



Business Viewpoint to the COVID-19 Legislation

Posted by Don Navarro on April 9, 2020

Small businesses have been devastated by the COVID-19 pandemic crisis. We suggest you add as a topic the COVID-19 legislation to the topics for your upcoming “Expert Webcast”. This is a very hot topic given the current COVID-19 crises and resulting business environment, and its effect on small businesses.

This legislation has three parts so far: Phase I enacted March 6, 2020; Phase II enacted March 18, 2020, and Phase III enacted March 27, 2020. The *Coronavirus Aid, Relief and Economic Security (CARES) Act*, enacted in Phase III provides for, among other things, US Government 100% guaranteed loans to small businesses that are delivered through the SBA. These amendments are likely to greatly increase small business Chapter 11 filings. We believe this is a very hot topic given the current COVID-19 crises and resulting business environment and its effect on small businesses.

Through its enactment of both the CARES Act and the Small Business Reorganization Act of 2019 ("subchapter V" or the "SBRA"), Congress has provided the small businesses and Debtors with several quicker, more effective, and less expensive statutory tools with which to achieve a debt restructuring. Under pre-CARES Act law, only persons or companies carrying secured and unsecured debt totaling \$2,725,625 or less could file avail themselves of the provisions of subchapter V. Congress raised the subchapter V debt ceiling to \$7,500,000. The increased ceiling will remain in place for a one year period, unless extended by Congress.

SBRA took effect February 19, 2020, just as the COVID-19 pandemic was hitting the United States. SBRA provides small business debtors with several advantages they did not enjoy in traditional chapter 11 cases. Subchapter V provides meaningful benefits to a Debtor. Key among these benefits to a Debtor:

- SBRA cases can be concluded more quickly and efficiently than traditional chapter 11 cases.
- In a subchapter V case, the reorganization process is accelerated and shortened. The debtor must file a plan of reorganization within 90 days after the commencement of the case.
- Disclosure statement is not required.
- Standing trustee is appointed to facilitate the case.
- Debtor had exclusive right to file a plan of reorganization within 180 days after commencement of case. 180-day "exclusivity period" can be extended in certain circumstances.
- SBRA cases are less expensive than traditional chapter 11 cases.
- No committee is appointed unless the bankruptcy court finds “cause” to appoint a committee.

- SBRA cases should have much shorter duration than traditional chapter 11 cases.
- Only the Debtor can file a plan of reorganization giving a Debtor more control over its financial destiny.
- Under subchapter V a Debtor can pay such administrative expenses, including the fees of the standing trustee that is appointed in the case, over a three to five-year in accordance with the plan of reorganization.

Financially troubled small businesses should make every reasonable effort to restructure its balance sheet and restructure its debt obligations consensually and out-of-court if at all possible before commencing a Chapter 11 bankruptcy case.

Authored By



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