

SUBCHAPTER I—OFFICERS AND
ADMINISTRATION

§ 1101. Definitions for this chapter

In this chapter—

(1) “debtor in possession” means debtor except when a person that has qualified under section 322 of this title is serving as trustee in the case;

(2) “substantial consummation” means—

(A) transfer of all or substantially all of the property proposed by the plan to be transferred;

(B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and

(C) commencement of distribution under the plan.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2626.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

This section contains definitions of three terms that are used in chapter 11. Paragraph (1) defines debtor in possession to mean the debtor, except when a trustee who has qualified in serving in the case.

Paragraph (2), derived from section 229a of current law [section 629(a) of former title 11], defines substantial consummation. Substantial consummation of a plan occurs when transfer of all or substantially all of the property proposed by the plan to be transferred is actually transferred; when the debtor (or its successor) has assumed the business of the debtor or the management of all or substantially all of the property dealt with by the plan; and when distribution under the plan has commenced.

Paragraph (3) defines for purposes of Chapter 11 a public company to mean “a debtor who, within 12 months prior to the filing of a petition for relief under this chapter, had outstanding liabilities of \$5 million or more, exclusive of liabilities for goods, services, or taxes and not less than 1,000 security holders.” There are, as noted, special safeguards for public investors related to the reorganization of a public company, as so defined.

Both requirements must be met: liabilities, excluding tax obligations and trade liabilities, must be \$5 million or more; and (2) the number of holders of securities, debt or equity, or both, must be not less than 1,000. The amount and number are to be determined as of any time within 12 months prior to the filing of the petition for reorganization.

§ 1102. Creditors’ and equity security holders’ committees

(a)(1) Except as provided in paragraph (3), as soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate.

(2) On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee.

(3) On request of a party in interest in a case in which the debtor is a small business debtor

and for cause, the court may order that a committee of creditors not be appointed.

(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.

(b)(1) A committee of creditors appointed under subsection (a) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the commencement of the case under this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented.

(2) A committee of equity security holders appointed under subsection (a)(2) of this section shall ordinarily consist of the persons, willing to serve, that hold the seven largest amounts of equity securities of the debtor of the kinds represented on such committee.

(3) A committee appointed under subsection (a) shall—

(A) provide access to information for creditors who—

(i) hold claims of the kind represented by that committee; and

(ii) are not appointed to the committee;

(B) solicit and receive comments from the creditors described in subparagraph (A); and

(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2626; Pub. L. 98-353, title III, § 499, July 10, 1984, 98 Stat. 384; Pub. L. 99-554, title II, § 221, Oct. 27, 1986, 100 Stat. 3101; Pub. L. 103-394, title II, § 217(b), Oct. 22, 1994, 108 Stat. 4127; Pub. L. 109-8, title IV, §§ 405, 432(b), Apr. 20, 2005, 119 Stat. 105, 110.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1102(a) of the House amendment adopts a compromise between the House bill and Senate amendment requiring appointment of a committee of creditors holding unsecured claims by the court; the alternative of creditor committee election is rejected.

Section 1102(b) of the House amendment represents a compromise between the House bill and the Senate amendment by preventing the appointment of creditors who are unwilling to serve on a creditors committee.

SENATE REPORT NO. 95-989

This section provides for the election and appointment of committees. Subsection (c) provides that this section does not apply in case of a public company, as to which a trustee, appointed under section 1104(a) will have responsibility to administer the estate and to formulate a plan as provided in section 1106(a).

There is no need for the election or appointment of committees for which the appointment of a trustee is mandatory. In the case of a public company there are likely to be several committees, each representing a different class of security holders and seeking authority to retain accountants, lawyers, and other experts, who will expect to be paid. If in the case of a public company creditors or stockholders wish to organize committees, they may do so, as authorized under section 1109(a). Compensation and reimbursement will be allowed for contributions to the reorganization pursuant to section 503(b) (3) and (4).

HOUSE REPORT NO. 95-595

This section provides for the appointment of creditors' and equity security holders' committees, which will be the primary negotiating bodies for the formulation of the plan of reorganization. They will represent the various classes of creditors and equity security holders from which they are selected. They will also provide supervision of the debtor in possession and of the trustee, and will protect their constituents' interests.

Subsection (a) requires the court to appoint at least one committee. That committee is to be composed of creditors holding unsecured claims. The court is authorized to appoint such additional committees as are necessary to assure adequate representation of creditors and equity security holders. The provision will be relied upon in cases in which the debtor proposes to affect several classes of debt or equity holders under the plan, and in which they need representation.

Subsection (b) contains precatory language directing the court to appoint the persons holding the seven largest claims against the debtor of the kinds represented on a creditors' committee, or the members of a prepetition committee organized by creditors before the order for relief under chapter 11. The court may continue prepetition committee members only if the committee was fairly chosen and is representative of the different kinds of claims to be represented. The court is restricted to the appointment of persons in order to exclude governmental holders of claims or interests.

Paragraph (2) of subsection (b) requires similar treatment for equity security holders' committees. The seven largest holders are normally to be appointed, but the language is only precatory.

Subsection (c) authorizes the court, on request of a party in interest, to change the size or the membership of a creditors' or equity security holders' committee if the membership of the committee is not representative of the different kinds of claims or interests to be represented. This subsection is intended, along with the nonbinding nature of subsection (b), to afford the court latitude in appointing a committee that is manageable and representative in light of the circumstances of the case.

REFERENCES IN TEXT

Section 3(a)(1) of the Small Business Act, referred to in subsec. (a)(4), is classified to section 632(a)(1) of Title 15, Commerce and Trade.

AMENDMENTS

2005—Subsec. (a)(3). Pub. L. 109-8, § 432(b), inserted “debtor” after “small business”.

Subsec. (a)(4). Pub. L. 109-8, § 405(a), added par. (4).

Subsec. (b)(3). Pub. L. 109-8, § 405(b), added par. (3).

1994—Subsec. (a). Pub. L. 103-394 substituted “Except as provided in paragraph (3), as” for “As” in par. (1) and added par. (3).

1986—Subsec. (a). Pub. L. 99-554, § 221(1), amended subsec. (a) generally, substituting “chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate” for “this chapter, the court shall appoint a committee of creditors holding unsecured claims” in

par. (1) and “United States trustee” for “court” in par. (2).

Subsec. (c). Pub. L. 99-554, § 221(2), struck out subsec. (c) which read as follows: “On request of a party in interest and after notice and a hearing, the court may change the membership or the size of a committee appointed under subsection (a) of this section if the membership of such committee is not representative of the different kinds of claims or interests to be represented.”

1984—Subsec. (b)(1). Pub. L. 98-353 substituted “commencement of the case” for “order for relief”.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Effective date and applicability of amendment by Pub. L. 99-554 dependent upon the judicial district involved, see section 302(d), (e) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 1103. Powers and duties of committees

(a) At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

(b) An attorney or accountant employed to represent a committee appointed under section 1102 of this title may not, while employed by such committee, represent any other entity having an adverse interest in connection with the case. Representation of one or more creditors of the same class as represented by the committee shall not per se constitute the representation of an adverse interest.

(c) A committee appointed under section 1102 of this title may—

(1) consult with the trustee or debtor in possession concerning the administration of the case;

(2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;

(3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;