

About Chapter 11

Chapter 11 is the portion of the U.S. Bankruptcy Code that establishes a legal procedure for a court-supervised restructuring of a company's obligations. Chapter 11 provides a way for companies to address their financial issues while continuing normal day-to-day operations.

Filing to Restructure Under Chapter 11

A Chapter 11 case is commenced by the filing of a Chapter 11 petition. A company usually takes this action to protect its business and ensure continued operations while it addresses its financial (and sometimes operational) challenges.

A Chapter 11 filing immediately freezes all legal and financial claims against the company that precede the filing and precludes creditors from exercising control over the company's property. A Chapter 11 restructuring is entirely different from other kinds of bankruptcy proceedings where the focus is on liquidating the company. Companies commonly file for Chapter 11 voluntarily because it provides a process for the company to emerge as a viable business.

During a Chapter 11 case, a company maintains its normal business operations and continues to provide employees with compensation and benefits. It is also able to do business with suppliers and customers in a routine manner so that it can continue to generate funds to support ongoing operations and to satisfy creditors.

Filing of First-Day Motions and First-Day Hearing *(usually within first day or two of case)*

On the same day the Chapter 11 petition is filed, a company usually files several "first-day motions" with the court. These first-day motions are designed to ensure that the company can maintain normal business operations with employees, suppliers, customers and other stakeholders. Many of the first-day motions are administrative in nature, and others are more substantive, such as a motion to continue paying compensation and benefits to employees (which is routinely granted by the Court) and a motion to obtain new debtor-in-possession (DIP) financing.

The court considers the first day motions at a "first-day hearing" that usually takes place on the first or second day of a Chapter 11 case. The Court issues "first-day orders" approving the first-day motions – in some instances on an interim basis until a "final" hearing is held within a few weeks (usually the case for DIP financing), and in some instances on a final basis without the need for a final hearing (usually the case for employee compensation and benefits).

Appointment of Official Creditors' Committee *(usually within first two weeks of case)*

After the company files to restructure under Chapter 11, a government agency, the Office of the U.S. Trustee, appoints an official Creditors' Committee. The Creditors' Committee typically includes anywhere from 5 to 11 of the company's largest unsecured creditors. The U.S. Trustee will usually try to include several types of creditors (e.g., trade creditors, banks, bondholders, etc.) so that the Creditors' Committee is a representative body. Normally, this Committee becomes involved in the Court process to represent the interests of all unsecured creditors and ensure that they are treated fairly.

Meeting of Creditors (*usually within first month or two of case*)

A joint meeting of company representatives and people who believe the company owes them money (called the 341 meeting because it is required under section 341 of the U.S. Bankruptcy Code) typically occurs approximately 30-65 days after a Chapter 11 filing. A notice of the 341 meeting, along with notice of the commencement of the case, will be mailed to all creditors within the first few weeks of the filing.

Notice to Creditors of Bar Date (*usually within first 4-6 months of case*)

Another major step in the Chapter 11 process is providing notice to anyone who believes they are owed money, that is, people who have a financial claim against the company. Notice procedures, which normally include advertising, are established. Notice is given to people with claims alerting them that their claims must be brought forward, by filing a "proof of claim," by a certain date that is referred to as the "bar date." Claimants are usually provided with a period of time from the date of the notice to file their proofs of claim.

Development of plan of reorganization (*time frame varies from case to case*)

Meanwhile, the company, as the debtor, will begin to develop a business plan and negotiate with its creditors to formulate a reorganization plan. The company has the exclusive right by law to propose such a plan of reorganization during the first 120 days of the Chapter 11 process. If the company is proceeding in good faith, the exclusive period may be, and usually is, extended by the Bankruptcy Court.

Once the Court has gathered all of the claims that resulted from the bar date notice, hearings are held to determine the value of any claims that are disputed. Once the plan of reorganization is formulated and documented, it will be filed with the Bankruptcy Court.

Presentation of Disclosure Statement to Bankruptcy Court (*time frame varies from case to case*)

Along with the plan of reorganization, a Disclosure Statement with complete financial information is presented to the Court. The Disclosure Statement also explains the company's proposed plan for paying its creditors. The Bankruptcy Court must determine if the Disclosure Statement contains adequate information for the creditors to decide whether to vote to accept or reject the plan of reorganization. If the Disclosure Statement

is approved by the Court, the company will then send it, along with the proposed plan of reorganization, to all creditors and interest holders in the company. Those parties can then vote on the reorganization plan.

Voting on the Plan and Confirmation (*time frame varies from case to case*)

The company will then seek Bankruptcy Court approval, or confirmation, of its plan of reorganization. If the plan is confirmed by the Court, the claims of creditors will be satisfied as provided for in the plan. At this point, the company can emerge from Chapter 11 as a reorganized company and operate its business as described in its plan of reorganization.