

## **JAFFE INSOLVENCY & REORGANIZATION GROUP UPDATE**

On December 21, 2020, Congress passed the Consolidated Appropriations Act of 2021, H.R. 133 (the "Act"), a spending bill that combines \$900 billion in stimulus relief aimed at responding to the COVID-19 pandemic with a \$1.4 trillion omnibus spending bill for the 2021 federal fiscal year. President Trump signed the Act on December 27, 2020. The Act temporarily modifies the Bankruptcy Code in important ways to provide relief for struggling small businesses, among other debtors. Notable changes to the Bankruptcy Code impacting businesses include:

- Small business debtors can now obtain an extension of 120 days from the petition date (*i.e.*, an additional 60 days) to begin making post-petition payments under a non-residential real property lease if the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to COVID-19. Any deferred obligations that are unpaid at confirmation constitute administrative expenses, but the debtor may spread the payments out over time under the confirmed plan.
- The time for a debtor to assume or reject a non-residential real property lease has been extended by 90 days such that a debtor now has 210 days (with the ability to request an extension of such deadline, for cause, for an additional 90 days) to make that election.
- The Act provides that if a landlord or a creditor agrees to extend or to defer the payment of an obligation due under an existing lease or executory contract through a pre-petition forbearance agreement or other debt accommodation agreement made or entered into on or after March 13, 2020, then a payment made pursuant to such agreement is not subject to avoidance and recovery as a preferential transfer under section 547 of the Bankruptcy Code.
- The Act authorizes a small business debtor, with court approval, to obtain a Paycheck Protection Program ("PPP") loan under Section 7(a) of the Small Business Act and for such loan to be repaid over the term of a confirmed plan. However, the statute also says that such PPP loans will be available to debtors in bankruptcy only if the SBA Administrator sends a letter to the Director of the Executive Office for the United States Trustee acquiescing to PPP loans in bankruptcy.

These changes will sunset two (2) years after the enactment of the Act but will apply to all cases commenced within such two year period.

The Insolvency & Reorganization Group at Jaffe is comprised of professionals with decades of experience in dealing with troubled companies. We have the experience and expertise to address the issues that may arise during these challenging times. As issues arise, it is important that you address them at the earliest possible stage to provide the maximum number of potential options to successfully resolve them. Please feel free to reach out to us if you have any questions.

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