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Chapter 11 Meets Year of the Rat

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The global proliferation of the COVID-19 pandemic coincided with the Chinese New Year denoted and symbolized as the *Year of the Rat*. Ironically, the previous *Year of the Rat* was 2008; recall that was the advent of the last globa recession. So, beware of the *Year of the Rat.*

As observed by many, the current worldwide financial downturn (yet to be classified as a recession or depression) unlike others, was precipitated by an organic virus, as opposed to a financial bubble or other economic catalyst. This atypical cause and devastating effect are uncharted for which there is no playbook. The inverse correlation of COVID-19 containment and the resulting assumed economic recovery are also still unknown. The longer the duration of the pandemic with the shuttering of businesses, the less likely there will be a robust return to normalcy. The historic CARES Act stimulus package, hopefully, will provide a bridge to financial survival, both to individuals and small businesses. But survivability is neither assured nor necessarily sustainable in the long term. Other skill sets and tools are also important ingredients in the recipe for sustainability.

Fortuitously and well before the COVID-19 pandemic, Congress passed a significant amendment to chapter 11 of the Bankruptcy Code. This recent legislation may provide an important tool to deploy in appropriate circumstances. The Small Business Reorganization Act of 2019 ("SBRA") was designed to facilitate, expedite and reduce the expenses associated with traditional chapter 11 cases. Oftentimes, the traditional chapter 11 process was too overwhelming, expensive and tedious for smaller businesses that otherwise may have benefited from a debt restructuring scheme. SBRA is significant since it has been reported that in excess of 95% of businesses within the United States are small businesses. Under SBRA, a business with total liquidated, non-contingent debts of $2,725,625.00 or less is eligible to file under this section and avail itself of its truncated and streamlined process. With the overlay of COVID-19 and in concert with the CARES Act, Congress further amended the debt ceiling to $7,500,000.00 for twelve months. Single real estate asset businesses and publicly traded companies are excluded.

One of the persistent challenges for a struggling small business is to access loans and generate sufficient revenue to stay alive. Smaller enterprises' ability to develop a plan to "earn" their way out of debt historically has been extremely challenging and usually insurmountable. Now, the confluence of the federal government providing substantial liquidity into capital markets, that translates into favorable credit terms through the CARES Act (and any subsequent legislation that may be enacted), coupled with the utilization of SBRA may prove to be an excellent formula for small businesses to regain their footing. These new sources of funding can be a viable source for supporting a reorganization plan under SBRA. However, two important caveats are important to note; the CARE Act has restrictions on the availability of loans for businesses currently in chapter 11 and there are also restrictions for companies that are insolvent, based upon a financial analysis to be determined. The latter limitation may be oxymoronic in the sense that a business that is shut down for an extended period of time could be considered insolvent.

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As both SBRA and the CARES Act are brand new, the possibilities are vast. At Lippes Mathias, our experienced team of financial restructuring attorneys are well equipped and prepared to assist small and large businesses with reorganizing, surviving and meeting a brave new world. With any questions, please contact the attorney with whom you work or any of the attorneys below.

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