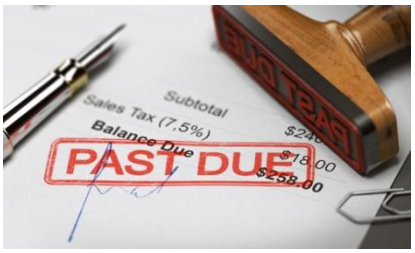
Critical Notice to Employers - Banking Arrangements



Couzens Lansky has issued many articles relating to the new governmental programs and regulations issued in response to COVID-19. With the reopening of the economy, you must also start considering your personal and commercial banking and financial arrangements.

During these difficult financial times, proactively seeking to understand and prepare for the potential significant financial problems you might encounter in your banking, creditor, vendor, and customer relationships is an important first step. Seeking expert counsel is important. The Couzens Lansky Banking and Financial Group includes attorneys with banking, restructure and workout experience, as well as insolvency and litigation expertise. We have assisted clients during economic downturns as far back as the 1970s, including 9/11 and 2008. Our attorneys have the distinct advantage of having represented financial institutions and various other creditors, as well as borrowers and debtors.

Analyzing your business and banking situation should be done now. Most businesses have been severely and negatively impacted by the current situation. While many financial institutions are currently preoccupied with the PPP and Stimulus Programs, they will turn their attention to many of you in the very near term. Therefore, you should now identify your strengths and weaknesses, update your business plan, reconsider your market position and create a budget that realistically identifies your credit needs. By addressing the Proactive Actions we set forth below, you can maximize the opportunity to make your financial institutions partners in developing solutions for your needs, rather than adversaries. In all cases, being prepared and proactive in reaching out to your financial institution can be helpful.

The following are more specific comments that may affect your business:

A. General Information:

1. Hopefully the government has learned from its experience in the 2008 financial crisis and will not repeat the regulatory oversight, rules, regulations, and directives that were not helpful then.

2. Every financial institution operates differently so there is no general standard for handling the current situation.

3. Many financial institutions are now in the process of developing long term cohesive plans for proceeding.

4. All lenders focus on getting repaid and avoiding more drastic enforcement actions, such as acceleration of debt, insolvency proceeding, and repossessing collateral. Unlike 2008, we currently anticipate minimal government directives requiring such undesirable actions, e.g. the forced disposition by lenders of notes and/or seizure of collateral.

5. The available government assistance programs are significantly greater and more varied than in 2008, requiring more careful evaluation.

6. All financial institutions will be conducting new or revised credit and risk analysis of all customers.

B. Proactive Actions:

While we do not know your relationship with your lender, based on the broad perspectives in the General Information section above, the following general proactive actions can be helpful when discussing your status with your lender:

1. Prepare your internal budget of payroll and other expenses considering reductions that are available or negotiable, and where appropriate include government assistance available to your company.

2. Currently negotiate as much relief as possible in terms of amount, time and frequency of payment for your obligations with those whom you conduct business, such as landlords, vendors, suppliers and customers.

3. Discuss and document decisions with vendors, suppliers, and customers as to their expectations, and any agreements, solutions and compromises you may have reached as contemplated in section 2 above.

4. Prepare new forecasts/projections of revenues and expenses with variations. This is perhaps the most difficult task. These should be realistic and demonstrate that you are making conscious and informed management decisions, including possible management and senior staff reductions and compensation reductions/deferrals.

5. Specify plans to conserve cash, avoid supply chain interruptions, maintain vendor services, customer deliveries and payments, and optimize available resources.

6. Consider what deferrals, forbearances and/or modifications to your financial arrangements you will want or need from your lender and for what period. For example, if you have a line of credit, does the advance formula amount need to be increased or does the definition of eligible accounts receivable need to be adjusted to your customer base. Financial covenants may need to be revised to be realistic.

C. Refinancing:

Many lenders have cash available and are looking for business. This may change as a result of write-offs, write-downs, charge-offs, reclassifications of loans and assets, regulatory requirements, and other matters that affect and restrict Lenders' availability and tolerance for certain relationships. Irrespective of whether your outlook is positive or potentially impaired, especially if you sense that your Lender is concerned about your ongoing relationship, this may be an opportune time for refinancing. Bear in mind that, among other benefits of refinancing, even if the cost of money is higher, longer term and amortization can decrease your monthly obligations. There may also be other governmental programs that you could now avail yourself of that were not present before.

D. How Couzens Lansky Can Help:

The Couzens Lansky Banking and Financial Group consists of the following attorneys, who together have more than 150 years of legal experience:

Donald A. Wagner	**-**	**Chair, bank documentation, loan origination, workouts, restructure and related matters**
Bruce J. Lazar	**-**	**Litigation, insolvency, restructures, workouts and insolvency**
Jerry M. Ellis	**-**	**Bankruptcy and insolvency**
Mark S. Frankel	**-**	**Bankruptcy and insolvency litigation**
Gary Schwarz	**-**	**Tax Issues, including those concerning creditors and debtors**

Couzens Lansky is dedicated to meeting your legal needs. Please contact Don Wagner if you have questions concerning the above material or if we may help you succeed and achieve successful financial relationships.