BANKRUPTCY

Chapter 11 Overview

Chapter 11 bankruptcy allows for a "reorganization" of the company, and is available to most corporations, partnerships, and limited liability companies. Chapter 11 is generally the most complex and expensive form of bankruptcy. Unlike a chapter 7 bankruptcy, where the trustee takes control of all of the company's assets and sells them, in a chapter 11, you have the opportunity to stay in control of your company while you reorganize the company's debts and try to reemerge as a healthy organization.

Upon filing, your company will be protected by the automatic stay and the company will be relieved from making scheduled principal payments on debt to secured and unsecured creditors.

During the case, you will work with your company's creditors to restructure the company's debts and obligations in a written plan of reorganization. The plan may include downsizing your business operations to reduce expenses, as well as renegotiating of debts. In some cases plans involve liquidating all assets to repay creditors. If the chosen plan is feasible and fair, the courts approve the plan, and the process moves forward. Once the plan is confirmed, it discharges your company from most prepetition debts.

Keep in mind that there is no guarantee that a reorganization will be successful. Many chapter 11 filings result in the sale of all of the company's assets or in the conversion to a chapter 7 proceeding.

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ADVANTAGES:

- You can generally continue operation of your company by performing activities that are in ordinary course of business.
- The plan creates new contract terms between the company and creditors, can reduce the debt, and permits payments over time, which is helpful for a small business debtor who needs extended payment terms on real property mortgages or equipment loans.
- Generally provides the debtor with an opportunity to preserve the going concern value of its business. A successful reorganization can enhance the value of the debtor's assets functioning together as a unit.
- Chapter 11 doesn't require debtors to turn over their disposable income to a trustee.
- You can reject burdensome executory contracts and unexpired leases and preserve the value of favorable ones.
- You have the ability to recover certain payments the company made before the bankruptcy.

DISADVANTAGES:

- Much more expensive than an out-of-court workout.
- Takes much longer than a chapter 7 liquidation.
- There are extensive financial record keeping and reporting requirements, with mandated public court filings.
- You must show a profitable operation when the debts and obligations are reorganized.
- You must pay fees for your attorney and other professionals (such as an accountant, investment banker or other financial consultants, and the unsecured creditor's committee).
- You are not guaranteed control of your company during your case; you may be displaced by the appointment of a trustee to run your company if there is fraud or gross mismanagement by you, or your company's management.
- If there are not enough resources to pay all creditors in full, you risk losing your equity in the company to creditors.