



---

# OVERVIEW OF CHAPTER 9

November 22, 2011

NORTH AMERICA EUROPE MIDDLE EAST LATIN AMERICA ASIA



### III. CHAPTER 9 REQUIREMENTS AND CONSIDERATIONS

➤ **Purpose:** Chapter 9 provides financially distressed “municipality” protection from its creditors while it develops and negotiates a plan for adjusting its debts.

➤ **Background:** The Tenth Amendment and Supreme Court have placed severe limitations on the power of the bankruptcy court in Chapter 9 cases which renders the bankruptcy court much less active than in Chapter 11 filings. The processes do vary significantly.

➤ **Eligibility Requirements:** Only municipalities defined as a “political subdivision or public agency or instrumentality of a state” are eligible and must satisfy four threshold requirements to obtain relief:

1. Have specific state authorization to be a debtor under Chapter 9
2. Be Insolvent
3. Desire to effect a plan to adjust debt
4. Satisfy one of the four conditions:
  - Has obtained the consent of at least a majority in amount of impaired claimholders under a proposed plan
  - Has negotiated in good faith but has failed to reach agreement with a majority of impaired claimholders under a proposed plan
  - Negotiation with such claimholders is impractical
  - Has a reasonable belief that a creditor may attempt to gain a preference



### III. CHAPTER 9 REQUIREMENTS AND CONSIDERATIONS(CONTINUED)

- The Chief Judge of the U.S. Court of Appeals will select the presiding bankruptcy judge
- 11 U.S.C. Section 1113 requires collective bargaining before the debtor may reject a union contract. This provision is not part of the Chapter 9 process. A debtor in Chapter 9 may cancel the union contract which is less complex in reducing labor costs.
- Liquidation of assets is not available to creditors. The choice is to accept the debtor's proposal plan, or if the case is dismissed, pursue individual remedies including state litigation.
- A "municipality" may borrow money during a Chapter 9 case as an "administrative expense"
- The U.S. Trustee's role is more limited Chapter 9 cases than in Chapter 11 cases
  - Appoints a creditor's committee
  - Does not examine the debtor at a meeting of the creditors
  - Does not monitor financial operations of the debtor or review professional fees
  - Unless the debtor consents, the day to day operations are not subject to court approval
- "Best Interests of the Creditors" means something different in Chapter 9 than under Chapter 11
  - Reflects the best alternative available to the creditors versus in Chapter 11 where the creditors interests are met if they receive as much under the plan as they would through a liquidation.

# ALVAREZ & MARSAL

[www.alvarezandmarsal.com](http://www.alvarezandmarsal.com)