

American Bankruptcy Institute Commission to Study the Reform of Chapter 11: A Review of Significant Recommendations for Large Chapter 11 Cases

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On December 8, the American Bankruptcy Institute Commission to Study the Reform of Chapter 11 released its [Final Report and Recommendations](#). The American Bankruptcy Institute organized the 23-member Commission in 2011 to study and address how financial markets, products and participants have evolved and, in some respects, outgrown the current chapter 11 framework, enacted in 1978. Since the 19th century, Congress has overhauled the corporate reorganization provisions of the federal bankruptcy law approximately every 40 years, and the 40th anniversary of the enactment of the 1978 Bankruptcy Code is just four years away. The Commission Report, which spans nearly 400 pages, recommends significant changes that seek to reconfigure our corporate insolvency system.

This detailed memorandum reviews 10 broad categories of Commission recommendations we believe will be significant to lenders and investors in large chapter 11 cases. Much of the Report is focused on the role and impact of secured creditors in large chapter 11 cases. While some of the Commission's recommendations may be beneficial to secured creditors, many would constrain the rights of secured creditors as compared to current law. Where the Commission's recommendations go from here is not yet clear. However, whether or not any of the recommendations are enacted, the Report will be the starting point in a long and vigorous debate regarding the reform of chapter 11, and it will likely heavily influence the thinking of practitioners, judges, lenders and stakeholders in large chapter 11 cases going forward.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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