

Business Structures and Managing Credit

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Objectives

- Understand the impact of business entity on managing credit
- Be aware of options for establishing legal-binding contractual relationship
- Be aware of contractual terms to include to aid recovery
- Be aware of options for recovering unpaid accounts
- Be aware of who you are contracting with and maximize liable parties up-front
- Be aware of what information you can gather up front to aid recovery in the event of default

Main Entities

- Corporation
- Sole proprietorship (individual)
- Partnership
- **Wherever feasible, have corporate debts guaranteed by principal individuals or pecunious parent company**

Establish contractual relationship

- Verbal agreement
- Written agreement, e.g. credit app, service contract, purchase order (including online/electronic)
- Terms on invoice (acceptance by conduct¹)
- Ultimate protection: security agreement granting secured creditor status

Terms to Include to Aid Recovery

- Annualized interest rate to comply with federal *Interest Act* (“2% per month, 24% per year” OK even though 26.82%)
- Collection expenses (“you agree to pay any collection expenses we incur to recover your unpaid account including lawyer’s fees”²)

Options for Recovering Unpaid Accounts

- Internal collection action (calls, letters, e-mails etc. from credit and sales departments)
- Enforcement of security interest
- Credit reporting
- Third-party collection action
 - Collection agencies
 - Law firms
- Litigation

Maximize Liable Parties Up-front

- Time to get cooperation is **before** granting credit
- Ask principals of corporations to sign personally as well or to provide personal guarantee
- Ask parent company to sign guarantee for subsidiary
- Governed by commercial realities—make credit too hard to get and you'll lose customers

Gather info up-front to aid in recovery

- Time to get cooperation is **before** granting credit
 - Corporate details (*exact* spelling of name, address, officers, banking info, list of assets including real property)
 - Principals' personal information (full name, address, telephone, e-mail, DOB, SIN, and enforcement avenues: banking info, list of assets including real property)
 - Personal information and enforcement avenues for all partners

Close with a couple of tips . . .

- Cash “settlement in full” cheques³
- Don’t fall for the very common OldCorp/NewCorp scam
(see <http://rmacanada.org/RMABlog/3276546>)

Appendices

1. *Bank of Montreal v. Glendale (Atlantic) Ltd.*, 1977 CarswellNS 12 at para. 93, 1 B.L.R. 279, 20 N.S.R. (2d) 216, 76 D.L.R. (3d) 303)
2. *Capital One Bank v. Matovska*, 2007 CarswellOnt 5605 (Div. Ct.)
3. *Waddams on Contract*, 5th Ed at p. 67