

Municipal Bankruptcies: An Overview and Recent History of Chapter 9 of the Bankruptcy Code

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The City of Detroit filed for protection under chapter 9 of the Bankruptcy Code on July 18, 2013,^[1] becoming the largest municipality to ever file for bankruptcy. Detroit's bankruptcy filing presents numerous complicated issues, which will be resolved over the course of the case.

This advisory provides an overview and history of chapter 9 of the Bankruptcy Code, beginning with a discussion of the various substantive provisions that govern (i) chapter 9's eligibility requirements, (ii) case administration issues that arise in chapter 9 cases and (iii) the requirements for confirming a chapter 9 plan of adjustment. Next, the advisory discusses significant chapter 9 cases since the Orange County bankruptcy case in 1994—the largest municipal bankruptcy at the time. Finally, since many municipal bonds are insured, the advisory provides an update on the major monoline insurance companies—most of which have been placed into rehabilitation proceedings due to their own financial challenges. At the end of this advisory is a chart that compares the key provisions of chapter 9 to counterparts of chapter 11.

I. Chapter 9 Case Issues

a. Eligibility Requirements (§ 109(c))

Section 109(c) of the Bankruptcy Code sets forth the requirements to be eligible to file as a chapter 9 debtor. Specifically, a debtor must establish that it (i) is a municipality, (ii) has specific authorization to file, (iii) is insolvent, (iv) wants to adjust its debts through a plan and (v) meets one of four creditor-negotiation requirements.