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INTRODUCTION TO THE SYMPOSIUM: THE BANKRUPTCY REFORM ACT OF 1978—A PRIMER

Robert E. Ginsberg*

The subject of this symposium, the Bankruptcy Reform Act of 1978,¹ is a remarkable piece of legislation. The statutory successor to the Bankruptcy Act of 1898,² it marks the first major bankruptcy law overhaul in forty years.³ The new law introduces vast reforms in both liquidation and reorganization proceedings. These changes resulted, *inter alia*, from Congressional recognition of the need for an independent, competent judiciary to handle the enormous increase in bankruptcy filings,⁴ from alterations in fundamental debtor-creditor relations (occasioned by changes in the methods of financing both business and consumer transactions evolving over the last four decades),⁵ and from a swing of the pendulum from the spirit of creditor protection to the spirit of debtor protection in the legal age of the consumer.⁶

To understand how these changes are manifested in and effected by the Reform Act, one must first understand the structure of the statute itself. The Bankruptcy Reform Act is divided into four titles. Title I contains the substantive law of bankruptcy (new Title 11 of the United States Code).⁷ Title II contains amendments to the Federal Judicial Code (Title 28 of the United States Code)⁸ that are designed to create an independent bankruptcy court

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1. Pub. L. No. 95-598, 92 Stat. 2549 (to be codified in 11 U.S.C. and scattered sections of 2, 7, 12, 15, 17-20, 22, 28, 29, 31, 33, 40-43, 46, 48, 49 U.S.C.). For a discussion of the legislative history of the Reform Act, see Klee, *Legislative History of the New Bankruptcy Law*, 28 DEPAUL L. REV. 941 (1979).

2. Ch. 541, 30 Stat. 544 (1897-98) (codified in 11 U.S.C. (1976) (repealed 1979)).

3. The Chandler Act, ch. 575, 52 Stat. 840 (1938), marked the last major change in the Bankruptcy Act.

4. See H.R. REP. NO. 595, 95th Cong., 1st Sess. 4 (1977) [hereinafter cited as HOUSE REPORT].

5. See HOUSE REPORT, *supra* note 4, at 116-17. The report stated that "[s]ince World War II, the incidence of consumer credit has grown enormously. . . . As we have become a consumer society, we have also become a credit society. . . . The Bankruptcy Act has not kept pace with the modern consumer credit society." *Id.* In explaining the obsolescence of the former Act, the report noted: "It has only been since 1938 that the consumer credit industry has grown; and it has only been since the widespread adoption of the Uniform Commercial Code in the early 1960's that commercial credit has grown to its present magnitude." *Id.* at 3.

6. As early as 1967, one commentator noted: "Social justice requires that the law is as attentive to the problems of the debtor as to those of the creditor. As a result, both the legislative and decisional law have shown an increasing preoccupation with the protection and relief of debtors." S. REISENFELD, CREDITORS' REMEDIES AND DEBTORS' PROTECTION xii (1967).

7. 11 U.S.C. app. §§ 101-151326 (Supp. II 1978). The most current codification of the new title 11 of the United States Code is found in our appendix to the 1978 supplement II to U.S.C. Throughout this article, all citations to title 11 will be to 11 U.S.C. app. § (Supp. II 1978).

8. 28 U.S.C. §§ 1 to 2906 (1976 & Supp. II 1978).

by providing for the appointment and tenure of bankruptcy judges, jurisdiction of bankruptcy courts, bankruptcy appeals, and similar matters of judicial administration. Title III of the Reform Act⁹ enacts amendments to other provisions of the United States Code required to bring the entire body of federal law into conformity with the new bankruptcy law. Title IV establishes the rules governing the transition from the prior law to the new.¹⁰

NEW TITLE 11—GENERAL MATTERS

The heart of the Reform Act is new title 11 of the United States Code. New title 11 is divided into eight odd-numbered chapters. Chapter 1¹¹ contains general matters: definitions,¹² rules of construction,¹³ and a statement of who may be a debtor in any type of liquidation or reorganization proceeding.¹⁴ New chapter 3 concerns the administration of the estate. Provisions are found here addressing the initiation of proceedings by voluntary or involuntary petition,¹⁵ the appointment and compensation of trustees and professionals,¹⁶ meetings of creditors and stockholders,¹⁷ as well as provisions with respect to the automatic stay,¹⁸ use, sale, and lease of property¹⁹ and executory contracts.²⁰ Chapter 5 of new title 11 sets forth the rights and duties of creditors, debtors, and trustees. Among the creditors' rights found here are provisions with respect to the proof and allowance of claims,²¹ a

9. Scattered sections of 2, 7, 12, 15, 17-20, 22, 29, 31, 33, 40-43, 46, 48, 49 U.S.C. (Supp. II 1978).

10. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. IV, 92 Stat. 2549.

11. As a matter of practice, chapters under the old Bankruptcy Act were written with Roman numerals. Chapters of new title 11 use Arabic numerals. Thus former chapter XIII becomes new chapter 13.

12. 11 U.S.C. app. § 101 (Supp. II 1978).

13. *Id.* § 102. Of particular import is the rule for constructing the phrase "after a notice and a hearing," a phrase that may well mean after a notice and without a hearing. *Id.* § 102(1).

14. *Id.* § 109.

15. *Id.* §§ 301-303.

16. *Id.* §§ 321-323, 326-331. Interestingly, the Reform Act tries to be more generous in the area of compensating attorneys and other professionals by providing that they shall be compensated at rates similar to those received by such professionals in non-bankruptcy contexts, thus eliminating the idea that the spirit of economy of administration in bankruptcy requires professionals to work at lower rates in bankruptcy cases. *Id.* § 330. On the other hand, trustees, be they chapter 7 liquidating trustees or operating trustees in chapter 11 reorganization cases, are held to a strict, very limited percentage ceiling in compensation. *Id.* § 326. This may lead to difficulties in attracting competent trustees—particularly in large business reorganization proceedings. The trustee receives \$20 in a no-asset case. *Id.* § 330(b).

17. *Id.* § 341.

18. *Id.* § 362.

19. *Id.* § 363.

20. *Id.* § 365.

21. *Id.* §§ 501-502. The concept of provability from former § 63 of the Bankruptcy Act of 1898, ch. 541, § 63, 30 Stat. 562-63 (1897-98), as amended by Chandler Act, ch. 575, § 63, 52 Stat. 873 (1938) (originally codified in 11 U.S.C. § 103 (1976) (repealed 1979)), has been abolished. See 11 U.S.C. app. § 101(4) (Supp. II 1978). Cf. *id.* § 502(c) (allowing an estimate of contingent or unliquidated claims, so as not to delay the closing of the case, or an equitable remedy for breach of performance).

system for determining which portion of a claim is secured and which is unsecured,²² and a general priority of distribution among unsecured creditors.²³ Provisions particularly important to debtors in chapter 5 outline the debtor's duties,²⁴ list those debts that are not dischargeable,²⁵ create new bankruptcy exemptions,²⁶ and limit discrimination against debtors attributable to a bankruptcy discharge.²⁷ Of particular import to trustees and their counsel are sections in chapter 5 defining what property of the debtor becomes property of the estate,²⁸ as well as the list of the trustee's avoiding powers.²⁹

22. *Id.* § 506.

