Appendix A – Comparing Chapter 9 and Chapter 11

|  |  |  |
| --- | --- | --- |
| **Bankruptcy Code/Rules Provision** | **Chapter 9** | **Chapter 11** |
| Commencing a Case (§§ 301 and 303) | A chapter 9 case can only be commenced by filing of a voluntary petition. | A chapter 11 case can be commenced by the filing of a voluntary or involuntary petition. |
| Eligibility to be a Debtor  (§ 109) | A chapter 9 debtor must demonstrate that it is eligible to be a chapter 9 debtor by establishing that it:   * is a municipality; * has specific authorization to file; * is insolvent; * wants to adjust its debts through a plan; and * meets one of four creditor-negotiation requirements.   A group of creditors often object to a chapter 9 debtor’s petition on the grounds that the debtor is not eligible to file. | Generally, any individual, corporation, partnership or LLC is eligible to be a chapter 11 debtor.  Exceptions include:   * insurance companies; * insured banks; * stockbrokers; * commodity brokers; and * municipalities.   It is rare for a group of creditors to challenge an entity’s eligibility to be a chapter 11 debtor. |
| Automatic Stay and Additional Stay (§§ 362 and 922(a)) | The automatic stay applies in a chapter 9 case and stays all actions filed against the debtor and its property.  Section 922(a) of the Bankruptcy Code also stays actions against officers and inhabitants of the chapter 9 debtor if such actions seek to enforce a claim against the debtor. | The automatic stay only acts to stay actions against the chapter 11 debtor and its property.  Generally, actions against non-debtors are not stayed as a result of a bankruptcy filing. |
| Schedules and Statements (§§ 501, 924 and 925; Bankruptcy Rule 1007) | A chapter 9 debtor does not need to file any schedules of assets and liabilities or a statement of financial affairs.  However, a chapter 9 debtor is required to file a list of the creditors holding the 20-largest unsecured claims.  A chapter 9 debtor also must file a list of all of its creditors.  Any claim listed on the list of creditors is a proof of claim deemed filed under § 501, unless filed as contingent, disputed or unliquidated. | A chapter 11 must file schedules and a statement of financial affairs. |
| Retention of Professionals (§ 327) | A chapter 9 debtor does not need bankruptcy court approval in order to retain professionals. | A chapter 11 debtor does need bankruptcy court approval in order to retain professionals. |
| Professionals’ Compensation (§§ 327–330, 901(a) and 943) | A chapter 9 debtor is not required to pay for the professionals employed by an official committee or the costs of the committee. | In a chapter 11 case, sections 328 through 331 provide the statutory basis for allowing administrative claims for professionals, including those retained by creditors committees. |
| Use, Sale or Lease of Property (§ 363) | A chapter 9 debtor can use, sell or lease its property without bankruptcy court approval or oversight. | A chapter 11 debtor cannot use, sell or lease property outside of the ordinary course without bankruptcy court approval. |
| Rejecting Collective Bargaining Agreements (§§ 365 and 1113) | Section 1113 of the Bankruptcy Code does not apply in a chapter 9 case.  The rejection of collective bargaining agreements is governed by section 365 of the Bankruptcy Code, as informed by *NLRB v. Bildisco & Bildisco.* | Section 1113 of the Bankruptcy Code limits a chapter 11 debtor’s ability to unilaterally reject a collective bargaining agreement. |
| Retiree Benefits (§ 1114) | Section 1114 of the Bankruptcy Code does not apply in a chapter 9 case.  A chapter 9 debtor may unilaterally stop paying for or otherwise modify retiree benefits. | A chapter 11 debtor must timely pay retiree benefits or satisfy various requirements in order to modify such benefits. |
| Preference Actions (§§ 547 and 926(b)) | While a chapter 9 debtor may generally avoid preferential transfers, there is an exception for payments or transfers of property to bondholders. | A chapter 11 debtor may avoid preferential transfers made to bondholders. |
| Post-Petition Effect of Security Interest (§ 552) | A pre-petition pledge (or security interest) in special revenue bonds continues to attach to revenue acquired post-petition. | Generally, property acquired after the commencement of a case is not subject to any lien resulting from a pre-petition security agreement. |

|  |  |  |
| --- | --- | --- |
| Nonrecourse Claims (§§ 927 and 1111) | Section 1111(b) of the Bankruptcy Code does not apply in chapter 9 cases.  Special revenue bondholders do not have recourse against chapter 9 debtors and, therefore, will not have allowed claims. | A nonrecourse claim secured by a lien on property of the estate is allowed or disallowed pursuant to section 502 of the Bankruptcy Code unless the holder of such claim makes an 1111(b) election. |
| Priority Wage Claims (§ 502(a)(4)) | Section 502(a)(4) of the Bankruptcy Code does not apply in chapter 9 cases.  Claims for unpaid wages are not entitled to priority in a chapter 9 case. | Claims for up to $11,275 in unpaid wages, salaries or commissions, including severance, are entitled to priority. |
| Exclusivity (§§ 941 and 1121) | Only a chapter 9 debtor may file a plan of adjustment.  There is no deadline for filing a plan of adjustment unless the bankruptcy court orders one. | A chapter 11 debtor has the exclusive right to file a plan of reorganization during the first 120 days of the case.  The chapter 11 debtor’s exclusivity period may be extended or terminated for cause. |
| Plan Requirements (§§ 943 and 1129) | A chapter 9 debtor can only adjust its debts through a plan.  A municipality cannot liquidate in chapter 9. | A chapter 11 debtor may either reorganize or liquidate through a plan. |