

CREDITOR'S RIGHTS TOOLKIT

What Is the Life Cycle of a Chapter 11 Bankruptcy Case and Why Do Stakeholders Need to Pay Attention to the Bankruptcy Case? (Part II)

A Chapter 11 bankruptcy, often called “reorganization bankruptcy,” is typically utilized to preserve and maximize the going concern value of the debtor’s business. The life cycle of a Chapter 11 bankruptcy case can be conceptualized in five stages. It is important for creditors, contract parties, and other parties-in-interest to understand these stages and how their rights and financial interests can be affected during the bankruptcy case. Part I of this series focused on the three stages: prepetition planning, filing petition and “first days” of a Chapter 11 case, and the middle stage of a Chapter 11 case. Part II of this series focuses on the middle and final stages of a Chapter 11 proceeding, which typically involves confirmation of a plan and post-plan administration.

Key Issues

STAGE 4: CHAPTER 11 PLAN + PLAN CONFIRMATION

- **CHAPTER 11 PLAN**

The debtor has the exclusive right to propose a plan within 120 days of the petition date, subject to possible extensions. A Chapter 11 “plan” is effectively a negotiated contract providing for global resolution of a financially distressed company’s pre-bankruptcy liabilities and outlines specific treatments for obligations to stakeholders, including secured and unsecured creditors, contract parties, equity holders, and other constituents. While some plans provide for the company to emerge from bankruptcy operating a business as a financially stable entity, in other cases, where the company has sold substantially all of its assets as part of the bankruptcy, the plan may be a plan of liquidation. Importantly, a plan can alter a creditor’s rights, including through third-party releases and prohibiting setoff and recoupment.

- **DISCLOSURE STATEMENT**

Accompanying the Chapter 11 plan, the disclosure statement provides a summary of essential information regarding the debtor’s assets, liabilities, organization, creditor claim classifications and treatment, and procedures for soliciting votes (referred to as a “solicitation

package”). The disclosure statement is designed to equip creditors with the necessary information to decide whether to accept or reject the plan.

- **PLAN CONFIRMATION**

During the plan confirmation phase, the debtor solicits votes from eligible parties and requests court approval of the plan. Creditors who receive a solicitation package will have a deadline to object to the plan if they so choose, and should thoroughly review the plan and disclosure statement to assess the impact on their claims or interests. The debtor must satisfy specific Bankruptcy Code requirements for plan confirmation, ensuring that dissenting creditors receive at least as much as they would under Chapter 7 liquidation. The plan must be “fair and equitable” and avoid “unfair discrimination” among creditor classes. This means the plan can be confirmed despite dissent, provided it treats similarly situated creditors equally (*i.e.*, one general unsecured creditor not treated better than another), adheres to statutory distribution priorities (*i.e.*, secured claims higher priority and paid before lower priority unsecured claims), and otherwise complies with the Bankruptcy Code.

STAGE 5: POST-CONFIRMATION ADMINISTRATION

- **IMPLEMENTING THE PLAN**

Post-confirmation administration of a bankruptcy estate involves implementing the confirmed plan of reorganization or liquidation. These activities include (i) reviewing, reconciling, and objecting to claims; (ii) distributing assets according to the terms of the plan; and (iii) in some cases, commencing and prosecuting adversary proceedings. In reorganized cases, the company remains in control of its business and may take control of implementing the plan. In cases involving liquidation, these tasks are handled by a plan administrator, liquidating trustee, or reorganized debtor. The post-confirmation phase can be lengthy, often taking months or even years to complete, depending on the complexity of the estate and the nature of the claims and assets involved.

Takeaway

A creditor should actively engage during the plan confirmation phase, reviewing all plans and disclosure statements, so that they can timely object where necessary, timely vote if applicable, and take any other necessary steps such as opt-outing of third-party releases, if applicable. Once confirmed, the plan’s provisions are binding on both the debtor and creditors. Post-confirmation, a creditor should continue to monitor the case for any pleadings that may affect its interests, including objections to proofs of claim if applicable. To the extent that the creditor receives an objection to claim, a litigation demand, or other notice from the post-confirmation estate, it is critical that the creditor act timely to protect its rights.