



Chapter 11 bankruptcy: Protecting your business during tough times

By: Paul Hammer Esq.

Operating a business can be difficult, particularly in Puerto Rico's fluctuating economy. And, while some businesses flourish, many unfortunately face times of financial uncertainty or hardship at some point. When a business has struggled or failed to bring in a profit over a period of several months, filing for Chapter 11 bankruptcy may be the only feasible alternative to get out of debt, allowing better financial security to be achieved.



There are many advantages to Chapter 11.

Automatic stay: The automatic stay is helpful for debtors who are facing aggressive collection action by creditors, and is the first step in reorganization. The debtor benefits from an injunction of all lawsuits, foreclosures, repossessions, bank levies, wage garnishments and other collection activities.

Avoidance and recovery of certain involuntary transfers: Once a debtor is under bankruptcy protection, it can avoid and recover certain bank levies, wage garnishments, lien notices and even repossessions of vehicles or equipment that occurred prior to the filing.

Preservation of a going concern: Debtors who are operating a business can continue operations. This means that the business name, goodwill and customer base are not lost.

Temporary deferral of obligations incurred pre-petition: Debtors may be able to temporarily defer making certain rent or installment debts.

Cure defaulted or accelerated obligations: Debtors can cure defaults on obligations such as mortgages or leases. Often, when a borrower defaults on legal obligations, the lenders "accelerate" that obligation. This means that the lender asks that the entire amount of the debt be paid in one lump-sum payment. Debtors may be able to cancel the debt acceleration, and return the obligation to pre-default status.

Assume or reject executory contracts and unexpired leases: Debtors may be able to "pick and choose" those equipment leases, real-estate leases or other long-term (or "executory") contracts they wish to maintain. Debtors can reject any contract that they believe is not economically profitable.

Sell property free and clear of liens and interests: Debtors can sell assets that are encumbered by liens. The court has authority to allow a buyer to purchase those assets free and clear of the encumbrances.

Extend payment of unsecured tax debts: The Bankruptcy Code allows debtors to extend payment of unsecured tax debts for up to five years.

Borrow post-petition: Debtors may be able to borrow money to finance their reorganization.

As shown above, bankruptcy offers flexibility to the resolution of economic obstacles faced by the common businessowner.

Prepa

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energy to retail customers, this letter is a request for arbitration by the Energy Affairs Administration," Marley added.

Law 73 names the Energy Affairs Administration as the arbitrator in such cases. Once a request is deemed legitimate, the agency has 60 days to make a decision, with a 30-day extension possible, Maeso said, adding that, on the face of it, RPD's request for arbitration appears justified.

The agency's decision could establish an important precedent, mandating that Prepa enact reasonable wheeling regulations, but Maeso acknowledged it could likely be challenged further in the courts.

Prasa sought a determination of wheeling tariffs from Prepa as early as February 2010, but its request was never answered. In the summer of 2010, Prepa held public hearings on a draft of the wheeling regulations, but developers criticized the documents because they didn't provide sufficient numbers and calculations to determine the proposed tariff charges.

In February 2011, at RPDs' request, Prepa provided a wheeling-tariff estimate of about 2¢ per kilowatt-hour (kWh), but the next year, Prepa released a revised wheeling proposal that would push its estimated cost up to 7¢ to 9¢ per kWh, according to developers. Here, too, Prepa failed to include all the necessary data for a potential client to calculate the entire final rate.

Last April, RPD asked Prepa for an interconnection request and made a presentation to Prepa Planning & Environmental Protection staff. The request was rejected, with Prepa officials saying a grid safety study for a large number of renewable-energy projects hadn't been completed and they didn't have time to evaluate the RPD request. They also said the rejection was partially based on the fact that wheeling regulations had yet to be approved, although it is Prepa that is required to draw them up and approve them.

After attempts to have Prepa reconsider its request for interconnection, which weren't answered, RPD decided to seek arbitration, Marley told CARIBBEAN BUSINESS.

"We have tried to work with Prepa in the past, and we are still willing to work with Prepa in the future. We are just trying to find a resolution to this as provided by law," Marley said, adding that it was important to not only establish just wheeling regulations, but that they are reasonable and justified.

"All of Puerto Rico has been waiting since 2010 for the wheeling regulations," Prasa Executive President Alberto Lázaro told CARIBBEAN BUSINESS.

In 2012, former government officials and industry executives were discussing proposed wheeling rates of 6¢ per kWh for solar, 5¢ per kWh for wind and 4¢ per kWh for baseline power sources,



Prepa has been mandated by a 2008 law aimed at fostering Puerto Rico's economic development to lease out its grid to private power producers.

such as WTE or natural gas, which were hailed at that time as reasonable.

RPD is trying to develop distributed recycling and WTE facilities that would produce power from municipal waste and wheel the energy produced to Prasa, with any excess production being sold to Prepa or perhaps other industrial customers.

Each distributed plant would have capacity of 10 megawatts to 20 megawatts, Marley said. The company's power-purchase agreement calls for up to 60 megawatts.

Marley said each project would create 200 to 250 construction jobs, as well as about 50 permanent jobs, of various skill levels, once the distributed recycling and WTE facilities begin operations. If fully developed, project investment could surpass \$300 million.

RPD uses a "thermal gasification" technology that is proven cleaner than incineration methods, and because its project would develop smaller distributed recycling and WTE facilities, rather than a single large one, the project could help stabilize Prepa's power grid, Marley said.

While Prepa would be paid for leasing out its grid to private producers, under wheeling it would face competition for the first time. Proponents say this would open the door for more private energy developers to provide solutions that would bring down energy costs for their customers, who are likely to be big business clients.

Widespread wheeling could increase the exodus of some of Prepa's most lucrative customers, many of whom are building their own onsite plants to bring down their power bills (CB April 10). ■



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