

INSOLVENCY & REORGANIZATION

NEW RESTRUCTURING OPTIONS FOR SMALL BUSINESS DEBTORS

The Small Business Reorganization Act of 2019 (the “[SBRA](#)”) was enacted and became effective on February 19, 2020. The SBRA created a new subchapter of chapter 11 of the Bankruptcy Code (Subchapter 5—Small Business Debtor Reorganization) which enables small businesses to reorganize through a streamlined, faster and more cost-effective chapter 11 process.

In light of the devastating impact that COVID-19 is having on the economy, it is likely that more small businesses will need to avail themselves of the relief provided by the SBRA.

HERE’S WHAT YOU NEED TO KNOW:

- Only a “small business debtor” is eligible to file a small business subchapter 5 case. A small business debtor is an individual or business entity that is engaged in commercial or business activities where not less than 50% of its debt is derived from such commercial or business activities.
- In order to qualify as a small business debtor, the SBRA provided that the individual or business must have aggregate noncontingent, liquidated debt of less than \$2,725,625, exclusive of debts owed to an affiliate or an insider of the debtor. Due to the economic crisis caused by COVID-19, this debt eligibility threshold was recently increased for one year to \$7,500,000.
- Small business debtors can take advantage of many of the protections of chapter 11 without being subject to the same timelines. In a small business case, the bankruptcy process will be quicker. In fact, the deadline for filing a plan is just 90 days (versus 120 days in a traditional chapter 11 case) after the case is commenced.
- While a trustee is appointed in a small business case, the debtor in most cases will continue to operate the business. The trustee’s role is to help the debtor resolve issues with creditors, formulate a plan and move the case along.
- In most small business cases, no creditors’ committee will be appointed. This may make the chapter 11 case significantly less expensive.
- Small business debtors do not have to solicit votes to confirm a plan. Thus, no disclosure statement is required unless the court for cause orders otherwise.
- Only a debtor may propose a plan. To confirm a plan, the plan must provide that all projected disposable income of the debtor (other than what is reasonably necessary for the payment of expenditures necessary for the continuation, preservation, operation of the business of the debtor) will be applied to payments to creditors over a three to five year period.

- The SBRA eliminates the absolute priority rule in small business cases so that small business owners may retain equity without paying creditors in full or providing new value.
- Unlike in a traditional chapter 11 case, the debtor is not required to pay administrative expenses in full on the effective date of the plan. Rather, a small business debtor may stretch payment of administrative expenses out over the term of the plan.

Please contact one of the members of Jaffe's Insolvency & Reorganization group to learn more about the SBRA and other recent revisions to the Bankruptcy Code.

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