

Bankruptcy ALERT

Developments in Bankruptcy Law



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Advantages of Chapter 11

Companies that are facing seemingly insurmountable financial difficulties can often turn to chapter 11 for relief. Some of the key advantages of filing chapter 11 to successfully resolve a company's financial woes are:

- **Automatic Stay:** The filing of a chapter 11 petition will, by operation of law, prohibit creditors from taking or continuing with any and all collection actions.
- **Freezes Pre-Petition Debt:** Upon the filing of a chapter 11 petition, the debtor is prohibited by law from making payments on its pre-petition debt, thus providing an immediate benefit to the cash flow of the business.
- **Restructuring of Secured Debt:** Under chapter 11, secured debt may be restructured by lowering the interest rate on the obligation, extending its maturity, or both. In certain circumstances, the amount of secured debt can be written down to the value of the creditor's collateral.
- **Extend Payment of Tax Debt:** Tax debt to the federal or state government may be paid in installments over a five-year period dating from the bankruptcy petition date.
- **Reduced Unsecured Debt:** In the typical chapter 11 case, a committee of unsecured creditors is appointed to represent the interest of all unsecured creditors. The debtor negotiates with the committee for a reduction in its unsecured debt to a manageable level and a repayment on the reduced amount that is consistent with the debtor's ability to pay. It is not uncommon for a substantial amount of debt to be forgiven with the realization that if the debtor is forced to shut down and liquidate, creditors will get a zero return.
- **Assume or Reject Contracts or Leases:** Debtors under chapter 11 can rid themselves of unfavorable contracts or leases, such as equipment leases, real estate leases and long-term contracts, or assume contracts or leases that were previously in default.
- **Recovery of Payments or Repossessions and Avoidance of Liens:** If a debtor makes payments as a result of collection pressure or has its assets liened, attached or repossessed within 90 days of a bankruptcy filing, the payments may be recovered and the liens, attachments or repossessions may be avoided as "preferential transfers."
- **Sell Property Free and Clear of Liens:** Debtors can use the chapter 11 process to sell any or all of their assets whether or not they are encumbered by security interests or other liens. The bankruptcy court has the authority to order that the sale be free and clear of any security interests or liens.

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