

their claims. The going concern value contemplates a “comparison of revenues and expenditures taking into account the taxing power and the extent to which tax increases are both necessary and feasible” Municipal Insolvency, *supra*, at p. 64, and is intended to provide more of a return to creditors than the liquidation value if the city’s assets could be liquidated like those of a private corporation.

## HOUSE REPORT NO. 95-595

In addition to the confirmation requirements incorporated from section 1129 by section 901, this section specifies additional requirements. Paragraph (1) requires compliance with the provisions of the title made applicable in chapter 9 cases. This provision follows section 94(b)(2) [section 414(b)(2) of former title 11]. Paragraph (2) requires compliance with the provisions of chapter 9, as does section 94(b)(2). Paragraph (3) adopts section 94(b)(4), requiring disclosure and reasonableness of all payments to be made in connection with the plan or the case. Paragraph (4), copied from section 92(b)(6) [probably should be “94(b)(6)” which was section 414(b)(6) of former title 11], requires that the debtor not be prohibited by law from taking any action necessary to carry out the plan. Paragraph (5) departs from current law by requiring that administrative expenses be paid in full, but not necessarily in cash. Finally, paragraph (6) requires that the plan be in the best interest of creditors and feasible. The best interest test was deleted in section 94(b)(1) of current chapter IX from previous chapter IX [chapter 9 of former title 11] because it was redundant with the fair and equitable rule. However, this bill proposes a new confirmation standard generally for reorganization, one element of which is the best interest of creditors test; see section 1129(a)(7). In that section, the test is phrased in terms of liquidation of the debtor. Because that is not possible in a municipal case, the test here is phrased in its more traditional form, using the words of art “best interest of creditors.” The best interest of creditors test here is in addition to the financial standards imposed on the plan by sections 1129(a)(8) and 1129(b), just as those provisions are in addition to the comparable best interest test in chapter 11, 11 U.S.C. 1129(a)(7). The feasibility requirement, added in the revision of chapter IX last year, is retained.

## REFERENCES IN TEXT

Section 103(e) of this title, referred to in subsec. (b)(1), was redesignated section 103(f) and a new section 103(e) was added by Pub. L. 106-554, §1(a)(5) [title I, §112(c)(5)(A)], Dec. 21, 2000, 114 Stat. 2763, 2763A-394.

## AMENDMENTS

2005—Subsec. (b)(5). Pub. L. 109-8 substituted “507(a)(2)” for “507(a)(1)”.

1988—Subsec. (b)(6), (7). Pub. L. 100-597 added par. (6) and redesignated former par. (6) as (7).

1984—Subsec. (b)(4). Pub. L. 98-353, §497(1), struck out “to be taken” after “necessary”.

Subsec. (b)(5). Pub. L. 98-353, §497(2), substituted provisions requiring the plan to provide payment of cash in an amount equal to the allowed amount of a claim except to the extent that the holder of a particular claim has agreed to different treatment of such claim, for provisions which required the plan to provide for payment of property of a value equal to the allowed amount of such claim except to the extent that the holder of a particular claim has waived such payment on such claim.

## 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 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this

title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

## 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.

## § 944. Effect of confirmation

(a) The provisions of a confirmed plan bind the debtor and any creditor, whether or not—

- (1) a proof of such creditor’s claim is filed or deemed filed under section 501 of this title;
- (2) such claim is allowed under section 502 of this title; or
- (3) such creditor has accepted the plan.

(b) Except as provided in subsection (c) of this section, the debtor is discharged from 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 a disbursing agent appointed by the court; and
- (3) the court has determined—
  - (A) that any security so deposited will constitute, after distribution, a valid legal obligation of the debtor; and
  - (B) that any provision made to pay or secure payment of such obligation is valid.

(c) The debtor is not discharged under subsection (b) of this section from any debt—

- (1) excepted from discharge by the plan or 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.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2624.)

## HISTORICAL AND REVISION NOTES

## SENATE REPORT NO. 95-989

[Section 947] Subsection (a) [enacted as section 944(a)] makes the provisions of a confirmed plan binding on the debtor and creditors. It is derived from section 95(a) of chapter 9 [section 415(a) of former title 11].

Subsections (b) and (c) [enacted as section 944(b) and (c)] provide for the discharge of a municipality. The discharge is essentially the same as that granted under section 95(b) of the Bankruptcy Act [section 415(b) of former title 11].

## § 945. Continuing jurisdiction and closing of the case

(a) The court may retain jurisdiction over the case for such period of time as is necessary for the successful implementation of the plan.

(b) Except as provided in subsection (a) of this section, the court shall close the case when administration of the case has been completed.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2625; Pub. L. 98-353, title III, §498, July 10, 1984, 98 Stat. 384.)

## HISTORICAL AND REVISION NOTES

## SENATE REPORT NO. 95-989

Section 948 [enacted as section 945] permits the court to retain jurisdiction over the case to ensure successful execution of the plan. The provision is the same as that found in section 96(e) of Chapter 9 of the present Act [section 416(e) of former title 11].

## AMENDMENTS

1984—Subsec. (a). Pub. L. 98-353 substituted “implementation” for “execution”.

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.

