

LEGAL ARTICLE

*You have delivered the goods or services,  
sent the invoice expecting the (on time) payment,  
but after waiting and waiting and waiting,  
the customer still has not paid the bill.*

*This kind of case happens too often, and worse,  
many customers simply ignore the outstanding bills.  
What can be done to collect those unpaid bills and,  
more specifically how Thai law governs  
the debt collection issue?*

## HOW TO COLLECT UNPAID BILL IN THAILAND

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### No doubt collecting any overdue

**bill** is one of the most hated tasks for any business professional to the extent that no one in the right mind wants to deal with. Particularly if you are a business owner or an executive in charge who is held accountable for the bottom line of a company or a division.



In any case, collecting accounts receivable is crucial to any business because it is a lifeblood to the business.

Whenever any account receivable becomes uncollectible, the overdue bill must be dealt one way or another. From time to time, a new customer or even an existing customer is behind on his or her payment. Typically, an invoice for a price of goods or an invoice for a services fee is overdue. In this article, we will address the legal aspects of the bill collection in Thailand.

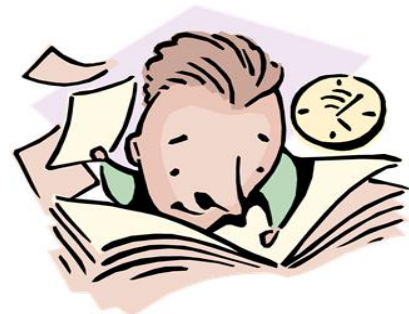
Once any invoice becomes overdue for quite some time, a responsible person should take the following steps.

### Step 1: Verify Claim's Enforceability

Sadly, not all overdue bills are enforceable by the legal action in a courtroom. Typically, a claim for an unpaid bill for a good price or a service fee must be at least supported by the relevant evidence. This requirement for the support evidence is either mandatorily imposed by a statute or is highly preferred and weighted by a court. Without this support evidence,

a bill collector may have a hard time in a courtroom in an effort to prove to the court that a customer does really owe the money.

When a customer fails to pay a bill on time, the first step that any bill collector should do is to check the documentation of the transaction.



### LOOK FOR WRITTEN CONTRACT

First, a bill collector may want to check whether a written contract is drawn up and signed in your favor or customer's favor. At present, based on a written contract what are your disadvantage and your customer's disadvantage?

You may also want to take a closer look at the detail of the payment due date. The idea is to ensure that the right is secured by a written contract.

### 1. Sale of Good

Under the Civil and Commercial Code, a sale of movable property where the agreed price is Baht 20,000 or higher is not enforceable by action unless there be some written evidence signed by the party liable or unless the deposit is made or there is part performance. Therefore, the sale of goods without the written sale agreement may be unenforceable. Basically without the written evidence signed by the party liable or the deposit being made or part performance, the bill collector is barred from filing a claim to recover the price of goods from a buyer in court.

### 2. Hire of Work (Services Agreement)

Even though law does not specifically require the written evidence for a hire of work agreement (services agreement) to be enforceable by action in court, the written evidence for the hire of work agreement still matters. If the amount of the hire of work (service fee) is significantly high, the court will highly weigh the written evidence or the written agreement for the hire of work (the services agreement). Without the written evidence, the bill collector may find it difficult, if not impossible, to convince the court that the customer has already agreed to pay the company the demanded amount for the hire of work.

#### REVIEW ALL CORRESPONDENCE

Second, the bill collector has to gather all issued invoices that have been unpaid, every correspondence e.g. facsimile messages, emails, letters and so on. Examine whether the company has ever waived any rights or not. Waivers can be in many forms. It could be a reduction of the billed amount or an agreement to a request for extension of time or any other form.



Moreover, the company as a supplier of a good or a service has to be cautious whether the customer has ever challenged any billed amount or the quality or the quantity of supplied goods or rendered services or not. So watch for any challenge for the billed amount.

If there is any challenge, the bill collector then has to be prepared for addressing these challenges properly. The customer may raise any inaccurate data and the bill collector may need to clarify such inaccurate data.

### Step 2: Negotiation

As a bill collector, before you go on offensive by suing the customer, it might be a good idea to discuss the outstanding bills with the customer. Normally, a bill collector contacts the customer in order to follow up the payment. In the process, the bill collector may arrange for a meeting with the customer so that both parties can agree on the outstanding issues.

Practically, the customer may take one of the following positions. The customer may challenge the billed amount on the ground of the quality or the quantity of the goods or the services supplied. Again, these complaints may or may not be legitimate. The customer may request for the extension of time. The customer may ask for the reduction of the billed amount. Apparently, before getting into any negotiation room, the validity and enforceability of the claim must be examined first by the bill collector.

If the negotiation happens to yield any fruitful result, the bill collector is recommended against signing anything, no matter how optimistic you're, until the document is reviewed by your own legal counsel.

### Step 3: Lawyer's Demand Notice

If the negotiation or the company's follow up letter happens to yield no positive result, the next step is to arrange of the lawyer to serve a demand notice to the customer in an effort to recover the price of goods or services. If the demand notice still fails to secure any payment, then you may need to go to the next step.



### Step 4: Preparation for Filing Lawsuit

When the lawyer's demand notice is still ignored by the customer, then it is the time that the bill collector instructs the lawyer to file a lawsuit against the customer in court to recover the overdue amount.

#### CHECK FOR STATUTORY LIMITATION ON TIME

One of the first things that the lawyer has to verify is whether the statutory limitation on time of the claim has run out or not. The law imposes the time limit (or you may think of it as a deadline) that a claimant (or a plaintiff) needs to file a claim (lawsuit) to the court.

The reason behind this time limit (deadline) is that a party cannot keep litigating forever. The memory of the witnesses may fade away and the documents may be destroyed, damaged or lost with the passage of time.



Thus, if a claimant (or a plaintiff) wants to use the court to enforce his or her right, he or she has to do so within the time limit (deadline). While this statutory limitation on time seems to be a task of a lawyer to sort out, the caution here for the bill collector is that do not wait for too long before taking any action because by the time you take any action, it may be too late.

The Civil and Commercial Code sets out the statutory limitations on time of each claim differently. For claim for price of sold goods or for the service fee (consideration for hire of work), the seller must file a claim (lawsuit) to the court to demand the payment of the price of the goods sold by the seller to a buyer from the buyer within the time limit (deadline) set out by law. The statutory limitation on time for the claim for the price of the sold goods is either two years or five years, depending on the circumstance.

#### **GIVE THE LAWYER EVERY SIDE OF THE STORY**

The bill collector is recommended to give the lawyer all accounts of whatever happens regardless of how terribly unfavorably it may sound to the company so that the lawyer can strategize a lawsuit in the way that is most beneficial to the company in the circumstance.

All too often, the client only tells one side of the story and withholds the critical information from the lawyer. Eventually, the lawyer finds out the undisclosed information in a courtroom and you know what the result would be like.

If the bill collector finds any weakness or any disadvantage in his or her claim, all those issues should be brought to the attention of the lawyer.



This will enable the lawyer to evaluate the situation more accurately and find a way to deal with any unfavorable tax. Definitely, it is not in your company's interest to withhold any information from your own lawyer.

*This legal article was written by Narit Direkwattanachai, a corporate & tax attorney at NARIT & Associates with expertise in corporate tax and commercial dispute. He holds a bachelor of laws (1<sup>st</sup> class honors) from Chulalongkorn University, a master of law from the University of Cambridge, UK and an MBA in finance from the Georgia Institute of Technology, USA. He can be reached at [narit@naritlaw.com](mailto:narit@naritlaw.com)*

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