23. *Id.* § 507. *See also id.* §§ 510 (subordination), 726 (distribution of estate property).

24. *Id.* § 521.

25. *Id.* § 523.

26. *Id.* § 522.

27. *Id.* § 525. The provision only prohibits discrimination by certain governmental units against debtors on account of a discharge. *See, e.g.,* *Perez v. Campbell*, 402 U.S. 637 (1973). It does not apply to private parties or quasi-governmental agencies such as bar associations. *See* HOUSE REPORT, *supra* note 4, at 366-67.

28. 11 U.S.C. app. § 541 (Supp. II 1978).

29. *Id.* §§ 542-550, 553. The following chart might be useful in comparing the trustee's avoiding powers under the old and new laws.

<u>Subject</u>	<u>Old Law</u>	<u>Reform Act</u>
	Bankruptcy Act of 1898, ch. 541, § —, 30 Stat. 544 (1897-98), as <i>amended by</i> Chandler Act, ch. 575, 52 Stat. 840 (1938) (original U.S.C. codification in parentheses) (1976))	11 U.S.C. app. § — (Supp. II 1978)
Prebankruptcy receiverships and assignments for the benefit of creditors	2a(21) (11a(21))	543
Postbankruptcy transfers of realty	21g (44g)	549(c)
Preferences	60 (96)	547
Liens by legal proceedings	67a* (107a)	547
Statutory liens	67b, c** (107b, c)	545
Fraudulent conveyances	67d* (107d)	548
Setoff	68† (108)	553

Chapters 1, 3, and 5 of the new Bankruptcy Code usually apply regardless of what relief debtors or their creditors are seeking.³⁰ Chapters 7, 9, 11, and 13 offer a debtor or its creditors specific kinds of relief. The provisions of those chapters apply only to debtors involved in proceedings under the chapter in question.³¹ Thus, for example, section 702,³² addressing the election of trustees, applies only to debtors involved in chapter 7 proceedings.

Chapter 7

New chapter 7 is the basic liquidation proceeding, formerly known as ordinary or straight bankruptcy. A chapter 7 proceeding is begun by voluntary or involuntary petition.³³ An interim trustee is appointed³⁴ who may be succeeded by a permanent trustee chosen by the debtor's unsecured cred-

<u>Subject</u>	<u>Old Law</u>	<u>Reform Act</u>
Executory contracts	70b† (110b)	365
Strong-arm clause	(110c)	
Postbankruptcy transfers	70d* (110d)	549(a), (b), (c)
State creditors' remedies	70e* (110e)	544(b)

* As amended by Act of July 7, 1952, ch. 579, 66 Stat. 427 (for 107a, 107d) and 66 Stat. 429 (for 110d, 110e).

** As amended by Act of July 5, 1966, Pub. L. No. 89-495, 80 Stat. 268 (for 107b, 107c) and 80 Stat. 269 (for 110b).

† As added by Act of June 22, 1938, ch. 575, 52 Stat. 878.

‡ As added by Act of Sept. 25, 1962, Pub. L. No. 87-681, 76 Stat. 571.

It is also important to note that the debtor is given many avoiding powers with respect to exempt property either directly or derivatively through the trustee. See 11 U.S.C. app. § 522(f)-(k) (Supp. II 1978). See also Hughes, *Code Exemptions: Far-Reaching Achievements*, 28 DEPAUL L. REV. 1025 (1979).

30. 11 U.S.C. app. § 103 (Supp. II 1978). Chapters 1, 3, and 5 apply in their entirety to a debtor being liquidated under chapter 7 or to a non-railroad debtor being liquidated or reorganized under chapter 11 or 13. If the debtor is a railroad being reorganized or liquidated under chapter 11, all of chapters 1, 3, and 5 apply except for two provisions dealing with meetings of creditors and stockholders. *Id.* § 1161. If the debtor is a governmental unit seeking rehabilitation under chapter 9, only chapter 1 and selected provisions of chapters 3 and 5 would apply. *Id.* §§ 103(e), 901.

31. *Id.* § 103.

32. *Id.* § 702.

33. *Id.* §§ 301, 303. A \$60 filing fee must be paid in every chapter 7 case. The Reform Act codifies the rule of *United States v. Kras*, 409 U.S. 434 (1973), that bankruptcy is not a funda-

itors.³⁵ If no trustee is so elected, the interim trustee becomes the permanent trustee.³⁶ The trustee is to liquidate the debtors nonexempt assets as expediently as is compatible "with the best interests of parties in interest,"³⁷ and distribute the proceeds to the debtor's creditors in accordance with their statutory priorities.³⁸ The key to chapter 7 for debtors is that they get a discharge from their debts unless grounds exist for denying it.³⁹

mental right, and that, because there is no constitutional right to a bankruptcy discharge, a debtor may be denied the right to a proceeding *in forma pauperis*. 28 U.S.C. § 1930 (Supp. II 1978). The fee may, however, be paid in installments. *Id.* A husband and wife may file a joint chapter 7 petition and pay one filing fee. *Id.* § 302. A major change has been accomplished in the involuntary petition area: creditors may now force a debtor into bankruptcy with less difficulty than under prior law. Assuming the debtor has twelve or more creditors, three unsecured creditors must join in the petition. Their claims must aggregate \$5,000. However, they no longer have to prove that the debtor has committed one of the acts of bankruptcy as required by former § 3a. Bankruptcy Act of 1898, ch. 541, § 3(a), 30 Stat. 546 (1897-98), as amended by Chandler Act, ch. 575, § 3(a), 52 Stat. 844-45 (1938) (originally codified at 11 U.S.C. § 21(a) (1976)) (repealed 1979). Instead, the petitioning creditors need merely show the debtor is generally failing to pay its debts as they come due or that a custodian is in possession of all or a substantial part of the debtor's property. 11 U.S.C. app. § 303(h) (Supp. II 1978). However, even if creditors do prove grounds for chapter 7 relief on an involuntary petition, they are not entitled to it as a matter of law. Rather, the court has nonappealable discretion to reject the petition if satisfied that chapter 7 is not in the best interests of the debtor and its creditors. *Id.* § 305(a)(1).

