

## ***CARES Act Provides Limited Bankruptcy Relief***

On Friday, March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), which provides \$2 trillion in economic stimulus for industries and individuals faced with challenges from the COVID-19 coronavirus. The legislation is over 850 pages and amends several provisions of title 11 of the United States Code (the “Bankruptcy Code”) by providing financially distressed small businesses and individuals with greater access to bankruptcy relief.<sup>1</sup>

### ***Amendments to the Small Business Reorganization Act of 2019***

The primary amendment to the Bankruptcy Code for businesses under the CARES Act is to subchapter V of chapter 11 of the Bankruptcy Code, which is a subchapter of chapter 11 known as the “Small Business Reorganization Act of 2019” or “SBRA” that became effective on February 19, 2020.

Prior to the enactment of the SBRA, small businesses had to choose between chapter 7 liquidation or chapter 11 reorganization, which was expensive and often resulted in liquidation in any event. Under the SBRA, however, “small business debtors” with less than \$2,725,625 in debt have a third option that marries features from chapter 7 and 11 in order to lower costs and streamline the plan confirmation process.<sup>2</sup> Specifically, a debtor opting for relief under chapter 11 as a “small business debtor” will operate as a debtor-in-possession but will do so under the supervision of a trustee tasked with facilitating the development of a consensual reorganization plan. The SBRA also lowers costs of administration by eliminating the requirement that a creditors committee be formed; streamlines the plan confirmation process by eliminating the requirement to file a disclosure statement and granting plan exclusivity to the debtor; eliminates the requirement that at least one impaired class accept the plan in the absence of unfair discrimination and unfair and inequitable treatment; eliminates the absolute priority rule; permits administrative expenses to be paid over time and not on plan effectiveness; and allows a debtor to cram down lenders on the value of residential collateral used for business loans.

The CARES Act increased the eligibility threshold for filing under the SBRA from \$2,725,625 to \$7,500,000 for a period of one year through March 27, 2021.<sup>3</sup> This increase will provide many small businesses with much needed access to the SBRA and will give them a less-expensive reorganization path while also reducing likely liquidations and saving jobs.

### ***Amendments for Debtors Filing Under Chapters 7 and 13***

The CARES Act also amends the Bankruptcy Code, for a period of one year, to assist individual chapter 7 debtors (liquidation) and chapter 13 debtors (wage earner plan) as follows:<sup>4</sup>

- The first amendment excludes from the Bankruptcy Code’s definition of “income” any coronavirus-related payments received under federal law for the purposes of determining chapter 7 or 13 eligibility;

- The second amendment excludes coronavirus-related payments made under federal law from the calculation of disposable income for purposes of confirming a chapter 13 wage earner plan; and
- The third amendment explicitly permits individuals and families to seek amendments to their confirmed chapter 13 wage earner plan if they are experiencing a material financial hardship due to the coronavirus pandemic, which amendments may include extending their payments for up to seven years after their initial plan payment was due.

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If you have any questions, please feel free to contact any of your regular contacts at the firm or any of our colleagues under “Business Restructuring + Insolvency” in the “Business + Finance” section of our website ([www.mofo.com](http://www.mofo.com)).

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<sup>1</sup> The amendments to the Bankruptcy Code are set forth in section 1113 of the CARES Act. The CARES Act also contains certain technical corrections to the Bankruptcy Code not discussed in this alert memorandum.

<sup>2</sup> The SBRA excludes certain categories of debtors from eligibility such as public companies and affiliates of those issuers, and single asset real estate cases. The CARES Act does not amend those exclusions.

<sup>3</sup> *See* CARES Act § 1113(a)(1). The debt eligibility limit does not take into account debts owed by the debtor to one or more affiliates or insiders. Moreover, 50 percent or more of the debt must be the result of the debtor’s business or commercial activities, and be noncontingent and liquidated at the time of filing.

<sup>4</sup> *See* CARES Act § 1113(b).