



BANKRUPTCY CODE CHANGES UNDER CARES ACT

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The provisions of the Bankruptcy Code have been carefully crafted to strike a balance between a debtor's right to seek a "fresh start" in the face of emergent circumstances against a creditor's right to expect prompt payments of debts as they come due. Because the Bankruptcy Code exists to achieve this balance in the face of a business's or individual's financial crisis, any modification of the Bankruptcy Code to address the COVID-19 outbreak speaks to the extraordinary nature of the Federal Government's response to the pandemic.

On March 25, 2020, the Senate passed the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") by a unanimous vote of 96-0 of those present. If the bipartisan CARES Act, as expected, becomes law, it will bring significant changes to the administration of bankruptcy cases around the country.

The most noteworthy change will impact small business debtors. By coincidence, the Small Business Reorganization Act (the "SBRA") became effective on February 19, 2020, creating the new subchapter V to Chapter 11 of the Bankruptcy Code. The SBRA was intended to create a court-supervised form to reorganize that was more appropriately tailored and streamlined for small businesses, which would, in-turn, save jobs and increase recoveries to creditors. Under the SBRA prior to the CARES Act, a small business was only eligible to file under subchapter V of Chapter 11 if its debts fell below the threshold of \$2,725,625. The CARES Act will increase this debt threshold to \$7,500,000, thereby making the provisions of the SBRA accessible to substantially more small business debtors. This change in the debt limit applies only to cases filed after the CARES Act becomes effective and is applicable for one year after the CARES Act becomes effective. After one year, the debt threshold will return to \$2,725,625.

As to individual debtors, there will be several additional meaningful changes. Under the CARES Act, the definition of "income" for Chapter 7 and Chapter 13 debtors under the

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Bankruptcy Code will exclude payments from the Federal Government related to COVID-19. Similarly, Chapter 13 debtors will be allowed to exclude COVID-19 related payments from disposable income for purposes of confirming a Chapter 13 plan. Debtors currently in a Chapter 13 case will also be allowed to request modifications of their Chapter 13 payment plans on account of material financial hardship imposed by the global pandemic.

These are unprecedented times. Financial crises can cause inertia, and inertia can make financial crises worse. Best practice in the face of crisis is to be proactive and understand the tools available to you and your business.