Any debtor with a residence, domicile, place of business or property in the United States may file a chapter 7 petition unless the debtor is, among other things, a domestic insurance company, bank, savings and loan or credit union, or a foreign association engaged in such business in the United States. 11 U.S.C. app. § 109(b) (Supp. II 1978). Private non-business trusts and decedents' estates are also excluded from chapter 7. HOUSE REPORT, *supra* note 4, at 313. The same groups of debtors are shielded from an involuntary chapter 7 petition, as are farmers and not-for-profit businesses. 11 U.S.C. app. § 303(a) (Supp. II 1978). *See id.* § 101(17), (18). Chapter 7 has special provisions respecting the liquidation of stock and commodity brokers. *See generally id.* §§ 741-766; *see also id.* § 103(c)-(d). Although the new law permits railroads to be liquidated in certain circumstances, *id.* § 1174, that can only be done in chapter 11. Railroads are ineligible for chapter 7. *Id.* § 109(b)(1). *See id.* § 101(33).

34. *Id.* § 701. The appointment is made by the court in most districts. However, in U.S. Trustee districts, it is made by the U.S. Trustee. *Id.* § 15701. An interim trustee must be appointed in every chapter 7 case, including a no-asset case.

35. *Id.* § 702. An election of a trustee is held if holders of at least 20% of the non-insider, allowable, undisputed, fixed, liquidated, unsecured claims indicate a desire to choose a trustee. A candidate is elected trustee if holders of at least 20% in amount of these claims vote and the candidate gets a majority in amount of the voted claims. *Id.* § 702(a)-(c). A trustee may be elected only in chapter 7. There is no comparable election process in chapter 11. Unsecured creditors may also elect a creditors' committee of from three to eleven members in chapter 7 cases. *Id.* § 705. The comparable committee in chapter 11 is appointed, not elected. *Id.* §§ 1102, 151102.

36. *Id.* § 702(d).

37. *Id.* § 704(1).

38. *Id.* §§ 507, 726.

39. *Id.* § 727. The effect of a chapter 7 discharge is strengthened by the fact that the Reform Act, by putting reaffirmations under the jurisdiction of the bankruptcy court, greatly limits a creditor's right to extract a reaffirmation of a discharged debt. *Id.* § 524(c)-(d).

Chapter 9

New chapter 9, like former chapter IX, offers relief to insolvent state and local governmental units. It is a voluntary proceeding only.⁴⁰ No trustee is appointed—the *debtor* tries, rather, to come up with a plan for scaling down its debts to manageable proportions. Significantly, a chapter 9 plan need not be “fair and equitable”⁴¹ but, if approved by each class of creditors, merely must satisfy the “best interests of creditors” test.⁴²

Chapter 11

New chapter 11 is the business reorganization provision. It combines former chapters X, XI, and XII, as well as former chapter VIII, respecting railroad reorganizations,⁴³ into a single reorganization chapter. New chapter 11 is not, however, strictly a business reorganization chapter: it is not limited to business debtors. Any debtor who is eligible for chapter 7 relief is, in general, also eligible for chapter 11 relief.⁴⁴ Nevertheless, chapter 11 is clearly intended to facilitate business rehabilitations.⁴⁵ While new chapter 11 resembles former chapter XI more than any other prior reorganization chapters, many significant changes have been made. It permits a comprehensive reorganization affecting all interests in the debtor, *i.e.*, secured creditors, unsecured creditors, and stockholders.⁴⁶ In one of the more important changes, a chapter 11 proceeding may be initiated by either a voluntary or involuntary petition.⁴⁷ In most chapter 11 cases the debtor will

40. *Id.* § 303(a). See also *id.* § 101(30).

41. See Bankruptcy Act of 1898, ch. 541, § 58(b)(1), 30 Stat. 561 (1897-98), as amended by Chandler Act, ch. 575, § 58(b)(1), 52 Stat. 868 (1938) (originally codified at 11 U.S.C. § 94 (1976)) (repealed 1979).

42. 11 U.S.C. app. § 943(b)(6) (Supp. II 1978). See 124 CONG. REC. H11,100 (daily ed. Sept. 28, 1978) [hereinafter referred to as CONG. REC.]. A class of creditors accepts the plan if approved by two-thirds in amount and a majority in number of the claims in the class. 11 U.S.C. app. §§ 901, 1126(c) (Supp. II 1978).

43. The railroad reorganization provisions are found in a special part of chapter 11, subchapter IV, 11 U.S.C. app. §§ 1161-1174 (Supp. II 1978), which is uniquely applicable to railroads. *Id.* § 103(g). Most of the remaining provisions of chapter 11 also apply to railroad reorganization cases. *Id.* § 1161.

44. *Id.* § 109(d). Of course railroads, which are ineligible for chapter 7 proceedings, are eligible for chapter 11. Stock and commodity brokers, on the other hand, which are eligible debtors under chapter 7, are prohibited from being debtors in chapter 11. *Id.*

45. See, *e.g.*, CONG. REC., *supra* note 42.

46. Former chapter XI, as added by Chandler Act, ch. 575, §§ 356-357, 52 Stat. 910-911 (1938) (originally codified at 11 U.S.C. §§ 756-757 (1976)) (repealed 1979), affected only unsecured creditors.

47. 11 U.S.C. app. §§ 301, 303 (Supp. II 1978). Former chapter XI was voluntary only, as was former chapter XII, as added by Chandler Act, ch. 575, §§ 321, 322, 421, 422, 52 Stat. 907-908 (1938) (formerly codified at 11 U.S.C. §§ 721, 722, 821, 822 (1976)) (repealed 1979). Former chapters VIII and X could be begun by either voluntary or involuntary petition. *Id.* § 77(a), 126 (11 U.S.C. §§ 208(a), 526). The significance of permitting involuntary chapter 11

remain in possession. The court may appoint a trustee in chapter 11 only when requested by a party for cause shown or when such appointment would best protect the interests of creditors and stockholders.⁴⁸ In deciding whether to appoint a trustee, the court may give no weight to the fact that the debtor's securities are held by public investors.⁴⁹ The debtor will not, however, be unsupervised under chapter 11. The Act contemplates active investigatory and supervisory activities by a court-appointed unsecured creditors' committee⁵⁰ having broad powers to investigate and consult with the debtor in possession.⁵¹ In addition, the court may appoint its own officer, an examiner, to investigate the debtor.⁵² Finally, the Securities and Exchange Commission is given a right to participate in chapter 11 cases.⁵³ Thus, at least a public debtor can expect to have the SEC looking over its shoulder as well.

