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# BANKRUPTCY FINANCING – THE DEBTOR-IN-POSSESSION CREDIT ALTERNATIVE

*Debtor-in-possession financing is utilized when available and necessary in chapter 11 cases, and has come to play an integral role in the restructuring process. In this article, the authors begin by discussing DIP lenders, financing structure, and issues on exit financing. They then turn to DIP financing issues and protections, including the "roll-up," waivers and releases, and credit bid rights. They close with a discussion of equity conversion rights and the complications that arise when lenders in syndicated groups do not agree.*

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Distressed companies may file for relief under chapter 11 bankruptcy for many reasons but often lack sufficient liquidity to fund an in-court restructuring and therefore must obtain financial support to get through the process. The Bankruptcy Code[1] provides corporate debtors a means to obtain credit in the form of debtor-in-possession financing ("DIP" or "DIP financing").[2] DIP financing helps facilitate a successful restructuring by funding case administration and operating expenses of the debtor while the debtor seeks to restructure its debts and emerge from bankruptcy. A debtor's access to post-petition financing can provide the DIP lender with case influence in setting case milestones for property dispositions and emergence from bankruptcy, as well as other funding related covenants. The terms of DIP financing and associated orders are heavily negotiated between a debtor and its stakeholders, and can also be part of broader restructuring support negotiations in a prenegotiated or prepackaged chapter 11 case. Some recent cases have shown a trend toward prepackaged consensus among the debtor, lender, and other parties in interest regarding DIP financing and the integral role it will play in the chapter 11 restructuring process. DIP financing has become fairly common in chapter 11 bankruptcy cases. This article discusses the DIP financing tools and strategies that have been deployed in recent cases.

## I. TYPES OF DIP FINANCING

### *A. DIP Financing Lenders*

DIP financing can take on many forms depending on who the DIP lender is and their incentives. A party in

[1] "Bankruptcy Code" means Title 11 of the United States Code.

[2] Section 364 of the Bankruptcy Code authorizes a debtor to obtain DIP financing.

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