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## ALERT: THINGS TO CONSIDER IN RESTAURANT RESTRUCTURINGS

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The restrictions implemented during the COVID-19 pandemic have forced restaurants and bars to discontinue or significantly curtail their business operations, jeopardizing financial stability and future business viability. Restructuring in Chapter 11 may help to resolve financial challenges and preserve business operations. Recent changes to the Bankruptcy Code have also streamlined the Chapter 11 process, making the process more cost effective and less time consuming for those restaurants and bars that meet the expanded eligibility criteria to file for Chapter 11 relief through Subchapter V of the Bankruptcy Code. Whether planning for a standard Chapter 11 restructuring or a restructuring under new Subchapter V, several provisions of the Bankruptcy Code apply uniquely to or have a greater impact on restaurants, bars and similar entities. Careful planning for a Chapter 11 restructuring must include consideration of, among other things:

- Special rights afforded to suppliers of certain perishable agricultural goods, including fruits, vegetables and livestock, under the Perishable Agricultural Commodities Act (PACA), 7 U.S.C. §§ 499a-t, and the Packers and Stockyards Act (PASA), 7 U.S.C. §§ 181-229b.
- Rapid turnover of perishable restaurant inventory leaving creditors with priority claims for product shipped within twenty days before a bankruptcy case is filed under Section 503(b)(9) of the Bankruptcy Code.
- Need to conserve cash and revenues to pay for future inventory to continue operation and avoid business disruption caused by vendors stopping goods in transit or reclaiming goods once a bankruptcy case is filed.
- Ability to retain or reject franchise agreements, rights available under state franchise protection laws, and the impact of non-compete clauses.
- Strict time limits to determine whether to assume or reject lease of restaurant space and other contracts under Section 365(d)(4) of the Bankruptcy Code.
- Need to comply with non-bankruptcy wage and hour laws, as well as Worker Adjustment and Retraining Notification (WARN) Act requirements, and any state law equivalents.

If your restaurant or bar is facing financial distress, it is important to take action while its assets and revenues are able to support continued operations if restructuring is the goal. If restructuring is not feasible, Chapter 11 also provides the restauranteur the ability to exit the business and maximize value through a sale of the business, as a going concern, free and clear of creditor claims, or to discontinue operations through an orderly liquidation. Dilworth's bankruptcy group has a specific expertise with respect to Chapter 11 and Subchapter V restructuring cases and has assisted many large, mid-size and small businesses with their successful restructuring.



## E-ALERT

If you have questions or wish to discuss your restructuring options, please contact [Anne M. Aaronson](#), [Jennifer L. Maleski](#), or [Yonit A. Caplow](#) or any of the attorneys in our [Bankruptcy Group](#).