These restrictions aside, a chapter 11 proceeding is generally to be in the hands of the debtor. The debtor is given the exclusive right to propose a plan for the first 120 days of the proceeding if no trustee is appointed.⁵⁴ The debtor solicits the acceptances, although the disclosure documents used by the debtor for this purpose are subject to review by the bankruptcy court.⁵⁵ The debtor's plan may provide for either reorganization or orderly liquidation.⁵⁶ The plan is accepted if each class of creditors affected by it

petitions is greatly increased in light of the fact that all the petitioning creditors need show is that the debtor is generally not paying its obligations as they mature. 11 U.S.C. app. § 303(h)(1) (Supp. II 1978). See note 33 *supra*. There is no difference between an involuntary chapter 7 or chapter 11 petition except in the prayer for relief. See note 33 *supra*. Presumably spouses could file a joint chapter 11 petition. 11 U.S.C. app. § 302 (Supp. II 1978).

48. *Id.* § 1104(a). In a U.S. Trustee pilot district, if a trustee is to be appointed in a chapter 11 case, the court will order the U.S. Trustee to make the selection. *Id.* § 151104(a).

49. *Id.* § 151104(a)(2). See also CONG. REC., *supra* note 42, at H11,102.

50. 11 U.S.C. app. § 1102(a)(1) (Supp. II 1978). In pilot districts, the appointment is made by the U.S. Trustee. *Id.* § 151102. The committee will ordinarily consist of the seven largest unsecured creditors or the members of a fairly chosen, representative, prebankruptcy committee.

51. *Id.* § 1103(c).

52. *Id.* § 1104(b) (appointment). If the debtor's fixed unsecured non-trade debt exceeds \$5,000,000, such appointment is mandatory. *Id.* § 1104(b)(2). This is the only place where chapter 11 treats small and large debtors differently.

53. *Id.* § 1109. The SEC is not a party in interest and may not take any appeals. HOUSE REPORT, *supra* note 4, at 404. The Interstate Commerce Commission, the Department of Transportation, and other governmental agencies are given similar rights in railroad cases. 11 U.S.C. app. § 1164 (Supp. II 1978).

54. *Id.* § 1121. If the debtor fails to propose a plan within 120 days after the petition, or if a trustee has been appointed, any party in interest may propose a plan. *Id.* § 1121 (c)(2).

55. *Id.* § 1125(b). See Corotto & Picard, *Business Reorganization Under the Bankruptcy Reform Act of 1978—A New Approach to Investor Protections and the Role of the SEC*, 28 DEPAUL L. REV. 961 (1979).

56. 11 U.S.C. app. § 1123(a)(5) (Supp. II 1978). Liquidation plans were generally regarded as impermissible under former chapter XI. *In re Pure Penn. Petroleum Co.*, 188 F.2d 851 (2d Cir. 1951).

accepts it by a vote of at least two-thirds in amount and a majority in number of the claims in the class that actually vote on the plan.⁵⁷ If a plan accepted by at least one class of creditors is rejected by another affected class or classes, new chapter 11 contains an elaborate "cram down" provision for forcing the plan on the recalcitrant creditors.⁵⁸ Basically, the plan can be imposed upon these claimants if it satisfies the absolute priority rule, that is, if it gives to such claimants the fair value of their claims.⁵⁹ The court is to confirm an accepted plan once a wide variety of circumstances are satisfied, most notably when it is feasible and when it is in the creditors' best interests.⁶⁰ To oversimplify somewhat, this means that the creditors are benefitted more when the debtor files a chapter 11 proceeding than when the debtor is liquidated under a chapter 7 procedure.⁶¹ The confirmation of a reorganization plan under chapter 11 discharges the debtor from its debts.⁶²

Chapter 13

Some of the Reform Act's most significant changes are found in new chapter 13. Former chapter XIII was the wage earner plan. First introduced formally into the Bankruptcy Act in 1938,⁶³ chapter XIII had a rather checkered history. It was rarely used in some districts, but was extremely popular in others.⁶⁴ New chapter 13, the plan for debtors with regular income, will likely enjoy widespread popularity because it offers both consumer debtors and small business people a feasible alternative to liquidation. New chapter 13 is available to any individual debtor with regular income;⁶⁵ single

57. 11 U.S.C. app. § 1126(c) (Supp. II 1978). Abstentions do not count in this regard. If stockholders are affected by the plan, at least two-thirds of the shares in each class voting on the plan must accept it. *Id.* § 1126(d).

58. *Id.* § 1129.

59. See Klee, *All You Ever Wanted to Know About Cram Down Under the New Bankruptcy Law*, 53 AM. BANKR. L.J. 133 (1979).

60. 11 U.S.C. app. § 1128(a) (Supp. II 1978).

61. *Id.* § 1128(a)(7)(A).

62. 11 U.S.C. app. § 1141(d) (Supp. II 1978). If the plan is a liquidation plan, the debtor is denied a discharge in chapter 11 if it would have been denied a discharge in chapter 7. *Id.* § 1141(d)(3). Included among the reasons for denying a debtor a discharge in chapter 7 is the fact that the debtor is not an individual. *Id.* § 727(a)(1). Thus, a corporation being liquidated in chapter 11 cannot obtain a discharge. A chapter 11 discharge does not discharge an individual debtor from nondischargeable debts. *Id.* § 1141(d)(2). *Cf. id.* § 523 (exceptions to discharge).

63. Chandler Act, ch. 575, 52 Stat. 840 (1938). Before formal enactment of chapter XIII, similar relief was available in a number of bankruptcy courts around the country, albeit without specific legislative sanction. 5 COLLIER ON BANKRUPTCY 1300-15 (15th ed. 1979).

64. COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, REPORT, H.R. DOC. NO. 137, Pt. I, 93d Cong., 1st Sess. 157-58 (1973). There was no logical explanation for why this was true since the popularity of former chapter XIII did not track along regional lines.

65. 11 U.S.C. app. § 109(e) (Supp. II 1978). Stock and commodity brokers are ineligible for chapter 13 relief. If spouses file a joint chapter 13 petition, only one of them need have regular income. *Id.* This represents a change in prior law. See Sup. Ct. R. Bankr. P. 13-111 (1976).

owner corporations and family partnerships are not, however, eligible for chapter 13 relief.⁶⁶ Notwithstanding that limitation, the Code's definition of "individual with regular income"⁶⁷ makes it clear that it is not limited to wage earners as was former chapter XIII,⁶⁸ but includes any individual with stable income from any source—welfare, pensions, investments, etc.—including sole proprietors. On the other hand, new chapter 13, unlike former chapter XIII, is clearly limited to small debtors. The new chapter will not apply to debtors with unsecured obligations greater than \$100,000 and secured obligations greater than \$350,000.⁶⁹

New chapter 13 is strictly a voluntary proceeding:⁷⁰ there are no involuntary chapter 13 proceedings.⁷¹ The debtor will remain in possession of its exempt and nonexempt property⁷² and, if in business, will continue to operate its business.⁷³ The filing of the petition stays almost all attempts by any prepetition creditors to collect any claims against the debtor by means of legal proceedings or otherwise.⁷⁴ It also stays any efforts by the debtor's creditors to collect on their consumer debt claims against those whom the debtor induced to co-sign for its debts.⁷⁵

Only a debtor may propose a chapter 13 plan.⁷⁶ The plan may affect any secured creditor except one whose only security is the debtor's principal

66. HOUSE REPORT, *supra* note 4, at 320.

67. 11 U.S.C. app. § 101(24) (Supp. II 1978).

