

accepted plan is not confirmed. In order to provide greater flexibility to the court, the debtor, and creditors, the bill allows the court to permit the debtor to propose another plan if the first plan is not confirmed. In that event the debtor need not, as under current law, commence the case all over again. This could provide savings in time and administrative expenses if a plan is denied confirmation.

#### AMENDMENTS

1984—Subsec. (b). Pub. L. 98-353 substituted “confirmation of a plan under this chapter” for “confirmation”.

#### 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.

### SUBCHAPTER III—THE PLAN

#### § 941. Filing of plan

The debtor shall file a plan for the adjustment of the debtor's debts. If such a plan is not filed with the petition, the debtor shall file such a plan at such later time as the court fixes.

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

#### HISTORICAL AND REVISION NOTES

##### SENATE REPORT NO. 95-989

Section 941 gives the debtor the exclusive right to propose a plan, and directs that the debtor propose one either with the petition or within such time as the court directs. The section follows section 90(a) of current law [section 410(a) of former title 11].

#### § 942. Modification of plan

The debtor may modify the plan at any time before confirmation, but may not modify the plan so that the plan as modified fails to meet the requirements of this chapter. After the debtor files a modification, the plan as modified becomes the plan.

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

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

The House amendment deletes section 942 of the Senate amendment in favor of incorporating section 1125 by cross-reference. Similarly, the House amendment does not incorporate section 944 or 945 of the Senate amendment since incorporation of several sections in chapter 11 in section 901 is sufficient.

##### SENATE REPORT NO. 95-989

Section 942 permits the debtor to modify the plan at any time before confirmation, as does section 90(a) of current law [section 410(a) of former title 11].

#### § 943. Confirmation

(a) A special tax payer may object to confirmation of a plan.

(b) The court shall confirm the plan if—

(1) the plan complies with the provisions of this title made applicable by sections 103(e)<sup>1</sup> and 901 of this title;

(2) the plan complies with the provisions of this chapter;

(3) all amounts to be paid by the debtor or by any person for services or expenses in the case or incident to the plan have been fully disclosed and are reasonable;

(4) the debtor is not prohibited by law from taking any action necessary to carry out the plan;

(5) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that on the effective date of the plan each holder of a claim of a kind specified in section 507(a)(2) of this title will receive on account of such claim cash equal to the allowed amount of such claim;

(6) any regulatory or electoral approval necessary under applicable nonbankruptcy law in order to carry out any provision of the plan has been obtained, or such provision is expressly conditioned on such approval; and

(7) the plan is in the best interests of creditors and is feasible.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2624; Pub. L. 98-353, title III, § 497, July 10, 1984, 98 Stat. 384; Pub. L. 100-597, § 10, Nov. 3, 1988, 102 Stat. 3030; Pub. L. 109-8, title XV, § 1502(a)(6), Apr. 20, 2005, 119 Stat. 216.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 943(a) of the House amendment makes clear that a special taxpayer may object to confirmation of a plan. Section 943(b) of the House amendment is derived from section 943 of the House bill respecting confirmation of a plan under chapter 9. It must be emphasized that these standards of confirmation are in addition to standards in section 1129 that are made applicable to chapter 9 by section 901 of the House amendment. In particular, if the requirements of sections 1129(a)(8) are not complied with, then the proponent may request application of section 1129(b). The court will then be required to confirm the plan if it complies with the “fair and equitable” test and is in the best interests of creditors. The best interests of creditors test does not mean liquidation value as under chapter XI of the Bankruptcy Act [chapter 11 of former title 11]. In making such a determination, it is expected that the court will be guided by standards set forth in *Kelley v. Everglades Drainage District*, 319 U.S. 415 (1943) [Fla.1943, 63 S.Ct. 1141, 87 L.Ed. 1485, rehearing denied 63 S.Ct. 1444, 320 U.S. 214, 87 L.Ed. 1851, motion denied 64 S.Ct. 783, 321 U.S. 754, 88 L.Ed. 1054] and *Fano v. Newport Heights Irrigation Dist.*, 114 F.2d 563 (9th Cir. 1940), as under present law, the bankruptcy court should make findings as detailed as possible to support a conclusion that this test has been met. However, it must be emphasized that unlike current law, the fair and equitable test under section 1129(b) will not apply if section 1129(a)(8) has been satisfied in addition to the other confirmation standards specified in section 943 and incorporated by reference in section 901 of the House amendment. To the extent that *American United Mutual Life Insurance Co. v. City of Avon Park*, 311 U.S. 138 (1940) [Fla.1940, 61 S.Ct. 157, 85 L.Ed. 91, 136 A.L.R. 860, rehearing denied 61 S.Ct. 395, 311 U.S. 730, 85 L.Ed. 475] and other cases are to the contrary, such cases are overruled to that extent.

##### SENATE REPORT NO. 95-989

Section 946 [enacted as section 943] is adopted from current section 94 [section 414 of former title 11]. The test for confirmation is whether or not the plan is fair and equitable and feasible. The fair and equitable test tracts current chapter X [chapter 10 of former title 11] and is known as the strict priority rule. Creditors must be provided, under the plan, the going concern value of

<sup>1</sup> See References in Text note below.

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”.