

COVID-19 and Economic Uncertainty: Preparing for Anticipated Bankruptcy Issues

The coronavirus pandemic and its unprecedented effect on the U.S. and global economies will make bankruptcy and related challenges an increasingly visible part of business operations and risk forecasting—for companies, investors, and vendors or creditors—for the foreseeable future.

Some companies and individuals may need to file for protection, while others will have to seek payment from vendors or other business partners that file. Others may find themselves the target of bankruptcy trustees bringing preference actions—seeking a return of payments that were rightfully made to them by a vendor in the immediate months before that company filed for bankruptcy protection.

No matter your position in the marketplace, as the rhythms of business and life are disrupted by the coronavirus outbreak and its evolving economic fallout, it will be useful to prepare to face a range of possible bankruptcy-related issues. Here are two simple things your company can do in anticipation:

1. IDENTIFY AT-RISK BUSINESS PARTNERS AND LIKELY CANDIDATES FOR BANKRUPTCY

Do you have a customer who has fallen behind in making payments they owe you?

Has your company made payments to a customer or vendor who seems like they are in a financially precarious position?

Is there a company increasing or heightening their efforts to collect funds from you?

If so, now is a good time to take an inventory of your relationship with these entities, both historically and currently, to help determine what preparations might be helpful. Be mindful that there are three main roles in most bankruptcies: the debtor, the creditor, and a trustee. And the U.S. Bankruptcy Code operates with a strict set of rules—some of which deny common sense, but are nonetheless binding. Anticipating your role in a possible bankruptcy and your relationship with other entities involved will help simplify the process later.

2. COLLECT AND DOCUMENT

Much like all legal matters, bankruptcy-related issues rely on documentation and proof. Whether you need to file a claim, defend a preference action, or object to a reorganization plan, you need all the documentation you can collect for support.

In particular, locate and organize documentation including:

- Contracts between the parties
- Payment history going back one year
- Communications regarding payment plans, changes in terms, or “handshake” agreements
- Outstanding invoices
- Proof of “new value” extended (*i.e.*, when a supplier provides new goods or services to help a customer/business partner keep functioning)
- Documents revealing any patterns that exist between the parties (*i.e.*, seasonal fluctuations that pertain to payment history)
- More frequent or different requests for payments on invoices that your company owes—particularly within a 90-day period prior to any one company filing for bankruptcy

Goldberg Segalla’s Bankruptcy, Restructuring, and Creditors’ Rights team can help clients identify potential issues far in advance or prepare for bankruptcy strategy and documentation challenges at any time. Being prepared for these issues before they emerge will help facilitate a smoother process once the court gets involved.

While the economy is uncertain, the rules of the Bankruptcy Code are clear. Reach out and we will help you navigate them.

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