In response to the COVID-19 pandemic, President Donald J. Trump signed into law the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) to provide a $2 trillion economic stimulus package to support U.S. businesses and individuals impacted by COVID-19. The CARES Act includes revisions to certain provisions of the U.S. Bankruptcy Code in an effort to provide better and more effective bankruptcy relief to small businesses and individuals during this unprecedented time.

**More small businesses will qualify for a more streamlined and affordable bankruptcy process under the Small Business Reorganization Act of 2019.**

The CARES Act amends the Small Business Reorganization Act of 2019 (the “SBRA”), which became effective February 19, 2020, to temporarily increase the debt threshold for filing for relief under the new Subchapter V of Chapter 11 of the Bankruptcy Code from $2,725,625 of debt to $7,500,000. The eligibility threshold will revert to $2,725,625 after one year. The SBRA is designed to enable small business debtors to reorganize their financial affairs in a more efficient and cost-effective manner while also maintaining more control over their businesses.
Historically, Chapter 11 reorganization has not been a viable option for most financially struggling small businesses due to the length and unmanageable expense of the process. Some of the key features of the SBRA are as follows:

- Debtors (businesses or individuals) with at least 50% of their debts being commercial debt and total debts not exceeding $7.5 million are eligible to file for relief under Subchapter V of Chapter 11 of the Bankruptcy Code.

- Subchapter V debtors can take advantage of many of the protections of Chapter 11 without being subject to the same timelines. In an SBRA case, the bankruptcy process will be quicker. In fact, the deadline for filing a plan is just 90 days (versus 120 days in a Chapter 11 case) after the case is commenced.

- Subchapter V debtors are not obligated to pay quarterly U.S. Trustee’s fees, which in a traditional Chapter 11 case can be significant.

- In an SBRA case, a creditors committees will generally not be appointed. Among other things, this will help to minimize the chances of disputes and distractions that a Subchapter V debtor might face in a Chapter 11 case.

- A standing trustee will be appointed in every SBRA case. The trustee’s supervisory role will include: (i) helping the Subchapter V debtor to formulate a plan; (ii) reporting fraud or misconduct, and (iii) and monitoring distributions under the plan. Unlike a trustee that might be appointed in a Chapter 11 case, a SBRA trustee is not concerned with operating the Subchapter V debtor’s business. Instead, the trustee’s goal is to help the debtor resolve issues with creditors and move the SBRA case along.

- In an SBRA case, only the debtor is permitted to file a plan of reorganization, eliminating the risk of competing plans being filed by creditors.

- In an SBRA case, a disclosure statement is not required, unless the Court orders otherwise.

- A Subchapter V plan may be confirmed even if all impaired classes vote to reject the plan. In a regular Chapter 11 case, a Court cannot confirm the plan unless at least one impaired class of unsecured claims votes to accept the plan.

- Unlike a typical Chapter 11 debtor, in an SBRA case, a small business debtor may stretch payment of administrative expense claims out over the term of the plan.

- Equity holders may be able to keep their equity interests in the business without the need to contribute new value because there is no “absolute priority rule” under Subchapter V. This means that business owners can keep their interests in the company even if unsecured creditors will not be paid in full under the plan.

More consumers will receive greater bankruptcy benefits and protections.
The CARES Act also amends certain provisions under Chapters 7 and 13 of the U.S. Bankruptcy Code to help consumers who will be or have been financially harmed by the COVID-19 pandemic. The key changes that consumers should be aware of are as follows:

- Chapter 13 debtors with existing confirmed plans who have suffered a “material financial hardship” due to COVID-19 will be allowed to seek plan modifications, including extending their payments for up to seven years after their first plan payment was due, thereby reducing their monthly payment obligation.

- Coronavirus related payments received by families and individuals from the federal government, as a result of the CARES Act and other stimulus, will not be included in the definition of “income” for eligibility purposes, nor will such payments be included in the calculation of “disposable income” for plan confirmation purposes. This change is designed to permit consumer debtors to receive the full benefit of stimulus payments.

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