

上海金融法院

诉讼风险提示

为帮助当事人正确行使诉讼权利，保护自身合法权益，避免不必要的诉讼风险，根据《中华人民共和国民法典》《中华人民共和国民事诉讼法》以及《最高人民法院关于民事诉讼证据的若干规定》等法律和司法解释的规定，将常见的民事诉讼风险告知如下：

一、不符合起诉条件。当事人起诉不符合法律规定条件的，人民法院将不予受理，即使受理也将驳回起诉。案件受理后，人民法院发现对案件不具有管辖权的，案件将被移送到有权管辖的人民法院进行审理。为节约诉讼成本，避免浪费司法资源，请选择向有管辖权的人民法院提起诉讼。

二、诉讼请求不适当。民事诉讼实行“不告不理”原则，诉讼请求应尽量明确、具体、完整，未明确的诉讼请求及未提出的诉讼请求，人民法院将不予审理。诉讼请求应适当，无根据的诉讼请求，得不到人民法院的支持。请求给付的款项金额应符合合理预期，请求金额未得到全部支持的，未支持部分相应的诉讼费用由当事人自行承担。

三、超过诉讼时效。当事人请求人民法院保护民事权利的期间为诉讼时效，一般为三年（特殊情形为一年）。对方提出超过诉讼时效而当事人没有证据证明存在诉讼时效中断或中止事由时，诉讼请求不会得到支持。

四、代理权限不明确。当事人委托诉讼代理人的权限分为特别授权与一般授权，没有明确写明“代为承认、放弃、变更诉讼请求，进行和解，提起反诉或者上诉等事项的”，将被视为一般授权。一般授权的代理人从事上述特别授权事项的，不具有法律

效力。

五、不按时交纳诉讼费用。不论起诉还是提起上诉，均应按照人民法院的通知预交案件受理费，逾期人民法院将按撤回起诉或撤回上诉处理。提出缓交、减交、免交诉讼费用申请未获批准后仍未按期预交案件受理费的，人民法院亦将按撤回起诉或撤回上诉处理。

六、申请财产保全存在错误。当事人申请财产保全，应当合法并以保证判决的执行为限。不当扩大查封、扣押或冻结财产范围，或利用财产保全的方式，恶意阻碍被申请人正常生产经营活动的，应当赔偿被申请人因财产被保全所受到的损失。

七、未提交或未及时提交相关证据。人民法院审理案件以事实为依据，除法律规定的不需要证明的事项以外，当事人应当对其所提出诉讼请求或者抗辩所依据的事实提交证据予以证明。不能提交证据证明有关事实，或在举证期限内未能提交证据的，可能面临不利的裁判后果。

八、证人未出庭接受质询。当事人提交证人证言的，该证人应当出庭并接受质询，否则会影响该证人证言的证据效力，甚至导致该证人证言不被采信。

九、委托审计、评估和鉴定等被退回。当事人申请审计、评估和鉴定，应当在法庭指定的期限内预交费用，未按期缴纳费用的，相关机构可能会退回审计、评估或鉴定委托，对申请人将产生不利影响。同时，当事人在交易过程中，应注意保存支付凭证、交易凭证和样品等，在诉讼中如果不能提供相关交易原始凭证和检材，可能导致审计、评估和鉴定程序无法启动。

十、不按时出庭或者未经允许退出法庭。原告经传票传唤，无正当理由拒不到庭，或者未经法庭许可中途退出法庭的，按撤

回起诉处理。该规定同样适用于反诉原告。被告经传票传唤，无正当理由拒不到庭，或者未经法庭许可中途退出法庭的，法庭将缺席判决。

十一、对确认送达地址的作用认识不清。当事人对自己提交的送达地址应引起足够重视，人民法院按该地址送达诉讼文书，因当事人提交的地址不准确，或地址变更未及时告知人民法院，致使诉讼文书被退回的，该诉讼文书仍视为已有效送达。合同当事人书面约定司法文书送达地址的，与向人民法院提交送达地址具有同等效力。

