

Appendix A: Comparison of Chapter 9 and Chapter 11 of the U.S. Bankruptcy Code

Chapter 9	Chapter 11
Commencement of the Case	
<ul style="list-style-type: none"> • Municipalities cannot be put into Chapter 9 involuntarily. <ul style="list-style-type: none"> - Only a municipality can initiate a Chapter 9 case. Section 303 of the Bankruptcy Code, which provides for the commencement of involuntary cases, is not applicable in Chapter 9. - A Chapter 9 case cannot be converted to one under another chapter. • Chapter 9 debtors are not required to file schedules or statement of financial affairs. <ul style="list-style-type: none"> - Pursuant to § 924, a Chapter 9 debtor is required to file a list of creditors. - Under § 925, any claim listed on the list of creditors is a proof of claim deemed filed under § 501, unless listed as contingent, disputed or unliquidated. - No reporting requirements. • Publication of the notice of commencement of the case. <ul style="list-style-type: none"> - Section 923 requires publication of a Notice of Commencement for three consecutive weeks in a local newspaper and in a newspaper having general circulation among bond dealers and bondholders. 	<ul style="list-style-type: none"> • Involuntary cases permitted. <ul style="list-style-type: none"> - A Chapter 11 case can be converted to one under Chapter 7. • Debtor required to file schedules and statement of affairs. <ul style="list-style-type: none"> - Under § 1111(a), no proof of claim required unless debt is listed in schedules as contingent, disputed, or unliquidated. - Debtor must submit quarterly statements of disbursements and make other disclosures (Rule 2015). • No publication of notice of commencement of the case required.

Note: This chart was prepared based on materials provided by Marc A. Levinson, Esq., Orrick, Herrington & Sutcliffe LLP, Sacramento, California.

Chapter 9

Chapter 11

- The notice must provide a date by which objections to eligibility must be filed.
- Bankruptcy judge is designated by the chief judge of the circuit rather than by the clerk of the bankruptcy court. § 921(b).
- Judge assigned at random by the clerk of the bankruptcy court.

Eligibility

- Must be a municipality (political subdivision, public agency, or instrumentality of a state). § 109(c)(1).
- Legislative Authority
 - The specific municipality, or municipalities generally, must be authorized under state law to be a Chapter 9 debtor. § 109(c)(2).
 - Certain state statutes contain limitations as to the type of entity that may file (i.e., such as a water district), and some require further approval from the state or a state official prior to any filing.
- Insolvency
 - Debtor bears the burden of proving that it is insolvent as of the petition date. § 109(c)(3). A municipality is insolvent if it is (1) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute, or (2) unable to pay its debts as they become due. § 101(32)(C).
- Must desire to effect a plan to adjust its debts. § 109(c)(4).
- Must satisfy one of the requirements of § 109(c)(5).
- Sole eligibility requirement relates to nature of the debtor (such as railroads and persons eligible to be Chapter 7 debtors). § 109(d).
- No insolvency requirement.

Chapter 9	Chapter 11
<ul style="list-style-type: none">• A bankruptcy judge may dismiss a Chapter 9 petition if the debtor did not file the petition in good faith. § 921(c).• In the event of an appeal from the entry of an order for relief, the bankruptcy court may not delay any proceeding in the Chapter 9 case, nor may any court issue a stay. § 921(e).	<ul style="list-style-type: none">• No statutory good-faith filing requirement.• No Chapter 11 equivalent.

Limitations on Powers of Court

- Because of limitations imposed by the Tenth Amendment to the U.S. Constitution on Congress's power over the states, the Bankruptcy Code provisions with respect to municipality debtors place restraints on the powers of a federal bankruptcy court to interfere with the operations of a municipality.
- State maintains its powers to control municipalities, subject to specific Bankruptcy Code provisions (such as the power to reject contracts). § 903.
- Absent consent by the debtor, the court may not interfere with (1) any of the political or governmental powers of the debtor, (2) any of the property or revenues of the debtor, (3) the debtor's use or enjoyment of any income-producing property. § 904.
- A Chapter 9 debtor does not need court approval to use, sell, or lease property, including cash collateral (§ 363 is not incorporated into Chapter 9).
- Chapter 11 debtors subject to § 363.

Chapter 9

Chapter 11

- The debtor maintains complete control of most of its financial affairs and operations (in bankruptcy, a municipality will still need freedom to operate and provide services to citizens).
- Court cannot appoint an examiner or a trustee (except relating to the recovery of avoidable transfers [§ 926(a)]).
- Trustee or examiner may be appointed.

Limited Role of U.S. Trustee (or Bankruptcy Administrator)

- The U.S. trustee (or bankruptcy administrator) has no general supervisory authority in a Chapter 9 case (reason being that it would be an improper interference with the political and financial affairs of the municipality debtor).
 - Does not examine the debtor at a meeting of creditors—there is no meeting of creditors.
 - Does not have the authority to move for appointment of a trustee or examiner or for conversion of the case.
 - Does not monitor the financial operations of the debtor or review the fees of professionals retained in the case.
- The U.S. trustee's most important role in Chapter 9 cases is to appoint a creditors committee or other committee(s) in the event court orders appointment of a committee.
- The U.S. trustee (or bankruptcy administrator) plays an active role in overseeing the bankruptcy case.
 - Conducts first meeting of creditors.
 - Appoints members of official committees.
 - May move for appointment of a trustee or examiner.
 - May move to convert the case.
 - Monitors financial operations and fee requests from estate professionals.

