

CHAPTER 11 BANKRUPTCY FACT SHEET

(Current as of April 30, 2020)

A Chapter 11 bankruptcy proceeding can be an effective tool for preserving your small business as a going concern and temporarily suspending creditor actions, including lawsuits, against your business and its assets. However, Chapter 11 can be costly, requires a significant time investment, and could cause business disruption and reputational harm. You should consult with legal counsel before filing for Chapter 11, to understand if this is the best option for you and your business.

Below is a brief overview of the (i) eligibility requirements for commencing a Chapter 11 case; (ii) Chapter 11's options for small businesses; (iii) the Chapter 11 case process; and (iv) some key factors to consider as you contemplate pursuing a Chapter 11 proceeding for your small business.

1. Eligibility and Filing Requirements for Chapter 11

- Any individual or company (including most corporations, partnerships and limited liability companies) that resides in or has a place of business or property in the United States can file as a debtor.
- There is no requirement that a debtor be unable to pay its debts.
- The debtor may file a petition with the bankruptcy court located in the jurisdiction where the debtor's domicile, residence, principal place of business or principal assets have been located for the 180 days prior to filing.
- Certain materials must be included with the debtor's filing, including financial information with respect to the debtor.
- The debtor will be required to pay a \$1,167 case filing fee and a \$550 miscellaneous administrative filing fee. A debtor that is an individual may apply to pay each fee in installments.

2. Eligibility for Subchapter V or a Small Business Case

- If your business qualifies as a "small business debtor", it will be eligible to file a Subchapter V case or a "small business case" under Chapter 11, either of which may be quicker and more cost-efficient than a regular Chapter 11 case.

- A “small business debtor” must (i) be engaged in business activities (but your primary business activity cannot be owning single asset real estate) and (ii) owe no more than \$2,725,625 in debt (for subchapter V cases only, this amount has been increased by the CARES Act to \$7,500,000 in debt for a one-year period), 50% or more of which must arise from commercial or business activities, excluding debts owed to insiders or affiliates.
- To proceed under Subchapter V or as a small business case, the debtor must make an election on its petition. It can be difficult to withdraw or alter an election after filing.

3. Overview of Chapter 11 Case

- Upon filing, the debtor will benefit from an automatic stay, which prevents creditor enforcement such as lawsuits and other actions.
- The debtor also has the opportunity to reject certain contracts, including leases.
- The debtor is responsible for a number of costs after filing, including fees to the office of the US Trustee (an oversight unit of the Department of Justice) (not applicable to Subchapter V debtors), ranging from \$325 to \$250,000 per quarter based on the debtor’s quarterly disbursements. Subchapter V debtors are responsible for the Subchapter V trustee’s expenses (not to exceed 5% of all payments under the plan of reorganization).
- The debtor continues to manage its business as a going concern (*i.e.*, for the benefit of all stakeholders) during the Chapter 11 process, unless removed by the court for cause, but generally will need court permission to act outside the ordinary course of business.
- The debtor’s ultimate goal is to achieve confirmation of a plan of reorganization, and emerge as a viable business concern.

4. Other Considerations

- The decision to file for bankruptcy is a complex one that should not be taken without the advice of legal counsel. Bankruptcy can be an expensive and time-intensive process involving frequent reporting and mandatory court appearances.
- Before filing, consider whether an alternative to Chapter 11 is best for you, including seeking out private or public sources of investment (including federal loans and grants under the CARES Act), liquidation of your business under Chapter 7 or attempting to restructure your debt out of court. In a Chapter 7 bankruptcy proceeding (often referred to as a liquidation bankruptcy), the debtor’s nonexempt assets are liquidated to pay its creditors – learn more [here](#).