

Strategies for Businesses to Mitigate the Expected Financial Fallout from COVID-19

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To state that COVID-19 is affecting the health of the economy is an understatement. The resulting travel bans, business closures, cancellations of major events, and turmoil across global stock markets are already causing a significant economic impact which may get worse before it gets better. Small businesses may have a particularly difficult time weathering the crisis because they have less room to downsize and fewer assets available to meet immediate needs. The impact on businesses, especially small businesses, may affect their ability to fulfill their obligations to landlords, suppliers and lenders. This crisis will undoubtedly lead to an increase in bankruptcy filings by both individuals and businesses.

Coincidentally for small businesses, in August 2019, President Donald Trump signed into law a new subchapter of the Bankruptcy Code known as the Small Business Reorganization Act, or SBRA. The new law, which became effective in February 2020, will make it easier and cheaper for small businesses with no more than \$2,725,625 in secured and unsecured debt to take advantage of a bankruptcy filing. SBRA simplifies the plan process for small businesses and makes it easier for owners to retain equity. This new law will facilitate an increase in small business filings as a result of the crisis.

In this environment, there are steps that business people can and should be taking now to help mitigate the eventual financial fallout and better position yourself if your borrower, tenant or customer files a bankruptcy petition. All business people should contact suppliers, customers, lenders, landlords and tenants to address any concerns and plan for the near term. Communication can be one of the best paths going forward.

Lenders should monitor their borrower's financial health and ask about the borrower's expectations of the short and long term impact on their business. Be diligent in requesting financial reports required under loan documents and, depending on the circumstances, you may want to ask your borrower to submit a business recovery plan. Also be alert to the financial health of any guarantors. Lenders' concerns if their borrower files a bankruptcy petition include how collateral will be valued based on different interpretations of a company's distress caused in part by COVID-19 and its ability to continue as a going concern, which can yield vastly different valuations.

Landlords generally have strong protections when tenants file a bankruptcy petition, but be aware that the bankruptcy court may extend the tenant's obligation to pay rent for 60 days from the filing date. Notwithstanding strong bankruptcy protections, landlords may be better off renegotiating with tenants now rather than having the tenant lose the space and the landlord lose income while seeking a new tenant. A reduced rent or rent free period that helps a tenant survive the crisis may be better off for everyone in the long-term.



All creditors should be concerned about the danger of a preference lawsuit seeking to recover payments made by a business within 90 days of filing a bankruptcy. There are strategies that can help to reduce this risk. For one, this is certainly not the time to apply any collection pressure.

Ultimately, in this difficult time for everyone, please be assured that we at Saiber are here to help. Saiber's team of lawyers has broad experience advising businesses in all aspects of the financial matters that will result from this crisis and we are ready to assist you.