

After a plan has been confirmed, but before its substantial consummation, a plan may be modified by leave of court, which subsection (d) provides shall be granted for good cause. Subsection (e) provides that a proposal to modify a plan is subject to the disclosure requirements of section 1125 and as provided in subsection (f). It provides that a creditor or stockholder who voted for or against a plan is deemed to have accepted or rejected the modifying proposal. But if the modification materially and adversely affects any of their interests, they must be afforded an opportunity to change their vote in accordance with the disclosure and solicitation requirements of section 1125.

Under subsection (g) a plan, if modified prior to confirmation, shall be confirmed if it meets the requirements of section 1130.

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Subsection (a) permits the proponent of a plan to modify it at any time before confirmation, subject, of course, to the requirements of sections 1122 and 1123, governing classification and contents of a plan. After the proponent of a plan files a modification with the court, the plan as modified becomes the plan, and is to be treated the same as an original plan.

Subsection (b) permits modification of a plan after confirmation under certain circumstances. The modification must be proposed before substantial consummation of the plan. The requirements of sections 1122 and 1123 continue to apply. The plan as modified under this subsection becomes the plan only if the court confirms the plan as modified under section 1129 and the circumstances warrant the modification.

Subsection (c) requires the proponent of a modification to comply with the disclosure provisions of section 1125. Of course, if the modification were sufficiently minor, the court might determine that additional disclosure was not required under the circumstances.

Subsection (d) simplifies modification procedure by deeming any creditor or equity security holder that has already accepted or rejected the plan to have accepted or rejected the modification, unless, within the time fixed by the court, the creditor or equity security holder changes this previous acceptance or rejection.

AMENDMENTS

2010—Subsec. (f)(1). Pub. L. 111-327 substituted “subsection (e)” for “subsection (a)”.

2005—Subsecs. (e), (f). Pub. L. 109-8 added subsecs. (e) and (f).

1984—Subsec. (a). Pub. L. 98-353, § 511(a), inserted “of a plan” after “After the proponent”, and “of such plan” after “modification”.

Subsec. (b). Pub. L. 98-353, § 511(b), substituted “circumstances warrant such modification and the court, after notice and a hearing, confirms such plan as modified, under section 1129 of this title” for “the court, after notice and a hearing, confirms such plan, as modified, under section 1129 of this title, and circumstances warrant such modification”.

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 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.

§ 1128. Confirmation hearing

(a) After notice, the court shall hold a hearing on confirmation of a plan.

(b) A party in interest may object to confirmation of a plan.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2635.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95-989

[Section 1129 (enacted as section 1128)] Subsection (a) requires that there be a hearing in every case on the confirmation of the plan. Notice is required.

Subsection (b) permits any party in interest to object to the confirmation of the plan. The Securities and Exchange Commission and indenture trustees, as parties in interest under section 1109, may object to confirmation of the plan.

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.