



Subchapter V of the US Bankruptcy Code

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In 2019 Congress enacted Subchapter V of the Bankruptcy Code, which became effective on 19 February 2020, and was intended to provide a more streamlined procedure for smaller businesses to seek relief similar to Chapter 11 but at reduced costs. A small business is defined as a person (individual, partnership or corporation) engaged in commercial or business activities that has an aggregate of non-contingent liabilities in a fixed amount . As part of the CARES Act, the debt limits for companies to qualify for Subchapter V were temporarily increased from USD 2,725,625 to USD 7,500,000. It is important to note, however, that the business must be operating to file for Subchapter V.



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There are a few key differences/benefits of Subchapter V, some of which can provide savings for cash-strapped companies: (i) only the debtor can file a plan; (ii) there is no need to file a disclosure statement; (iii) there are reduced requirements for information to be provided to creditors; (iv) while a trustee is appointed upon commencement of the case, if a consensual plan is proposed the Trustee is removed; (v)



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there can be no creditor’s committee; and (vi) plans are due 90 days from filing, absent cause to extend.

There are also a few key provisions in a traditional Chapter 11 case that have been removed. For example: (i) plan confirmation does not require an impaired consenting class to vote in favor of the plan; (ii) the absolute priority rule, which precludes equity from retaining their interests in the absence of full payment to unsecured creditors (or consent to treatment) is eliminated; and (iii) the standards for determining if a plan is fair and equitable have been modified. Some of these requirements provide fodder for creditors to challenge plans. There are also some unanswered questions that remain on certain key areas, such as (i) pursuit of avoidance actions; (ii) what happens if the debtor does not propose a plan; and (iii) what are the Trustee’s duties. Answers to these and other questions either be fleshed out over time in modifications to the Code or caselaw.

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