法团队
Dorsey & Whitney Bankruptcy Team for Foreign Suppliers