68. Bankruptcy Act of 1898, ch. 541, § 606(3), (8), *so added by* Chandler Act, ch. 575, § 606(3), (8), 52 Stat. 930 (1938) (originally codified at 11 U.S.C. § 1006 (1976)) repealed 1979).

69. 11 U.S.C. app. § 109(e) (Supp. II 1978). In computing these amounts, only noncontingent liquidated claims are counted. *Id.* There was no comparable provision in former chapter XIII, where any debtor was eligible regardless of debtload. Chapter XIII formerly limited the amount a debtor could *earn*, but that limitation was repealed in 1959. *See* 10 COLLIER ON BANKRUPTCY 48 (14th ed. 1978).

70. 11 U.S.C. app. § 301 (Supp. II 1978). Spouses may file a joint chapter 13 proceeding, *id.* § 302, although they are held to one \$100,000/\$350,000 limit in a joint case even if both have regular income. *Id.* § 109(e).

71. *Id.* § 303(a). Thus, a chapter 7 or a chapter 11 case can only be converted to chapter 13 with the debtor's consent. *Id.* §§ 706(c), 1112(d). Congress specifically rejected any suggestion permitting creditors to force debtors to work off their debts in chapter 13 involuntarily. HOUSE REPORT, *supra* note 4, at 120-21.

72. 11 U.S.C. app. § 1306(b) (Supp. II 1978). There is a chapter 13 trustee, but its role is essentially that of a distributing agent. The new law does give the chapter 13 trustee financial counseling duties to both the debtor and the court as well as investigatory functions. A chapter 13 trustee is not to give a debtor any legal advice. *Id.* § 1302(b)(3). The new law contemplates a standing chapter 13 trustee appointed by the court. *Id.* § 1302(d). The appointment is made by the U.S. Trustee in pilot districts. *Id.* § 151302.

73. *Id.* § 1304.

74. *Id.* § 362.

75. *Id.* § 1301. *Cf. id.* § 101(7) ("consumer debt" defined). Such creditors may, with the permission of the bankruptcy court, go against the debtor's co-signors to the extent that the debtor's plan does not propose to pay their claims in full. *Id.* § 1301(c)(2).

76. *Id.* § 1321.

residence.⁷⁷ Presumably, the mortgagee's claim on the debtor's house is to be handled by curing any default and bringing it current over the life of the plan.⁷⁸ Priority unsecured claims must be paid in full;⁷⁹ however, the claims of other unsecured creditors may be either treated generally or classified⁸⁰ and paid in full or in part.⁸¹ The plan must be funded in part from the debtor's future income,⁸² although a portion of the payments may come from future sales of the debtor's assets.⁸³ Ordinarily the plan is to be completed within three years, although in unusual cases plans lasting as long as five years are permissible.⁸⁴

The court must confirm the chapter 13 plan once all affected secured creditors approve it and the court is satisfied that it is both feasible and offers unsecured creditors no less than they would have gotten had the debtor chosen a chapter 7 liquidation.⁸⁵ The court can force the plan on an unwilling secured creditor, other than the mortgagee on the debtor's home, if satisfied that the payments the debtor proposes to make to that creditor have a present value at least equal to the amount of the creditor's secured claim.⁸⁶ Unsecured creditors get no vote at all in chapter 13. Instead, the court is to force the debtor's plan on those creditors if satisfied that the plan is in their best interests.⁸⁷ Because general unsecured creditors can generally expect nothing in a consumer liquidation case,⁸⁸ a plan offering them

77. *Id.* § 1322(b)(2).

78. *Id.* § 1322(b)(5).

79. *Id.* § 1322(a)(2).

80. *Id.* § 1322(b)(1). Compare Bankruptcy Act of 1898, ch. 541, § 646(1), as added by Chandler Act, ch. 575, § 646(1), 52 Stat. 932 (1938) (originally codified at 11 U.S.C. § 1046 (1976)) (repealed 1979).

81. 11 U.S.C. app. § 1322(b)(6) (Supp. II 1978). If unsecured claims are classified, all claims within the same class must be treated equally. *Id.* § 1322(a)(3).

82. *Id.* § 1322(a)(1).

83. *Id.* § 1322(b)(8).

84. *Id.* § 1322(c).

85. *Id.* § 1325(a).

86. *Id.* § 1325(a)(5)(B). The creditor must also retain its security. However, all the debtor has to pay is the secured portion of the claim. Thus if a secured creditor has a claim of \$1,000 and security worth \$200, all the debtor would have to offer such a creditor to force a plan on it would be retention of its lien plus payments over the next three years with a present value of \$200. The \$800 balance would be an unsecured claim, *id.* § 506, and could be treated as any other unsecured claim under the plan. HOUSE REPORT, *supra* note 4, at 124. This could be particularly important in light of the power given the debtor to void nonpurchase money, non-possessory security interests in exempt household goods. 11 U.S.C. app. § 522()(2)(Supp. II 1978). See Kaplan, *Chapter 13 of the Bankruptcy Reform Act of 1978. An Attractive Alternative*, 28 DEPAUL L. REV. 1045 (1979). Compare 11 U.S.C. app. § 722 (Supp. II 1978), permitting a debtor to redeem certain personal collateral in liquidation cases by paying to the secured creditor the value of the collateral.

87. *Id.* § 1325(a)(4).

88. This is particularly true in light of the generous new federal exemption provision. *Id.* § 522(d).

anything, *i.e.*, something more than nothing, is clearly in their best interests and should be approved.⁸⁹ The absence of unsecured creditor vote should strongly encourage more chapter 13 composition plans than under the former law.⁹⁰

If the debtor completes payments under the plan, the debtor receives a discharge.⁹¹ The debtor need not be eligible for a discharge in chapter 7 to receive a discharge in chapter 13, so there is no six year bar in chapter 13. The discharge covers all debts provided for by the plan—both dischargeable and nondischargeable—except certain postpetition debts⁹² and those long term debts the debtor has updated under the plan, such as the home mortgage.⁹³ If the debtor defaults under the plan, the court may dismiss the case,⁹⁴ convert to chapter 7,⁹⁵ modify the plan,⁹⁶ or grant the debtor an extraordinary discharge.⁹⁷

Chapter 15

The final chapter of new title 11, chapter 15, outlines the duties of a new federal official, the United States Trustee. The Attorney General appoints

89. There is nothing in the law specifically requiring the court to find that the plan is the debtor's best effort so long as it is proposed in good faith. *Id.* § 1325(a)(3). *Cf. id.* § 727(a)(9)(B)(ii) (payment of 70% of claims under a plan and the debtor's best effort will allow the granting of a discharge, even if a similar discharge was made within a six-year period).