十二、超期申请强制执行。申请人民法院强制执行的期限是法律文书生效后的两年以内，超过该期限申请，被执行人提出异议的，人民法院将裁定不予执行。另外，不及时申请强制执行，可能导致无法找到被执行人可供执行的财产，将大大降低执行到位的可能性，申请人的财产权益可能因此受损。

Notice on Litigation Risks

To assist parties in properly exercising litigation rights, protecting lawful interests, and avoiding unnecessary risks, this notice outlines common litigation risks in civil proceedings under the Civil Code of the People's Republic of China, the Civil Procedure Law of the People's Republic of China, and the Supreme People's Court Provisions on Evidence in Civil Cases:

I. Failure to Meet Filing Conditions

If a lawsuit does not satisfy statutory requirements, the People's Court will reject the case or dismiss it after acceptance. Cases

accepted but lacking jurisdiction will be transferred to the competent court. To save costs and resources, ensure filing with the competent court.

II. Improper Claims

People's Courts adhere to the “non-intervention principle”. Claims shall be specific, concrete, and complete. Unspecific claims or claims that have not been filed will not be heard. Claims shall be suitable, groundless claims will be rejected. The amount of monetary claims shall be in line with reasonable expectations. If part of a monetary claim is denied, the applicant bears the costs for the rejected portion.

III. Exceeding the Statute of Limitations

The general statute of limitations for civil rights protection is three years (one year for special cases). Claims may be dismissed if the respondent raises a statute of limitations defense and the applicant cannot prove interruption or suspension of the limitation period.

IV. Ambiguous Agent Authorization

A litigation agent's authority is either general or special. Unless explicitly stated, authority to admit, waive, or modify claims, negotiate settlements, or appeal will not be deemed. Acts beyond authority are legally invalid.

V. Failure to Pay Litigation Costs

Applicants must prepay Litigation Costs as notified whether for initial claims or appeals. Late payment results in withdrawal of the case for initial claims or appeals. When an application for deferral, reduction, or exemption of litigation costs is denied by the People's Court, a timely payment is required; otherwise, the case is withdrawn.

VI. Erroneous Property Preservation Applications

Property preservation must be lawful and proportionate to ensure the enforcement of the judgement. Excessive seizure, detention, or freezing of assets, or malicious obstruction of the respondent's operations, renders the applicant liable for compensation for respondent's losses caused by property preservation.

VII. Failure to Submit Evidence

People's Courts hear cases on the basis of facts. Parties must provide evidence supporting their claims or defenses unless exempted by law. Failure to submit evidence within the prescribed period may result in adverse judgments.

VIII. Witnesses Failing to Appear for Cross-examination

If the party submits a witness statement, the witness must appear in court for cross-examination. Absence will affect the evidentiary validity of that witness's testimony, even lead to rejection of their testimony.

IX. Rejection of Audit/Assessment/ Evaluation Requests

Applicants must prepay fees for audits, assessments, or expert evaluations by court deadlines. Failure to pay fees by the due date may result in rejection of the request and bring a negative impact on the applicant. Also, parties should take care to preserve the payment vouchers, transaction vouchers and samples, etc., in the course of the transaction. Failure to preserve may make the audit, assessment or evaluation impossible to proceed.

X. Absence or Unauthorized Exit from Court

Plaintiffs failing to appear after summons or leaving court without permission face dismissal of the case (applies to counterclaim plaintiffs). Defendants' absence permits default judgments.

XI. Lack of Understanding of the Role of Service Address

Parties should pay sufficient attention to the service address they provide. The People's Court serves the process according to that address. Documents returned due to incorrect addresses or unreported changes are deemed validly served. Contractually agreed service addresses hold equal legal effect.

XII. Overdue Enforcement Applications

Enforcement must be applied within two years from the date a judgment becomes legally effective. Where an application is made after the prescribed time limit and the person subjected to execution raises an objection, the People's Court shall dismiss the application.

Delays may also reduce the likelihood of recovering assets which may significantly reduce the likelihood of implementation being in place and jeopardize the applicant's property interests.