



The time has come to liquidate your company. How can you start over?

By John M. Collard



When a company is in trouble, the owner loses all credibility. Bankers and creditors no longer believe what you have to say. Chances are, it is much harder to be creative with new stories to get cooperation. In the meantime, your assets are deteriorating in value.

When all attempts to save the business have failed, strongly consider liquidating a company — either as a method to withdraw or as a catalyst to help you start over.

Most business owners with a large debt burden choose bankruptcy over a workout because it is easier, but a workout might be your best option based on your situation and desired course of action after liquidation.

Regain credibility

To make a workout work, there must be trust, and a working knowledge about this complicated process. Bring in a respected third party, like a turnaround specialist or outside director, to guide you and to regain a positive working relationship with the bank and creditors. These professionals have gone through this process before. The very fact that you hire an expert can reestablish that credibility. Often, a bank or creditor will work with a third party

when they won't work with you alone. When creditors realize — and believe — that there are not sufficient assets to cover debt obligations, they will settle for less on the dollar. Keep negotiations non-legal because lawyers tend to bring the discussion to a different level, but do get legal advice as you go through the process of liquidation.

Generally speaking, the only beneficiaries of liquidation proceeds are the bank and secured creditors, particularly in a bankruptcy proceeding. But depending on your circumstances, there are ways for you to see benefit as well.

Liquidation: Four different options

When it comes to liquidation, there are four alternatives, each with its own advantages and limitations. Though only a workout allows you to start over. (*Chart*)

Let's look at your options:

Business bankruptcy: The ultimate goal of the Bankruptcy Code is to maximize value for creditors. This option is normally for corporations, partnerships or LLCs, and is costly and time consuming. The federal Bankruptcy Court appoints a trustee to sell assets and pay creditors. Note that not all debt is dischargeable in

bankruptcy. For example, you are still liable for trust fund taxes, back taxes, recent purchases, loan-to-pension plans and bad checks.

The trustee will look back at transactions during statutory periods (90 days for creditors and 365 days for owners) before filing to avoid those of a preferential or fraudulent nature. The company's credit rating will be damaged, but your personal rating will not be.

Assignment for the Benefit of Creditors (ABC):

Your insolvent business assigns (transfers) all of its assets and debts to a new assignment estate — a third-party firm — to be liquidated in accordance with state statutes and court oversight. The assignee firm sells assets and pays your creditors a fraction of full debt (for a fee) while you get on with your life. The assignee is a fiduciary to the creditors.

The assignee controls the ABC process. This process is usually faster and more private than bankruptcy, and it often yields better value for assets sold than in bankruptcy auction. The buyer receives a "bill of sale" that assets are transferred free and clear of claims of creditors. Personally guaranteed debt is still prevalent, but negotiable.

Personal bankruptcy: This option is normally for sole proprietorship or for owners with a large amount of personal debt or guarantees. The federal Bankruptcy Court appoints a trustee to sell personal assets and pay creditors. Your credit will be destroyed and stay part of the record for 10 years.

If you pledged your house as collateral for a loan and the loan is in default, then the lender can foreclose. Bankruptcy can delay the process, but you may lose your home. Most states have a “homestead exemption” that allows you to keep your principal residence if your equity doesn’t exceed a certain limit and you keep payments current.

Liquidate out of bankruptcy (workout): The out-of-court workout idea is simple: It attempts to achieve consensual agreement with creditors outside of a court proceeding. You or your representative contacts creditors to arrange for a release of debt in exchange for paying less than the full value. Why would creditors agree to this? Often it is a better choice than suing you and attempting to collect against dwindling or no assets, all before you may file for bankruptcy, where they get nothing. For a workout to work, you must: i) have creditors believe that you are going out of business or into bankruptcy and have no means of paying full value, ii) have some assets or cash flow to pay reduced negotiated debt, and iii) obtain releases from personal liability. The disadvantage to a workout is that you don’t have the ability to involuntarily

bind an unwilling creditor who won’t cooperate, which is why credibility is key. Don’t kid yourself — this is a lot of work.

You have flexibility because you control a private process where you choose who gets paid how much and when. You can first pay debts where personal liability is associated, like trust-fund withholding taxes, personally guaranteed lines of credit, leases and contracts where you signed personally, even to family and friends. You can even purchase assets (intellectual property, patent, copyright, special technology, etc.) from the company, which can be a catalyst to starting over. Unless you default on personally guaranteed debt, there is no effect on your credit record. This is the lowest-cost approach and brings the highest value from assets sold privately. Most important, you can start over if you wish.

Work with the bank, secured creditors and your landlord first. If you can get them to cooperate and settle for less, this gets easier. If they won’t cooperate, then you may be forced into bankruptcy. Determine this early.

Put a fund in place to pay creditors, managed solely by a third party. Allow them to negotiate independently. We often see debt resolution settlements in the \$0.25 to \$0.35 per dollar range — a 75 percent saving (before fees).

Consider a public auction to sell assets. You can buy select assets at reduced price and auction the remainder to bidders.

Remember, all proceeds come to you.

Also note that if creditors sue your company, they may get a judgment that is worth nothing because the company has no assets — and if you are not personally obligated, they can’t come after you.

Many more strategies exist to generate cash, resolve disputes, renegotiate agreements and start over again. You can use “bankruptcy” and “no assets” as leverage to settle matters. Communication is a strength — use it to direct the process. When you are quiet, creditors assume the worst.

The options in a workout are only limited by your creativity because you are in control. Credibility is key, so get help to regain trust. When executed properly, a workout lets you keep personal wealth and start over again.

About the Author

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Options For Liquidation

Consider	Liquidate out of bankruptcy (workout)	Assignment for Benefit of Creditors (ABC)	Business bankruptcy (Chapter 7)	Personal bankruptcy (Chapter 7)
Proceeds	Usually bring highest value	Likely bring some value	Bankruptcy sale = low value	Bankruptcy sale = low value
Payoffs	You choose who gets paid first, how much	Turn over to professional (assignee)	Trustee controls how much each creditor gets	Trustee controls how much each creditor gets
Payments to family/friend	Won’t be taken back	May not be taken back	Trustee demand returned – given to creditors	Trustee demand returned – given to creditors
Personal obligations	Usually not affected	Guarantees could remain active	Guarantees remain in place	Wipes out debt and business obligations
Personal credit record	Usually not affected	Usually not affected	No effect	Credit record for 10 years
Visibility	Private process	Private process	Public process	Public process
Significant	Lowest cost, most flexibility, can start over	State court oversight	Very costly – only for Corp, partnership, LLC	Can be costly – will lose personal assets