**§ 946. Effect of exchange of securities before the date of the filing of the petition**

The exchange of a new security under the plan for a claim covered by the plan, whether such exchange occurred before or after the date of the filing of the petition, does not limit or impair the effectiveness of the plan or of any provision of this chapter. The amount and number specified in section 1126(c) of this title include the amount and number of claims formerly held by a creditor that has participated in any such exchange.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2625.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

The House amendment deletes section 950 of the Senate amendment as unnecessary. The constitutionality of chapter 9 of the House amendment is beyond doubt.

SENATE REPORT NO. 95-989

[Section 949] This section [enacted as section 946], which follows section 97 of current law [section 417 of former title 11], permits an exchange of a security before the case is filed to constitute an acceptance of the plan if the exchange was under a proposal that later becomes the plan.

**CHAPTER 11—REORGANIZATION**

**SUBCHAPTER I—OFFICERS AND ADMINISTRATION**

- Sec. 1101. Definitions for this chapter.
- 1102. Creditors' and equity security holders' committees.
- 1103. Powers and duties of committees.
- 1104. Appointment of trustee or examiner.
- 1105. Termination of trustee's appointment.
- 1106. Duties of trustee and examiner.
- 1107. Rights, powers, and duties of debtor in possession.
- 1108. Authorization to operate business.
- 1109. Right to be heard.
- 1110. Aircraft equipment and vessels.
- 1111. Claims and interests.
- 1112. Conversion or dismissal.
- 1113. Rejection of collective bargaining agreements.
- 1114. Payment of insurance benefits to retired employees.
- 1115. Property of the estate.
- 1116. Duties of trustee or debtor in possession in small business cases.

**SUBCHAPTER II—THE PLAN**

- 1121. Who may file a plan.
- 1122. Classification of claims or interests.
- 1123. Contents of plan.
- 1124. Impairment of claims or interests.
- 1125. Postpetition disclosure and solicitation.
- 1126. Acceptance of plan.
- 1127. Modification of plan.
- 1128. Confirmation hearing.
- 1129. Confirmation of plan.

**SUBCHAPTER III—POSTCONFIRMATION MATTERS**

- 1141. Effect of confirmation.
- 1142. Implementation of plan.

- Sec. 1143. Distribution.
- 1144. Revocation of an order of confirmation.
- 1145. Exemption from securities laws.
- 1146. Special tax provisions.

**SUBCHAPTER IV—RAILROAD REORGANIZATION**

- 1161. Inapplicability of other sections.
- 1162. Definition.
- 1163. Appointment of trustee.
- 1164. Right to be heard.
- 1165. Protection of the public interest.
- 1166. Effect of subtitle IV of title 49 and of Federal, State, or local regulations.
- 1167. Collective bargaining agreements.
- 1168. Rolling stock equipment.
- 1169. Effect of rejection of lease of railroad line.
- 1170. Abandonment of railroad line.
- 1171. Priority claims.
- 1172. Contents of plan.
- 1173. Confirmation of plan.
- 1174. Liquidation.

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Chapter 11 of the House amendment is derived in large part from chapter 11 as contained in the House bill. Unlike chapter 11 of the Senate amendment, chapter 11 of the House amendment does not represent an extension of chapter X of current law [chapter 10 of former title 11] or any other chapter of the Bankruptcy Act [former title 11]. Rather chapter 11 of the House amendment takes a new approach consolidating subjects dealt with under chapters VIII, X, XI, and XII of the Bankruptcy Act [chapters 8, 10, 11, and 12 of former title 11]. The new consolidated chapter 11 contains no special procedure for companies with public debt or equity security holders. Instead, factors such as the standard to be applied to solicitation of acceptances of a plan of reorganization are left to be determined by the court on a case-by-case basis. In order to insure that adequate investigation of the debtor is conducted to determine fraud or wrongdoing on the part of present management, an examiner is required to be appointed in all cases in which the debtor's fixed, liquidated, and unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$5 million. This should adequately represent the needs of public security holders in most cases. However, in addition, section 1109 of the House amendment enables both the Securities and Exchange Commission and any party in interest who is creditor, equity security holder, indenture trustee, or any committee representing creditors or equity security holders to raise and appear and be heard on any issue in a case under chapter 11. This will enable the bankruptcy court to evaluate all sides of a position and to determine the public interest. This approach is sharply contrasted to that under chapter X of present law in which the public interest is often determined only in terms of the interest of public security holders. The advisory role of the Securities and Exchange Commission will enable the court to balance the needs of public security holders against equally important public needs relating to the economy, such as employment and production, and other factors such as the public health and safety of the people or protection of the national interest. In this context, the new chapter 11 deletes archaic rules contained in certain chapters of present law such as the requirement of an approval hearing and the prohibition of prepetition solicitation. Such requirements were written in an age before the enactment of the Trust Indenture Act [15 U.S.C. 77aaa et seq.] and the development of securities laws had occurred. The benefits of these provisions have long been outlived but the detriment of the provisions served to frustrate and delay effective reorganization in those chapters of the Bankruptcy Act in which such provisions applied. Chapter 11 thus represents a much needed revision of reorganization laws. A brief