Chapter 9

Chapter 11

Case Administration

- Chapter 9 does not create an estate.
 - Section 541 is not incorporated into Chapter 9.
 - Section 902(1) defines “property of the estate” to mean “property of the debtor.”
- Retention of Professionals
 - Sections 327 through 331 of the Bankruptcy Code are not applicable in a Chapter 9 case.
 - The only provision of Chapter 9 governing the compensation of professionals provides as a confirmation requirement that all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable. § 943(b)(3).
- Automatic Stay
 - Automatic stay provisions apply.
 - Section 922(a) adds automatic stay provisions that prohibit actions against officers and inhabitants of the debtor if the action seeks to enforce a claim against the debtor.
 - Section 922(d) limits the applicability of the stay.
 - Chapter 9 petition does not operate to stay application of pledged special revenues to payment of indebtedness secured by such revenues.
 - An indenture trustee or other paying agent may apply pledged funds to payments coming due or distribute the pledged funds to bondholders without violating the automatic stay.
- Commencement of the case creates an estate.
- Sections 327 through 331 apply.
- Automatic stay applies only to the debtor and its property.

Chapter 9

Chapter 11

- Committees
 - Creditors committee has powers and duties similar to those of a committee in a Chapter 11 case.
 - Cannot be appointed until after the entry of the order for relief, which may take months in a Chapter 9 case in which eligibility is challenged.
- Right to be heard more expansive in Chapter 9.
 - Section 1109 applies.
 - Rule 2018(c) provides that:
 - The Secretary of the Treasury of the United States may, or if requested by the court shall, intervene in a Chapter 9 case.
 - Representatives of the state in which the debtor is located may intervene in a Chapter 9 case with respect to matters specified by the court.
- Dismissal
 - Court may dismiss a Chapter 9 petition if it concludes the debtor did not file the petition in good faith or if the petition does not meet the requirements of Chapter 9.
 - Court also may dismiss the petition for cause. § 930.
- Court may convert to Chapter 7 or dismiss as specified in § 1112.

Avoidable Transfers

- Bankruptcy Code avoidance powers are applicable, with one exception.
 - In Chapter 9 cases, a transfer of property by a municipality to or for the benefit of a bondholder on account of such bond may not be avoided as a preference. § 926(b).
- Bankruptcy Code avoidance powers are applicable.

Chapter 9

Chapter 11

Executory Contracts and Unexpired Leases

- Section 365 applies in Chapter 9 cases.
- Collective bargaining agreements.
 - Section 1113 does not apply in Chapter 9 cases.
 - Most courts analyze under § 365.
- Section 1114 does not apply in Chapter 9 cases.
- A Chapter 11 debtor cannot unilaterally abrogate a collective bargaining agreement.
 - Section 1113 requires a Chapter 11 debtor to negotiate proposed modifications of a collective bargaining agreement with the authorized representative of the employees covered by such agreement.
- Section 1114 enumerates the stringent ground rules for treatment of retiree benefits.

Special Revenues

- Obligations secured by a lien on special revenues retain such lien postpetition in Chapter 9. However, the security interest is subject to the necessary operating expenses of the project involved. § 928(b).
- The holder of a claim payable solely from special revenues does not have recourse against the debtor. § 927. This prevents the conversion of revenue bonds into general obligation bonds.
- A creditor with a nonrecourse claim may, under certain circumstances, be treated as having recourse against the debtor. § 1111(b).

Plan of Adjustment

- Only the debtor may file a plan for adjustment of debts—creditors may not propose and file competing plans.
- Creditors may file a plan after termination of exclusivity.
- A trustee may file a plan because such appointment terminates exclusivity.

Chapter 9

Chapter 11

- The Bankruptcy Code does not fix a specific deadline by which the debtor must file a plan. If a plan is not filed with the petition, the debtor shall file such plan at such later time as the court fixes. § 941.
- Plan content and confirmation requirements in Chapter 9 cases are similar to those applicable in Chapter 11 cases.

Discharge

- A municipality debtor receives a discharge of all debts as of the time when: (1) the plan is confirmed; (2) the debtor deposits any consideration to be distributed under the plan with the disbursing agent appointed by the court; and (3) the court determines that securities deposited with the disbursing agent will constitute valid legal obligations of the debtor and that any provision made to pay or secure payment of such obligations is valid. § 944(b).
- A municipality debtor is not discharged from any debt (1) excepted from discharge by the plan or the order confirming the plan, or (2) owed to an entity that, before confirmation of the plan, had neither notice nor actual knowledge of the case. § 944(c).
- Confirmation of a plan discharges a debtor from most debts that arose before the date of confirmation. § 1141(d). After confirmation, the debtor is required to make plan payments and is bound by the provisions of the plan.