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A Beacon in a Storm: Responding to the COVID-19 Financial Crisis

Legal Update

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Given our expertise and ability to respond quickly and act decisively in a crisis, the Fredrikson & Byron Bankruptcy, Restructuring & Workouts Group determined that the greatest impact that we can have on our community is to share our financial crisis expertise and some of the tools that we utilize to advise clients in troubled times. While the information and materials are summary in nature, we hope that they can assist in beginning the process to bridge to better days. The key to surviving through the COVID-19 crisis is to act proactively and quickly. We stand at the ready to assist wherever we can help.

As proven in the depths of these prior crises, individuals and businesses can best chart a path forward by:

1. Assess the current financial situation, including available cash, credit and any other forms of liquidity;
2. Prepare financial models—best case, middle case and worst cast—that conserve as much cash as possible and prioritize those obligations that are most critical;
3. Establish near-term and long-term goals and a plan of action to implement them;
4. Communicate that plan of action to critical constituents—such as employees, banks, landlords and critical trade-vendors; and
5. Work to implement that plan, ideally through the art of persuasion but if need be through legal or other tools.

It is important to consider all available resources and developments—all of which are changing at unprecedented speed. Current important resources and developments for individuals and business facing economic uncertainty from COVID-19 include:

Stimulus Bill—“CARES Act”

The White House, Senate and House reached an agreement on a \$2 trillion plus stimulus package—the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”). The CARES Act became law on Friday, March 27, and includes:

- Direct payments of \$1,200 to most individuals making up to \$75,000 or \$2,400 for couples making up to \$150,000. The amount decreases for individuals with incomes above \$75,000, and payments cut off for those above \$99,000.
- Expanded unemployment benefits that boost the maximum benefit by \$600 per week for four months and add up to 13 weeks of extended benefits, plus a new unemployment assistance program to provide jobless benefits to those who are independent contractors, self-employed or unemployed
- \$500 billion in loans or loan guarantees, including "Payroll Protection Loans" available from the SBA that may be forgivable and which are discussed in greater detail below
- \$120 billion for hospitals
- \$150 billion for state and local governments
- Suspended federal student loan payments by borrowers through September 2020
- Protection of certain residential loan borrowers and certain tenants from foreclosures and evictions for several months
- Tax credit for retaining employees, worth up to 50 percent of wages paid during the crisis, for businesses forced to suspend operations or that have seen gross receipts fall by 50 percent from the previous year
- Delayed payroll tax for employers, requiring half of the deferred tax to be paid by the end of 2021 and the other half by the end of 2022
- Increased debt cap for small business debtors under Subchapter V of Chapter 11 from approximately \$2.7 million to \$7.5 million which sunsets after a year

While the size and speed with which the stimulus package was enacted has been unprecedented, it may not provide the immediate cash flow relief that businesses and individuals need. However, understanding how and when the package may affect a business or its industry will be critical. We will continue our study of the CARES Act for the benefit of our clients.

Regulatory Relief

Federal financial institution regulatory agencies and the state banking regulators issued an interagency statement encouraging financial institutions to work constructively with borrowers affected by COVID-19. This joint statement provides greater prospect for borrowers to obtain modifications like payment deferrals, fee waivers and repayment term extensions without the loan being treated as a troubled credit (FDIC joint statement). Many clients have already contacted lenders to seek immediate relief on loan terms.

Access to SBA Credit—Economic Disaster Loans and Payroll Protection Loans

The U.S. Small Business Administration (SBA) is offering designated states and territories low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of COVID-19. In addition, the SBA is offering “payroll protection” loans of up to \$10 million to qualifying business that employ up to 500 people. Provided the loan proceeds are used for qualified purposes, such as payroll and operating expenses, the loans may be forgiven up to the principal balance. Our Banking Group has prepared a summary of the payroll protection loans along with answers to frequently asked questions.

Employer & Employee Guidance

Our Employment & Labor Group has prepared summaries of what employers and employees need to know relating to the Families First Coronavirus Response Act, and practical guidance for addressing the evolving challenges presented by COVID-19. That information and additional COVID-19 information is available at the Employment & Labor Group page.

Relief from Contracts

Certain contractual provisions—such as force majeure—or other generally applicable legal rights—such as impossibility of performance—may provide individuals and businesses bases for relief from obligations of landlords, suppliers or other contract counter-parties. In short, these concepts allow a party to avoid liability for a breach when an intervening event outside of the control of the individual or business renders performance impossible. These legal rights are very fact specific so parties must review carefully any applicable contractual provisions. This careful review and consideration may provide a foundation from which to reach consensual arrangements with counter-parties, such as landlords and suppliers, to defer or reschedule current and near-term obligations.

Court Availability and Relief

Courts across the country are issuing specific orders to manage their caseloads during the crisis. Courts are generally restricting matters to be heard to those that are truly an emergency, with most hearings occurring by telephone. Also, governors are issuing orders staying certain parties from obtaining relief. For example, the Minnesota Governor has issued an executive order staying residential eviction actions and requesting lenders to implement an immediate moratorium on all pending and future foreclosures. (Our Real Estate Group’s summary of the executive order) We are tracking and summarizing executive orders issued in Minnesota and other states. These and other orders will impact not only the ability of a business to operate but also the relief that creditors or other constituents may obtain.

Legal Processes

Today, more than ever, it is incumbent upon businesses and their advisors to have command of legal alternatives available—ranging from out of court workouts to Chapter 11 bankruptcy—to fully inform and assess the complete spectrum of viable options to develop and implement a strategy to achieve the desired goals of each situation. A chart comparing out of court workouts, receivership, assignment for benefit of creditors, Chapter 7 bankruptcy, Chapter 11 bankruptcy, Article 9 foreclosure and dissolutions is available [here](#) (Bankruptcy and Alternatives Chart). This chart provides an overview of the purpose and characteristics of each option, including an analysis of how quickly these options provide resolution, whether judicial oversight exists and the authority governing the action. It is a guide to advising a business in distress about the many options that exist for the turnaround, sale of assets or other resolution.

Best wishes for a healthy and successful journey through this difficult time.