

## Expanded Restructuring Opportunities for Small Business Debtors

Legal professionals and their clients have long lamented that the complexities of chapter 11 bankruptcies and resulting high costs frustrate and often prevent restructure. In response, Congress amended the bankruptcy code, adding Subchapter V, a streamlined reorganization designed for the small business in financial distress. These amendments are referred to as the Small Business Reorganization Act (SBRA) and were signed into law on August 23rd, 2019 and became effective as of February 20, 2020.

### **SMALL BUSINESS REORGANIZATION ACT OF 2019**

The SBRA was constructed to create an option for small business between chapter 11 and chapter 7 bankruptcies. The act aims at lowering the costs, simplifying the procedures, and providing greater flexibility in plan confirmation requirements to help small businesses survive bankruptcy and regain control of their operations.

Under this act, the definition of small business debtor in the section 11 USC 101(51D) limits the applicability of the statute to individuals or business entities with debt initially not exceeding \$2,000,000 (excluding debts owed to one or more insiders or affiliates). The \$2,000,000 limitation is subjected to adjustment to reflect changes in the Consumer Price Index (and was effectively 2,725,000 when the SBRA came into effect). The Subchapter V election is made at the time of filing a petition for relief. It is the debtor's obligation to invoke the application of the Subchapter V provisions asserting the filing meets the thresholds for the small business debtor. Some other key provisions of SBRA include the following:

#### 1. Increases a debtors ability to reorganize and maintain control of the business

Under SBRA, owners of small businesses can retain a stake in the company as long as the plan is "fair and equitable" and does not "discriminate unfairly" with respect to each class of claims or interests. Maintaining an equitable interest without paying in full senior classes creditor classes or in the alternative bringing new value to the business has proved a major stumbling block to reorganization under a Chapter 11. The ability to reorganize and maintain an equitable interest is a significant departure from Chapter 11. Further, the small business debtor's plan can be confirmed as long as it provides for all the projected disposable income of the debtor to be received in the 3 to 5 year period of scheduled plan payments over all creditor's objections. Liquidation of nonexempt assets must also be provided as an alternative if plan payments cannot be made. Assuming plan payments are made, a discharge of pre-petition debts must be entered.

#### 2. Reduces unnecessary procedural burdens and costs for the debtors

As per the SBRA, debtors can retain control over the business operations and avoid significant extra costs of the traditional chapter 11. In addition the act provides that a creditors' committee will not be appointed unless ordered by the bankruptcy court which in turn will help the debtors avoid the additional expenditure incurred. In chapter 11, the filing and approval of the disclosure statement is a critical step in achieving reorganization. The statement is a detailed document aimed at informing the creditors about key stipulations in the debtor's plan. With SBRA in effect, the debtor is no longer subjected to preparing a disclosure statement and going through the approval process, thereby avoiding this costly and time consuming obligation.

#### 3. Increases oversight and ensures quick reorganization

With this act in effect, a trustee will be appointed for every small-business case performing duties similar to a chapter 13 trustee and ensuring that the business stays right on track. Under chapter 11, the debtor has an exclusive but limited right to file a reorganization plan. If the period to file the plan expires, the creditors are free to file a competing plan of their own. However, under the SBRA only debtors are permitted to file a plan of reorganization although the time is shortened to 90 days. Ultimately, by lowering the costs and simplifying the process of plan confirmation, SBRA provides an easier way for small businesses to thrive.

## **SMALL BUSINESS BANKRUPTCY ACTS AS AMENDED BY THE CARES ACT, 2020**

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) went into effect on March 27th, 2020. In addition to addressing the economic impacts of the pandemic, the law also included amendments to the bankruptcy code. The changes are as follows:

1. The SBRA debt limit increased. The CARES act temporarily amends the SBRA to increase the debt threshold for small businesses eligible to file under the SBRA from \$2,725,625 to \$7,500,000 (excluding insider or affiliate debt).
2. The amendment has been designed as a short-term resolution. One year after the date of enactment, the term "Debtor" will return to its original definition under 11 U.S.C. 51(D) to reinstate the \$2,000,000 limitation (as adjusted by the Consumer Price Index).
3. Excluded from monthly income for purposes of determining disposable income are payments made under Federal Law relating to the National Emergencies Act concerning COVID-19. Thus, relief received under other provisions of CARES remains protected.

## **THE COVID-19 IMPACT**

Small businesses are feeling the drastic effect of COVID-19 as a result of shelter-in-place orders, lost foot traffic and social distancing. The government has offered several programs as lifelines to small businesses. The Economic Injury Disaster Loan offers disaster assistance loans for up to \$2 million to businesses that have sustained "substantial economic injury." By doing this, the government hopes to provide support to small businesses to overcome temporary loss in revenue. Furthermore, the government allocated \$660 billion for Payroll Protection loans. These loans do not have to be re-paid assuming the money is used for accepted expenses, such as payroll. Although the government is providing Disaster Assistance Loans and Paycheck Protection Program Loans, that doesn't prevent businesses from landing in the bankruptcy court. For many businesses, this will only prolong the inevitable. For others, they might not have been able to secure a loan in the first place due to the competitive nature.

## **STRATEGIC PLANNING FOR COMMERCIAL LENDERS**

According to the Wall Street Journal, advisers and lawyers with extensive experience in corporate bankruptcies in the U.S. are anticipating a surge in debt restructurings and chapter 11 filings due to the economic disruption caused by pandemic. Furthermore, the timely implementation of the SBRA and the COVID-19 amendments has widened eligibility and has made Subchapter V a very appealing choice. Experts are unsure of when the predicted deluge will hit, it may take weeks or months. However, these professionals are urging banks to start planning now.

As a result, many organizations are trying to identify and evaluate legal partners that are capable of managing a sudden influx of small business bankruptcies. Unlike other creditor-supporting Chapter 11 law firms, AIS Law utilizes integrated data and technology to supply premium legal services at a much lower cost.

AIS' proprietary bankruptcy database allows creditors to receive proactive notification for any small business customers who filed for bankruptcy. AIS Law specializes in the administration of bankruptcy cases including services such as: case status review, 341 meeting attendance, plan review analysis, negotiations, objections to plan, hearing attendance and case monitoring.

## **ABOUT AIS LAW**

AIS Law, LLP, a Washington, D.C. based law firm, provides default legal services within the mortgage, auto finance and credit card financial verticals. We are revolutionizing the way law is practiced by blending personalized service with cutting-edge technology. Our proprietary software, Legal Trac, is designed to capture data directly from the source with direct input into pleadings and documentation. Thus, capitalizing on our clients' needs for accurate and responsive resolutions. AIS Law is unique in its incorporation of technology not merely to aid or enhance the lawyers work product, but specifically to reduce legal fees incurred by its clients. While maximizing the developments in technology, AIS Law maintains the tradition of personal service to its clients with a network of retained counsel, attorneys active in the courts in which the clients' matters are addressed.