

**CALIFORNIA  
LAWYERS  
ASSOCIATION**

**NAVIGATING COVID-19  
CONCERNS: ESSENTIAL  
INSOLVENCY QUESTIONS  
AND ISSUES FOR  
BUSINESS LAWYERS  
AND BUSINESS OWNERS**

Presented by the Business Law Section





# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Insolvency Options

Bankruptcy

Assignment for the benefit of creditors

Workout or composition of creditors

State law dissolution

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Insolvency Options

Liquidation vs. Reorganization

Individual, Entity, or Both?

Differences between Chapter 7, Chapter 9, Chapter 11, and Chapter 13

New Subchapter V

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Small Business Reorganization Act of 2019

Stimulus bill increases debt limit to \$7.5 million non-contingent and liquidated

All the benefits of Chapter 11; lower expense, faster approval

No impaired accepting class is needed

No absolute priority rule; just pay disposable net income for 3-5 years

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Bankruptcy Triggers

Collection activity that cannot be avoided

Turnover of possession rejected

Statute of limitations ending / preferential transfer aging to 90 days

3-day notice or other default cure period is expiring

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Bankruptcy Relief

Filing petition/automatic stay of collection and litigation

Reject executory contracts

Restructure secured and unsecured debt

Corporate and individual discharge

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## First, do your homework

Check regulatory notices relating to your business

Check your insurance – is business interruption kicking into place?

Check downstream and upstream suppliers and customers

Understand and manage management of cash flow

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## OK, still more homework ...

Review leases and determine which clauses are in violation

Review loan documents for defaults

Review all commercial relationships for guaranties and co-signatures

Do a complete assessment of personal liability that might pass through



# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Then, get your house in order

Contact critical vendors and customers

Negotiate rent reduction or holiday with your lessor(s)

Work with your bank toward forbearance

Ensure credit lines are available if needed

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Then, get your house in order

Call your sureties if there are performance and payment bonds

Are the supply chains are covered by insurance?

Will the surety will finish the work?

Document everything; provide notice where practicable; prepare daily project work reports; note and document sick workers

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Then, get your house in order

Plan for downstream bankruptcies of subcontractors or upstream bankruptcies of owners

Hire replacement contractors to move the job forward

Work with contract parties to get funding released directly if possible

Apply to current and not oldest invoice if payments are late

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Extended Deadlines for Filing of Returns and Making Payments

Per IRS and Treasury Department, Tax Day is extended from April 15, 2020 to July 15, 2020 to file and make payments without interest or penalties.

California has also extended the filing and payment deadline for personal and business state tax returns to July 15, 2020.

For any taxpayer anticipating a refund, they should file their returns quickly in order to receive their refund checks as soon as possible.

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## SBA Disaster Grants and Loan Programs

Contact for SBA—

[sba.gov/disaster](https://sba.gov/disaster)

[disasterloan.sba.gov](https://disasterloan.sba.gov)

800-659-2955

[Email—disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov)

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# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Economic Injury Disaster Loan (EIDL)

Low interest loans-

- 3.75% for profit companies
- 2.75% for nonprofit companies
- 30 year term

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Economic Injury Disaster Loan (EIDL)

Application could take 3-4 weeks to process

Funding to occur within 5 days of approval

Loan amount - up to \$2 million

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Governmental Assistance – Tax Relief in Stimulus Bill

Tax credit rebates of up to \$1,200 per individual and \$500 per child that are phased out for taxpayers with AGI over \$75,000 (\$150,000 MFJ and \$112,500 HOH) and will be “rapidly advanced”;

The delay of employer payroll tax deposits for 2020 (50% due by December 31, 2021 and 50% due by December 31, 2022);

A refundable employer retention credit equal to 50% of qualified wages against quarterly employment taxes, to offset up to \$10,000 of wages paid per employee in 2020



# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Governmental Assistance – Tax Relief in Stimulus Bill

The reinstatement of NOL carrybacks for the 2018-2020 taxable years, and repeal of the 80% taxable income limitation for the 2018-2020 taxable years;

A Tax Cuts and Jobs Act (TCJA) technical correction that classifies qualified improvement property as 15-year recovery period, allowing the bonus depreciation deduction to be claimed for such property retroactive as if it was included in the TCJA at the time of enactment;

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## **Governmental Assistance – Tax Relief in Stimulus Bill**

Penalty-free withdrawals of retirement funds of up to \$100,000 (income recognized over a three-year period);

A temporary waiver of Required Minimum Distribution requirements in 2020;

The suspension of charitable contribution limits for 2020;

The deferral of excess business loss limitations until 2021;

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Governmental Assistance – Tax Relief in Stimulus Bill

An increase in the business interest deduction limitations from 30% to 50% of adjusted taxable income for the 2019 and 2020 taxable year;

The acceleration of the corporate credit for prior year minimum tax liability, allowing 100% of the credit to be claimed in 2019 (2018 at the election of the taxpayer); and

A cancellation of debt (COD) exclusion of small business loans forgiven under the Act

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## QUESTIONS?

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# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Speaker Biographies

Mr. Rudolph is a partner in the firm Sullivan, Hill, Rez & Engel, APLC, with offices in San Diego CA and Las Vegas NV. Sullivan Hill has been San Diego's business and trial law firm for more than 50 years. Its practice is centrally focused in the areas of insolvency and commercial bankruptcy, business and corporate transactions, insurance coverage and construction law. Mr. Rudolph's expertise is in the area of small business representation and consultation, creditor rights and remedies, business bankruptcies and fiduciary representation. He is a frequent lecturer state and county wide and an author of numerous bankruptcy related articles.

A complete biography for Mr. Rudolph can be located at <https://.sullivanhill.com/rudolph>

# ESSENTIAL INSOLVENCY QUESTIONS AND ISSUES FOR BUSINESS

## Speaker Biographies

Mr. Harris is a partner in the Silicon Valley bankruptcy boutique, Binder & Malter LLP.

Mr. Harris frequently lectures and writes on bankruptcy topics and has authored numerous articles, case updates, and other materials, including three affirmative legislative proposals that became California law and has presented three programs on the Small Business Reorganization Act of 2019. Mr. Harris has also contributed to a book on the topic of small business bankruptcy and has twice testified before the California State Senate as an expert in the field of bankruptcy and insolvency. Mr. Harris's accomplishments, publications and speaking engagements are detailed at <https://www.bindermalter.com/robert-g-harris.html>.

Mr. Harris' practice focuses on representing large and small businesses and individuals in Chapter 11, both as debtors and creditors, bankruptcy litigation, state court ABCs, receiverships, execution sales and various other bankruptcy and collection matters. Mr. Harris's experience includes real estate restructurings, sales and reorganizations of high tech and general manufacturing companies, dealing with intellectual property rights in bankruptcy, and handling alleged securities laws and Federal Trade Act violations.