



Debtors & Vendors: What You Need to Know About Restructuring

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Roadmap

- **Liquidation v. Restructuring**
- **Restructuring**
 - Out-of-court
 - Bankruptcy filing
- **Liquidating**
 - Out-of-court
 - Bankruptcy filing
- **Warning Signs – Time to start talking to your key stakeholders**
- **Bankruptcy – When it is necessary**
- **What to do when your customer may be in trouble**

Restructuring v. Liquidation

- Both can be done out of court or through a bankruptcy filing
- Choice usually driven by lenders
- **Liquidation** favors the most senior secured creditors
- **Reorganization** more favorable to trade and other unsecured creditors
- Either way, equity is often wiped out

Restructuring Out-of-Court

- Start negotiations early—before covenants are blown or the lenders start exercising remedies
- May only restructure funded debt
- Can also restructure equity
- May not affect trade or other unsecured creditors.
- Creditors may be forced to take less than they are owed
- Generally requires approval of participating lenders and by a majority of the bondholders—not just the agent

Restructuring Through a Bankruptcy Filing

- Chapter 11 plan product of negotiations with stakeholders
- Funded debt—restructured or converted to equity, or replaced by new debt
- Confirmed plan binds all creditors
- Trade debt may receive little or no payment
- Company can assume or reject contracts or leases



Liquidating Out-of-Court

- The company may pursue the sale of the company or substantially all of its assets
- Lenders may force a sale
- If the company and the lender can't agree on a sale, the company may need to file bankruptcy
- Lenders often don't foreclose unless buyer lined up
- Assignment provisions usually enforced
- Trade may be paid if buyer wants good will and cooperation

Liquidating Through a Bankruptcy Filing

- Lender or buyer may prefer bankruptcy sale
- Chapter 11 preferred over chapter 7
- Secured creditors may fund operations in exchange for benefits
- Sale process approved by bankruptcy court
- Usually involves competitive bidding
- Sale free and clear of any liens, claims, or encumbrances
- Contracts and leases can be assumed and assigned to the purchaser
- Trade debt and other unsecured claims often not paid in full

Warning Signs – Time to Start Talking to Your Key Stakeholders

- Continuing need for waivers or forbearance from lender
- Liquidity is diminishing
- Material tax delinquencies
- Questionable ability to meet upcoming interest or principal payments



Warning Signs – Time to Start Talking to Your Key Stakeholders

- Debt covenants getting tighter
- Trade debt materially in arrears
- Negative cash flow for multiple quarters
- Negative net worth



Advantages of Starting Negotiations with Stakeholders Early in the Process

- Reduces pressure and risk
- Creates a higher likelihood of a consensual outcome
- Ability to plan ahead if negotiations break down
- Easier to turn things around when the hole isn't so deep
- Increases likelihood of preserving business and equity

When a Bankruptcy Filing May Be Necessary

- Fiduciary duty to creditors
- Lender cooperation
- DIP financing options
- Retain chief restructuring officer and restructuring advisory firm
- Explore and develop restructuring and/or liquidation alternatives with your professionals
- Develop realistic business plan with cash flow projections
- Conserve cash
- Retain restructuring counsel and financial advisors early

What To Do When Your Customer May Be in Trouble

- Monitor level of credit extended
- If right to terminate contract triggered, consider termination
- Verify location of leased equipment
- Limit exposure to avoidance actions (but take the money if it's offered)
- File mechanic's lien if possible

If Your Customer Files Bankruptcy

- Respect automatic stay
- Perform under contracts or leases
- No self-help or collection remedies
- Track what you're owed
- Monitor the case for deadlines
- File a timely proof of claim
- Contact company about leased equipment

If You Are Party to a Contract or Lease That Will Be Assigned to a Purchaser

- Keep accurate accounting
- Monitor sales process
- Review notices of assumption or rejection
- Check “cure amount” if agreement assumed
- Modification of assumed contract requires consent
- File proof of claim for rejected contract

Conclusion

- Early Action = Better Outcome.
- Keep an eye on your customers' financial condition
- Protect your interests
- If bankruptcy is involved, get help from counsel sooner rather than later



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