

## **New Small Business Bankruptcy Provisions**

**Effective on February 19, 2020**

For many years, the United States Bankruptcy Code has featured special provisions for administering small business bankruptcies. Unfortunately, the provisions were too cumbersome and expensive for most small businesses to afford. However, relief is on the horizon. Congress has recently amended the Bankruptcy Code to provide more streamlined and less costly provisions for administering small business bankruptcy cases. The amendments are contained in the new Chapter 11, Subchapter 5. For the first time in memory, small business bankruptcy may now provide the relief Congress may have intended, but failed to provide. The new amendments will take effect on February 19, 2020.

Under the new law, a “small business debtor” will be defined as any debtor engaged in commercial business activities, excluding a single asset real estate debtor, whose total secured and unsecured debts are less than \$2,725,625 (which limit will be adjusted for inflation after April 1, 2021). This definition includes individuals and business entities, such as corporations, partnerships, and limited liability companies. For debtors who qualify, and affirmatively elect this treatment, the new Subchapter 5 eliminates or substantially modifies many of the expensive and cumbersome requirements that a small business debtor must meet under current law. The most relevant changes are as follows:

- (1) Small business debtors will no longer be required to draft and obtain court approval of a lengthy disclosure statement to explain what is contained in the plan of reorganization;
- (2) The formation of an unsecured creditors committee will no longer be required;
- (3) Small business debtors will not be required to pay quarterly U.S. Trustee’s fees (which are now an expensive burden);
- (4) Though creditors will be entitled to vote to accept or reject the debtor’s plan of reorganization, the court will be permitted to confirm the plan of reorganization even without affirmative acceptance of acceptance of the plan by any class of creditors;
- (5) The requirement of “absolute priority” is eliminated. This change will allow business owners to maintain ownership and control without paying creditors in full, upon a finding by the court that the plan is fair and equitable. In general, that means that all net cash flow is devoted to the payment of creditors for a fixed period of time, after deducting the reasonable and necessary expenses of running the business. For individual debtors, this deduction includes the money reasonably necessary of the support of the debtor and his/her dependents. The removal of the requirement of absolute priority diminishes creditor leverage and will reduce the amount the debtor would otherwise have to offer through the plan to buy creditor support.

These new changes should make Chapter 11 quicker, cheaper, and far more useful for the small business debtor. They are long overdue. We look forward to the opportunity to advise small business debtors regarding the new Subchapter 5 and to assist them in using these valuable new reorganization tools.