



If your business is in trouble, bankruptcy is NOT the only road open

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Newspaper headlines are ominous these days. And while we wish it were hyperbole, the nearterm forecast for our economy is bleak. A down market and almost daily announcements of companies filing for bankruptcy protection are giving many business owners a run for their money, literally. It's no secret that a tight credit market and decreased consumer spending are impacting businesses all over the country.

Interestingly, however, although we can expect the number of bankruptcy filings to increase in response to the current economic downturn, some clients have been surprised to learn that bankruptcy is not the only option for troubled businesses. In fact, depending on the scope of a company's financial problems, an out-of-court workout or state court-appointed receivership may provide an alternative means to avoid bankruptcy and its associated trauma.

Sometimes, troubled businesses are able to resolve difficulties with creditors or other stakeholders out of court. Led by turnaround professionals and/or legal counsel, workout proceedings are often inclusive of all stakeholders, and are usually brought about voluntarily by responsible businesses.

For example, a business falls on hard times, experiences a cash flow shortfall and isn't able to service its obligations. A lender, instead of foreclosing on its collateral or forcing a court action like receivership or bankruptcy, may be agreeable to an alternative means to help the business reorganize and continue operating. Out-of-court workouts, often the least intrusive means of dealing with insolvency, usually work best in an economy that is stable.

Given the present economic turmoil, however, a court-supervised receivership may be a more agreeable solution from the lender's perspective. Receivership may provide more protection than an out-of-court workout, but relative to a bankruptcy, it usually consumes fewer monetary and other resources that could be used to reorganize the business. Bankruptcy proceedings, by nature, are transparent to the public and often very expensive due to administrative and legal costs. To paint a picture in broad strokes, the rules of bankruptcy are stringent and numerous, often requiring a multitude of lawyers and other professionals under the public scrutiny of a bankruptcy court, the office of the U.S. Trustee, and all stakeholders of the business.

In general, a receivership is formed by a court for the purpose of bringing an independent person to govern the affairs of a company that may be insolvent and facing unresolved difficulties with its stakeholders. The receiver, who may or may not be an industry expert, is given responsibility to determine and recommend a plan to reorganize or wind-up the affairs according to guidelines set by the court. The receiver may or may not personally operate the business or replace management in the course of his or her work.

While bankruptcies are subject to a tightly scripted process without much latitude, receiverships can be more tailored to the specific facts and circumstances of a troubled business. Receiverships usually get far less attention from media, and it can be easier to keep sensitive information about the business and its stakeholders out of the public domain by working with the court to limit information disclosures. Especially for family businesses or retail establishments where public scrutiny could be damaging, the prospect of steering clear of the public eye while attempting to reorganize may be quite advantageous.

Our insolvency specialists can assist businesses in evaluating all of these alternatives. From a trend standpoint, [KraftCPAs Turnaround & Restructuring Group](#) is very active in sectors hardest hit by the economic downturn, such as automotive, retail, and construction.

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