

Working with Your Bank in Troubled Times

By Dan Rohletter

“When you are up to your neck in alligators, it’s hard to recall that your initial objective was to drain the swamp.” – Anonymous

For borrowers in default of bank loans, one of the most important things to do is to get out in front of the problem early. The sooner a borrower communicates with a lender about the inability to comply with loan terms, loss of a major customer, or other difficulties, the sooner the bank can formulate a mutually beneficial solution. Failure to openly and honestly communicate early generally limits options and causes banks to take drastic measures to recover collateral or otherwise move toward liquidation.

If early communication occurs and the borrower convinces the bank of its viability, the parties could enter into a forbearance and modification agreement. This typically describes the existing loan relationship, the events of default, and the circumstances under which the bank will forbear from exercising its available remedies. The borrower must be prepared to come up with consideration for the bank forbearing or waiving its available options (e.g., injecting additional capital into the business, providing additional collateral, or adding a guarantor).

If the bank is not amenable to a forbearance arrangement, the borrower may have to consider more unpleasant alternatives, including filing for bankruptcy protection (Chapter 7 liquidation or Chapter 11 plan of reorganization). If bankruptcy is not an alternative, the borrower may have to endure a forced liquidation of the collateral to satisfy its obligations. If a borrower can keep the business going under less onerous loan terms, it should try refinancing its obligations. Unfortunately, the current economic climate makes this challenging. In a nutshell, borrowers in a workout situation should:

- Communicate early and honestly with the lender, even bad news
- Provide the lender with requested documents and information
- Avoid threats or confrontation with the lender
- Select knowledgeable legal counsel
- Move quickly to identify and implement a viable workout plan that avoids liquidation.

For more information about workouts and other financing issues, please contact Dan Rohletter or your CPM attorney.