
Financial Relief for Small Businesses Gets a Boost and Even More So Under the CARES Act

By David H. Freedman

For many small companies facing financial issues, the restructuring or workout process can be challenging. This is particularly true in a Chapter 11 bankruptcy where the complexity, costs, fees, and length of process may eliminate a Chapter 11 reorganization as a viable option.

In an effort to alleviate some of these historical challenges, a new federal law became effective on February 19, 2020 known as the Small Business Reorganization Act (SBRA). It is intended to provide a faster, and a more compact and practical way for small businesses to successfully reorganize their operations in a Chapter 11.

SBRA amends Chapter 11 of the Bankruptcy Code and is part of a newly created Subchapter V. Some of the highlights relating to small businesses under SBRA (and expanded under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)) include:

- Available for a small business debtor¹ with aggregate non-contingent, liquidated, secured and unsecured debts (excluding affiliates and insiders) up to \$2,725,625 (increased up to \$7,500,000 under the CARES Act until March 27, 2021 at which time it will return to \$2,725,625 unless extended or amended by Congress). SBRA is not available to single-purpose entities such as a single-asset real estate company.
- Only the debtor can file a proposed Chapter 11 plan, which must typically be filed within 90 days of the date of the bankruptcy filing. A disclosure statement is not required.
- A trustee is appointed primarily to assist in facilitating a consensual Chapter 11 plan, but the debtor retains control of its assets and operations.
- There is no unsecured creditors committee (unless ordered by the court for cause).
- There is no “absolute priority” rule. A Chapter 11 plan can be confirmed

without the support of any impaired class of creditors as long as the plan does not discriminate unfairly and is deemed to be fair and equitable with respect to each class of creditors.

- The debt repayment period is 3 to 5 years. All debts do not need to be paid in full. To be fair and equitable, the Chapter 11 plan must provide that all or a portion of the future earnings or other future income be applied to making payments under the plan.
- Eliminates the “new value” rule. Owners can retain their equity interest in the business without paying creditors in full or contributing to the plan.
- If all of the payments required under the confirmed Chapter 11 plan are made, the remaining pre-bankruptcy debts of the debtor are discharged.

Small businesses that need relief from their creditors and related financial burdens should carefully evaluate all of their restructuring options, particularly under SBRA which makes Chapter 11 more accessible. With the debt limitation cap substantially increased under the CARES Act up to \$7,500,000 (at least until March 27, 2021), it is anticipated that many small businesses that have been impacted by COVID-19 and other matters will be able to take advantage of the benefits offered under SBRA.

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