

# Recent Bank Failures & Distress: Lessons Learned and Chapter 11 Implications

UT LAW | CLE



TEXAS Law  
The University of Texas at Austin  
School of Law

42<sup>nd</sup> Annual Jay L. Westbrook  
Bankruptcy Conference  
November 17, 2023

Latham & Watkins operates worldwide as a limited liability partnership organized under the laws of the State of Delaware (USA) with affiliated limited liability partnerships conducting the practice in France, Hong Kong, Italy, Singapore, and the United Kingdom and as an affiliated partnership conducting the practice in Japan. Latham & Watkins operates in Israel through a limited liability company, in South Korea as a Foreign Legal Consultant Office, and in Saudi Arabia through a limited liability company. © Copyright 2023 Latham & Watkins. All Rights Reserved.

1

## Agenda

- I. Introductions
- II. Banking/Cash Management Implications of Filing for Chapter 11
- III. Checks & Balances in Chapter 11
- IV. Recent Bank Failures and Distress in 2023
- V. Implications Going Forward

2

# I. Introductions



Kevin M. Epstein (United States Trustee)  
[Kevin.M.Epstein@usdoj.gov](mailto:Kevin.M.Epstein@usdoj.gov)

**LATHAM & WATKINS** LLP

Ebba Gebisa (Counsel)  
[Ebba.Gebisa@lw.com](mailto:Ebba.Gebisa@lw.com)



Seth Herman (Director)  
[sherman@m3-partners.com](mailto:sherman@m3-partners.com)



Cari Turner (Managing Director)  
[cturner@alvarezandmarsal.com](mailto:cturner@alvarezandmarsal.com)

UT LAW

CLE



TEXAS Law

The University of Texas at Austin  
School of Law

3

# II. Banking/Cash Management Implications in Chapter 11

- Chapter 11 Debtors seek “first day” relief under the Cash Management Motion
  - “First Day Motions” are typically filed at the commencement of the case (i.e., with the Chapter 11 petition) to ensure a smooth transition into bankruptcy and to permit the debtor to maintain stable operations
    - Allow the debtor to, among other things, continue certain operations and business practices, pay or honor certain prepetition obligations, and obtain related procedural relief
  - Cash Management Motion is a customary First Day Motion
    - Typically seeks authority to maintain the debtor’s existing **cash management system**, including the use of bank accounts, intercompany financing arrangements, and existing business forms

4

## II. Banking/Cash Management Implications in Chapter 11

- More specifically, Cash Management Motion relief typically includes:
  - Continued use of existing bank accounts (including paying related fees)
  - Continued use of existing “business forms”
  - “Debtor-in-Possession” designation on checks
  - Addressing requirements of **Bankruptcy Code Section 345(b)**
    - Section 345(b) requires a debtor to obtain a bond for any deposit or investment account not insured or guaranteed by the US government
    - Typically involves negotiation with the United States Trustee if the debtor’s bank account(s) do not currently comply and relief is needed

5

## III. Checks & Balances in Chapter 11: UST Oversight and Adherence to UST Guidelines

- The United States Trustee Program (the “**UST**”) is a component of the Department of Justice responsible for overseeing the administration of bankruptcy cases with the aim of promoting the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders
  - Not be to be confused with the chapter 11 trustee appointed in a bankruptcy case (i.e., the UST does not have direct control of the company and its property)
- Once in bankruptcy, the debtor owes fiduciary obligations to the estate. The UST has issued guidelines that cover banking and other responsibilities for debtors-in-possession

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Recent Bank Failures and Distress

Also available as part of the eCourse

[2023 Current Issues in Business Bankruptcy: Position Enhancing Transactions; Appeals of Bankruptcy Sales; Post-Petition DIP Financing; and Bank Failures](#)

First appeared as part of the conference materials for the 42<sup>nd</sup> Annual Jay L. Westbrook Bankruptcy Conference session "Bank Failures and Banking Distress"