90. Under the old law, the acceptance of a majority in number and amount of the proved and allowed unsecured claims was required. Bankruptcy Act of 1898, ch. 541, § 652(1) *as added by* Chandler Act, ch. 575, § 652(1), 52 Stat. 934 (1938) (originally codified at 11 U.S.C. § 1052 (1976)) (repealed 1979). A further drawback to chapter 13 composition plans has also been eliminated. Under former chapter XIII, the mere confirmation of a composition plan raised the six year bar to discharge, even if the debtor defaulted under the plan and never got a discharge. Bankruptcy Act of 1898, ch. 541, § 14c(5), 30 Stat. 550 (1897-98), *as amended by* Chandler Act, ch. 575, § 14c(5), 52 Stat. 850 (1938) (originally codified at 11 U.S.C. § 32 (1976)) (repealed 1979). Under chapter 13, a composition plan only raises the six year bar if the debtor gets a discharge and then only if the plan calls for the general unsecured creditors to get less than 70% of their claims. 11 U.S.C. app. § 727(a)(9) (Supp. II 1978).

91. *Id.* § 1328(a).

92. *Id.* § 1328(d).

93. *Id.* § 1328(a)(1). There are two significant exceptions to the rule that otherwise nondischargeable debts are dischargeable in chapter 13. Nondischargeable alimony, maintenance, and child support claims are also nondischargeable in chapter 13. *Id.* § 1328(a)(2). *Cf. id.* § 523(a)(5) (debts for willful and malicious conversion or injury by the debtor to another entity or the property of another entity are likewise nondischargeable). Also, nondischargeable tax claims, insofar as they are entitled to priority, must be paid in full by the plan. *Id.* §§ 1322(a)(2), 507(a)(6), 523(a)(1)(A).

94. *Id.* § 1307(c).

95. *Id.* The court may also convert a chapter 13 case to chapter 11 *before* a plan is confirmed. After default on a confirmed plan, a conversion to chapter 11 may not occur. *Id.* § 1307(d). If the debtor is a farmer, the debtor's consent is required for such a conversion. *Id.* § 1307(e).

96. *Id.* § 1329. A modified plan may not last longer than five years from the time of the first payment under the original plan.

97. *Id.* § 1328(b). Although the court may grant a debtor an extraordinary discharge at any time in chapter 13, the court can grant such a discharge only if satisfied that the default is not

the United States Trustee,⁹⁸ who is to relieve the bankruptcy court from time-consuming administrative tasks.⁹⁹ The U.S. Trustee project is experimental in eighteen scattered "pilot" districts.¹⁰⁰ His or her primary duties concern the appointment, maintenance, and supervision of a panel of private trustees for chapter 7 cases.¹⁰¹ In pilot districts, the U.S. Trustee selects and supervises the trustee in all cases under chapters 7, 11, and 13.¹⁰²

TITLE 28 AMENDMENTS

Under the former Act, virtually the entire body of bankruptcy legislation—substantive, procedural, and judicial—was embodied in a single title of the United States Code.¹⁰³ A significant portion of the Bankruptcy Reform Act, however, is codified in Title 28 of the United States Code, the Judicial Code.¹⁰⁴ New title 11 is the substantive law of bankruptcy. The amendments to title 28 create a new, independent court—the bankruptcy court—and outline the new court's jurisdiction and the corresponding system of bankruptcy appeals.¹⁰⁵

the debtor's fault, that the unsecured creditors have gotten payment no less in value than they would have in chapter 7 liquidation, and that no modification is feasible. Such a discharge does not affect any nondischargeable debts. *Id.* § 1328(c).

98. 28 U.S.C. § 581 (Supp. II 1978). The appointment is for seven years.

99. CONG. REC., *supra* note 42, at H11,088.

100. The experimental system expires unless renewed by Congress before April 1, 1984. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 408, 92 Stat. 2686 (1978). At least one Senator does not expect it to be renewed. 124 CONG. REC. S17,405 (daily ed. Oct. 6, 1978) (remarks of Sen. Wallop). There are ten trustees in the eighteen districts. Several serve more than one district. One trustee serves the Districts of Maine, New Hampshire, Massachusetts, and Rhode Island, one the Southern District of New York, one the Districts of Delaware and New Jersey, one the Eastern District of Virginia and the District of Columbia, one the Northern District of Alabama, one the Northern District of Texas, one the Northern District of Illinois, one the Districts of Minnesota, North Dakota and South Dakota, one the Central District of California, and one the Districts of Colorado and Kansas. 11 U.S.C. app. § 1501 (Supp. II 1978).

101. 28 U.S.C. § 586 (Supp. II 1978).

102. 11 U.S.C. app. §§ 15701, 151104, 151302 (Supp. II 1978). Although in certain circumstances the U.S. Trustee may serve as trustee in chapter 7 or chapter 13 cases, the U.S. Trustee may not serve as trustee in chapter 11 cases. *Id.* The U.S. Trustee may only appoint a chapter 11 trustee on order of the court. *Id.* § 151104. The U.S. Trustee also selects the creditors' committee and examiner, if any, in chapter 11 cases. *Id.* §§ 151102, 151104. In non-pilot districts, such choices are made by the court. *Id.* §§ 701, 1102, 1104, 1302. In chapter 7 cases, in non-pilot districts, the choice of trustee is made from a panel of private trustees maintained by the Director of the Administrative Office of the United States Courts. 28 U.S.C. § 604 (Supp. II 1978).

103. See 11 U.S.C. §§ 1 to 1103 (1976) (repealed 1979). *But see* 20 U.S.C. §§ 1087 to 1087-3 (1976) (repealed 1979).

104. Codified in scattered sections of 28 U.S.C. (1979 & Supp. II 1978).

105. Title 11 of the Reform Act also amends Title 28 of the U.S. Code to implement the U.S. Trustee system. 28 U.S.C. §§ 581-589 (Supp. II 1978).

