

Practice Update

Small Business Reorganization Options During the COVID-19 Pandemic

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Small businesses experiencing short-term and long-term distress from the effects of the current pandemic can avail themselves of various immediate remedies that are available under Chapter 11.

However, the Small Business Reorganization Act (the SBRA) provides enhancements solely for eligible small businesses that are faster and less expensive than traditional Chapter 11.

In August of 2019, Congress passed a radical reform of Chapter 11 that substantially enhanced a small business' ability to reorganize. The SBRA provides numerous unique enhancements of the existing Chapter 11 remedies available solely to eligible small businesses that generally allow for a quicker, cheaper, and much less burdensome reorganization process.

Material Enhancements under the SBRA

Substantially reduces costs for completing a Chapter 11 Reorganization:

- No quarterly dues are owed to the Office of the United States Trustee (the government)
- No requirement to draft, file, and seek approval of a prospectus explaining a debtor's plan for reorganizing its assets and liabilities

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- No automatic appointment of a creditor committee (debtors typically fund the legal fees of the committee)
- Allows for payment of legal fees and other expenses incurred during Chapter 11 over the term of the Chapter 11 plan

Expedites Chapter 11 Reorganization and reduces regulatory burden on Debtors:

- Only a debtor can file a plan
- A debtor can confirm a plan without soliciting or obtaining consent from any of a debtor's creditors
- Requires a plan to be filed within 90 days of commencement of Chapter 11
- Allows shareholders to retain ownership without paying all debts in full
- Allows debtors to propose plans that limit repayment to unsecured creditors an amount equal to three to five years of a debtor's disposable income (not needed for operation, preservation, or maintenance of debtor's operations)
- Narrows debtor's compliance requirements to a single Small Business Trustee appointed in the case and the Court (no automatic committee and the United States Trustee has a limited role)

Eligibility for Small Business Reorganization Relief

- The term "small business debtor"—means a person or entity engaged in commercial or business activities that has aggregate undisputed debts as of the date the bankruptcy is commenced in an amount not more than \$2,725,625 (excluding debts owed to 1 or more affiliates or insiders) not less than 50 percent of which arose from the commercial or business activities of the debtor. Additionally, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) increases this debt limit to \$7,500,000 for one year.

Companies NOT eligible for SBRA Chapter 11 enhancement, include:

- Companies that do not satisfy the definition of a small business debtor
- Companies with affiliates that have debt exceeding \$2,725,625 of undisputed debt (again increased to \$7,5000,000 for one year under the CARES Act)
- Public companies or any affiliate of a public company
- Shopping centers
- Office buildings
- Industrial/warehouse buildings
- Apartment complexes
- Any small business that generates substantially all of its gross revenues from the operation of a single real property or project (that exceeds four residential units)

NOTE: Hotels, golf courses, and marinas may be eligible small businesses depending on various factors related to how they generate their revenues.

For many businesses the SBRA provides an alternative to Chapter 11 that is faster, less expensive, and poses fewer obstacles. Akerman's bankruptcy and restructuring attorneys are available to discuss whether the SBRA is an option that can address your financial difficulties in these trying times.

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