The Small Business Reorganization Act of 2019 and the CARES Act: Expanded Restructuring Opportunities for Small Business Debtors

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), signed into law March 27, 2020, and the Small Business Reorganization Act of 2019 (SBRA), which went into effect Feb. 19, 2020, provide options for small business debtors considering chapter 11 bankruptcy protection. Designed to alleviate costs and create greater efficiencies in the chapter 11 process, the SBRA was modified by the CARES Act to raise the maximum qualifying debt level from approximately $2.7 million to $7.5 million, through March 27, 2021. This temporary modification expands the eligibility to file for chapter 11 utilizing the SBRA to thousands of additional small businesses during what is a time of unprecedented economic volatility**Key**

Provisions of the SBRA, as Modified by the CARES Act

- As set forth above, the cap for small business debtors seeking relief pursuant to the SBRA increased from $2,725,625 to $7.5 million.
- To be eligible, a debtor cannot be a single asset real estate company, cannot be affiliated with other debtors with combined debt exceeding $7.5 million, and cannot be publicly traded.
- A debtor is not eligible if it is “an affiliate of an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. section 78c).” This restriction does not expire with the other CARES Act modifications.
- The SBRA provides for the appointment of a standing trustee to assist in overseeing the development and confirmation of a plan. Such party will not be a traditional examiner or chapter 11 trustee.
- Only the debtor may file a chapter 11 plan, and it has 90 days to do so. A disclosure statement will generally not be necessary, provided the plan itself contains adequate information.
- A court can confirm a debtor’s plan without the vote of any impaired accepting class so long as the plan does not discriminate unfairly and it is “fair and equitable.” The term “fair and equitable” is modified such that, to be fair and equitable a chapter 11 plan must provide that all of the debtor’s disposable income received during the length of the plan will be applied to

make payments under the plan for a period of three to five years.
- A creditors' committee will generally not be appointed unless the court for cause orders otherwise.
- The general prohibition on equity holders of a debtor retaining their interests without paying creditors in non-consenting classes does not apply to debtors filing under the SBRA.
- Finally, although not a component of the SBRA, multiple recent changes to existing preferential transfer law under section 547(b) of the Bankruptcy Code may result in a reduction in the number of preference lawsuits filed in small business bankruptcies.

The SBRA, as temporarily modified by the CARES Act, provides a potentially valuable instrument for those eligible small businesses facing liquidity issues that are searching for a quicker and more cost-efficient option than a traditional chapter 11 restructuring. However, small businesses with debts exceeding the $2,725,625 maximum qualifying debt level under the SBRA (expanded to $7.5 million temporarily through the CARES Act) must be mindful that this expansion is set to expire March 27, 2021, at which time $2,725,625 will once again become the maximum debt level.

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