Under the former Bankruptcy Act, district courts appointed bankruptcy judges for six-year terms.¹⁰⁶ Thus, the bankruptcy court was often characterized as little more than a stepchild of the district court.¹⁰⁷ Although the House and the Senate fully debated the precise status to be attached to the Bankruptcy Court, both agreed that the increase in the number and complexity of bankruptcy cases required an elevation in the status and independence of the bankruptcy judge in order to attract competent judges of high quality to the bankruptcy bench.¹⁰⁸ After lengthy discussion over whether the United States Constitution required bankruptcy judges to be article III judges with life tenure,¹⁰⁹ or whether the broad grants of jurisdiction contemplated for the bankruptcy court by the Reform Act could be exercised by article I judges,¹¹⁰ Congress settled on a continuation of the article I status and created a new bankruptcy court that is nominally an adjunct of the district court.¹¹¹ The new court is, however, in fact independent of the district court. Bankruptcy judges are appointed by the President and confirmed by the Senate for a term of fourteen years.¹¹² The jurisdiction over bankruptcy cases in the district court¹¹³ rests solely with the bankruptcy courts.¹¹⁴ Because all trial functions in bankruptcy are handled by the bankruptcy judge and not the district judge, the result is a court functionally and politically independent of the district court.¹¹⁵

106. Bankruptcy Act of 1898, ch. 541, § 34a, 30 Stat. 554 (1897-98), as amended by Chandler Act, ch. 575, § 34a, 52 Stat. 857 (1938) (formerly codified at 11 U.S.C. § 62 (1976)) (repealed 1979).

107. SEN. REP. NO. 989, 95th Cong., 2d Sess. 16 (1978) [hereinafter cited as SENATE REPORT].

108. *Id.* at 15; HOUSE REPORT, *supra* note 4, at 10.

109. See U.S. CONST. art. III, § 1; HOUSE REPORT, *supra* note 4, at 29.

110. U.S. CONST. art. I, § 8. HOUSE REPORT, *supra* note 4, at 33, 35. See 1 COLLIER ON BANKRUPTCY 2-9 (15th ed. 1979).

111. 28 U.S.C. § 151(a) (Supp. II 1978). 124 CONG. REC. S17,434 (daily ed. Oct. 6, 1978) (remarks of Sen. Thurmond).

112. 28 U.S.C. §§ 152, 153(a) (Supp. II 1978). In choosing bankruptcy judges, the President is to give "due consideration" to candidates recommended by the judicial council for the circuit in which the appointment is to be made. *Id.* § 152. District judges have no direct voice in the appointments. The omission of life tenure forecloses article III status for bankruptcy judges.

113. *Id.* § 1471(a)-(b) (Supp. II 1978).

114. *Id.* § 1471(c).

115. See, e.g., 11 U.S.C. app. § 921(b) (Supp. II 1978). Essentially, the only role the district courts will play in most bankruptcy proceedings under the new Act is an appellate one. See 28 U.S.C. § 1334 (Supp. II 1978). *But see id.* § 160 and text accompanying notes 121-27 *infra*. However, the power to enjoin another court and most criminal contempt powers do remain exclusively with the district court and are denied to the bankruptcy court. *Id.* § 1481. On the other hand, the power of the bankruptcy court to conduct jury trials where appropriate is now clear. *Id.* §§ 1480, 1869(f). See generally Eisen & Smrtnik, *The Bankruptcy Reform Act of 1978—An Elevated Judiciary*, 28 DEPAUL L. REV. 1007 (1979).

JURISDICTION

One of the most complex issues presented under the former Bankruptcy Act involved disputes arising during the course of a bankruptcy proceeding: should they be resolved by the bankruptcy court or should the litigation be conducted in a non-bankruptcy forum? The dilemma was deferred to in the words of art as the question of summary versus plenary jurisdiction.¹¹⁶ Its resolution led to many time-wasting and expensive jurisdictional disputes.¹¹⁷ In one of its most significant accomplishments, the Reform Act abolishes the distinction between summary and plenary jurisdiction¹¹⁸ and gives the bankruptcy court "exclusive jurisdiction over all cases under title 11."¹¹⁹ Thus, virtually all matters arising in or related to a bankruptcy fall within the bankruptcy court's jurisdiction and should be litigated in those courts. Thus, the problems attendant upon resort to nonbankruptcy fora—*i.e.*, wasteful disputes over the bankruptcy court's jurisdiction—should be eliminated.¹²⁰

APPEALS

The Reform Act establishes alternative systems for appeals in bankruptcy matters. The choice of which system is to be followed in any circuit is left to

116. On a simplified basis, summary jurisdiction referred to matters over which the bankruptcy court had jurisdiction. Plenary jurisdiction referred to those matters arising during the course of a bankruptcy proceeding which were to be resolved in a forum other than the bankruptcy court. 1 COLLIER ON BANKRUPTCY 3-22 (15th ed. 1979). Some two hundred pages of the leading treatise on bankruptcy law were devoted to a discussion of the summary-plenary jurisdiction problem. 2 COLLIER ON BANKRUPTCY 438-638 (14th ed. 1976). The summary-plenary jurisdiction dispute appeared in every volume of the Federal Reporter and Federal Supplement between 1898 and 1940. Note, *Scope of the Summary Jurisdiction of the Bankruptcy Court*, 40 COLUM. L. REV. 489, 490 n.2 (1940). The number of such disputes did not decline significantly thereafter. See, e.g., *Katchen v. Landy*, 382 U.S. 323 (1966).

117. CONG. REC. *supra* note 42, at 107-08. One slight vestige of the summary-plenary dichotomy might still exist on the question of a right to jury trial. 28 U.S.C. § 1480(a) (Supp. II 1978); COLLIER ON BANKRUPTCY 3-93 (15th ed. 1979).

118. 11 U.S.C. app. § 1471(a) (Supp. II 1978).

119. *Id.* § 1471(b). This jurisdiction is exercised by the bankruptcy court exclusively. *Id.* § 1471(c).

120. Under the venue provisions of the Code, the litigation will usually take place in the "home" bankruptcy court, *i.e.*, the court where the main case is pending. *Id.* § 1473(a). The most important exception to the rule is that the trustee can only sue to recover a consumer debt of less than \$5,000, or any other claim of less than \$1,000, in the bankruptcy court for the district where the defendant lives. *Id.* § 1473(b). However, venue is not jurisdictional. *Id.* § 1477(b). The new law permits removal of actions pending in other courts to the bankruptcy court. *Id.* § 1478. However, the bankruptcy court has nonappealable discretion to decline to hear a matter either on original or removal jurisdiction. *Id.* §§ 1471(d), 1478(b). *Cf.* 11 U.S.C. app. § 305 (Supp. II 1978) (court may dismiss or suspend a case, after notice and a hearing, if the interests of creditors and the debtor would be better served by such dismissal or suspension).

the circuit judicial council.¹²¹ Under one system, the chief judge of the circuit designates panels of three bankruptcy judges to hear appeals of decisions of the bankruptcy courts within the circuit.¹²² Further appeals from these bankruptcy appellate panels go to the courts of appeals.¹²³ The other system is similar to that followed under the former Bankruptcy Act:¹²⁴ appeals from the decisions of a bankruptcy court go to the district court,¹²⁵ and further appeals go to the court of appeals.¹²⁶ Regardless of which system is used in a circuit, the new law offers the parties an attractive alternative to the first appellate level. If the parties so agree, they may bypass the bankruptcy panel or district court and take the original appeal directly to the court of appeals.¹²⁷ This alternative should serve the interests of time and expense in bankruptcy proceedings.

