
Considerations for Businesses Seeking to Take Advantage of SBRA Benefits

By Julie Beth Teicher

We previously **profiled the SBRA**, the new Small Business Reorganization Act, which was enacted to provide a simplified Chapter 11 on an expedited timeline for debtors with aggregate secured and unsecured debt as of the filing date of no more than \$2,725,625, exclusive of debt owed to an affiliate or an insider. At least 50% of the debt has to arise from commercial or business activities of the debtor. The debt limit was expanded by the CARES Act to \$7,500,000.00.

A case filed under SBRA is still a Chapter 11 case, but filed under Subchapter V. If a company is having financial issues but is concerned about the costs of a Chapter 11, filing under Subchapter V may be a good option, as it is designed to streamline the reorganization process. Among the considerations of whether a Subchapter V is the right course of action are the following:

(i) Does current management want to continue to operate the debtor? Subchapter V provides that the debtor will continue to operate its business, with the same powers as a debtor-in-possession in a Chapter 11 case.

(ii) Is the debtor able to put together a plan relatively quickly? In the Subchapter V case, the debtor is the only party that can file a plan, and the plan has to be filed within 90 days of the bankruptcy case being filed. But, the debtor must be ready to discuss the plan within 60 days of filing the case.

(iii) Will the debtor's operations provide sufficient funding of a plan over a period of 3 to 5 years? The debtor will need to commit its projected net disposable income to the plan.

(iv) What is the likelihood that the debtor will be able to get the consent of all creditors to the proposed plan? If the creditors don't consent, there is still the opportunity to get a plan confirmed over the creditors' objections, but it may be more difficult.

(v)How much is presently owed to creditors? Should the company act now to take advantage of the \$7,500,000 debt limit? Presently, the raised debt limit will end on March 27, 2021, unless it is further extended or adjusted by Congress.

If your company is having issues paying its creditors, you should seek the advice of our **Bankruptcy, Restructuring and Debtor-Creditor Rights Practice Group** immediately. In addition to a Chapter 11 bankruptcy proceeding under Subchapter V, other options may be available, in and outside of the courtroom setting. But waiting until things are really bad can severely limit your options. We are also prepared to assist with appropriate collection actions if your company is a creditor of a company that is having financial problems. Similarly, the earlier you seek our assistance, the greater the number of approaches that may be available. Regardless, it is important that you keep good records. The better organized your company is when seeking our assistance in a debtor/creditor situation, the more efficient the process.

Maddin Hauser has substantial experience in all bankruptcy and non-bankruptcy matters on behalf of debtors, creditors, lenders, landlords, vendors, customers, owners and others. Please contact any member of our **Bankruptcy, Restructuring and Debtor-Creditor Rights Practice team** for assistance.