RULES OF BANKRUPTCY PROCEDURE

Procedure in bankruptcy cases will continue to be governed by rules of bankruptcy procedure promulgated by the Supreme Court.¹²⁸ Congress, however, introduced a significant change in the Supreme Court's rulemaking power in bankruptcy matters. Formerly, Congress had empowered the Supreme Court to overrule the procedural provisions of the Bankruptcy Act itself with a bankruptcy rule.¹²⁹ The Reform Act revoked that power, and now, in the event of a procedural conflict between the Act and a rule, the

121. 28 U.S.C. § 160 (Supp. II 1978).

122. *Id.* Of course, a panel may not hear an appeal from the decision of one of its members. *Id.* Appeals of interlocutory orders of the bankruptcy court may be taken to such panels only with the permission of the panel. Appeals of final orders may be taken as of right. *Id.* § 1482.

123. *Id.* § 1293.

124. Bankruptcy Act of 1898, ch. 541, § 39(c), as added by Chandler Act, ch. 575, § 39(c) 52 Stat. 858-59 (1938) § 39(c). See also Sup. Ct. R. Bankr. P., part VIII.

125. 28 U.S.C. § 1334 (Supp. II 1978). Appeals of interlocutory orders of the bankruptcy court may be taken to the district court only with the permission of the district court. Appeals of final orders may be taken as of right. *Id.* In general, appeals to either the panel or the district court will continue to be governed by part VIII of the bankruptcy rules as supplemented by the local interim rules. Thus an aggrieved party under either system must file a notice of appeal within ten days of the order complained of, or seek an extension of time for doing such within that ten day period. SUP. CT. R. BANKR. P. 802; 1 COLLIER ON BANKRUPTCY 3-268 (15th ed. 1979).

126. 28 U.S.C. §§ 1291, 1293(b) (Supp. II 1978). The Supreme Court has jurisdiction to review bankruptcy cases by certiorari or appeal. *Id.* § 1254. 1 COLLIER ON BANKRUPTCY 3-235 (15th ed. 1979).

127. 28 U.S.C. § 1293(b) (Supp. II 1978). Direct appeals to the court of appeals will be governed by the Federal Rules of Appellate Procedure, not the Bankruptcy Rules. 1 COLLIER ON BANKRUPTCY 3-247. An aggrieved party generally has thirty days in which to file a notice of direct appeal to the court of appeals. 28 U.S.C. § 2107 (Supp. II 1978). Compare SUP. CT. R. BANKR. P. 802(a).

128. 28 U.S.C. § 2075 (Supp. II 1978).

129. 28 U.S.C. § 2075 (1976), added to Bankruptcy Act of 1898 by Act of Oct. 3, 1964, Pub. L. No. 88-623, 78 Stat. 1001 (repealed 1979).

statute will control.¹³⁰ The result is that the existing Bankruptcy Rules remain in existence, but are valid only insofar as they do not conflict with the Bankruptcy Reform Act.¹³¹ It is clear that the existing rules (and official forms) are going to require a serious overhaul to align the rules with the major changes in the bankruptcy law made by the Reform Act.¹³²

TRANSITION

In general, the transition period for implementing the new Bankruptcy Code runs from October 1, 1979, to April 1, 1984. Most of the substantive provisions of the Act became effective on October 1, 1979.¹³³ Cases pending on September 30, 1979, will continue to be administered under the former Bankruptcy Act.¹³⁴ Although the effective date of many of the provisions creating the new bankruptcy court is delayed until April 1, 1984,¹³⁵ the delay is probably more a matter of semantics than substance. Although the delay will be of some significance to bankruptcy judges, it will be of no import to litigants in cases begun after October 1, 1979, because the jurisdiction of the bankruptcy court from October 1, 1979, to March 31, 1984, is basically the same as it will be after April 1, 1984.¹³⁶

In sum, the Bankruptcy Reform Act of 1978 is a remarkable accomplishment. It represents a massive revision in prior bankruptcy law and seeks to implement a wide variety of fundamental policy changes in bankruptcy law and administration. Future litigation will determine its success in this re-

130. The Reform Act deleted the portion of former section 2075 of Title 28 of the United States Code that read: "All laws in conflict with such rules shall be of no further force of effect after such rules have taken effect." Pub. L. No. 95-598, § 247, 92 Stat. 2676 (1978). Both the old and new versions of section 2075 provide: "Such rules shall not abridge, enlarge, or modify any substantive right," and thus the rules are confined to matters of procedure.

131. Pub. L. No. 95-598, § 405(d), 92 Stat. 2685 (1978).

132. At present the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, chaired by Circuit Judge R.J. Aldisert, is undertaking this project. However, it is estimated that the revision will take several years. In order to avoid chaos during the drafting process, the Advisory Committee has published "Suggested Interim Banking Rules," which may be adopted in each district as local rules or used by bankruptcy judges as guidelines during the transition period. See Statement of Judge Aldisert (August 15, 1979), THE ADVISORY COMM. ON BANKRUPTCY RULES OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, SUGGESTED INTERIM BANKRUPTCY RULES iii (1979).

133. Pub. L. No. 95-598, § 402(a), 92 Stat. 2682 (1978). See generally HOUSE REPORT, *supra* note 4, at 287-90.

134. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 403(a), 92 Stat. 2683. An exception to this rule was carved for certain pending railroad reorganization cases which will be governed in part by both the old law and the Reform Act.

135. *Id.* § 402(b)-(d).

136. *Id.* § 405. HOUSE REPORT, *supra* note 4, at 460. This provision also implements the new appellate system during the transition period. See text accompanying notes 120-25 *supra*.

gard.¹³⁷ It is clear that the new law is far from perfect. It leaves many questions unanswered and deals with other questions only generally or confusedly. No single symposium could deal with all of the issues that the Reform Act raises. It is the purpose of this symposium to explore some of the important policy changes that the Reform Act makes in both consumer and business insolvency proceedings as well as to examine the change made in the judicial administration of bankruptcy cases. In addition, in order to put the new code in perspective, the symposium will review the development of the Bankruptcy Act of 1978. While the symposium does not purport to chart the course of future litigation under the Reform Act, it is hoped that it will assist the bench, the bar, and legal scholars in studying future developments in bankruptcy law.

137. Not all of the future development in bankruptcy law will come from litigation. Already major amendments to the Bankruptcy Reform Act of 1978 have been introduced in both houses of Congress. Although these purport to be technical amendments, they do in fact make substantive changes in the new law designed to either alter or clarify the goals of the Reform Act. S. 658, 95th Cong., 1st Sess. (1979); H.R. 5447, 95th Cong., 1st Sess. (1979). *See also* H.R. 5043, 95th Cong., 1st Sess. (1979), with respect to taxes and bankruptcy.

