

(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].

Editorial Notes

AMENDMENTS

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

Statutory Notes and Related Subsidiaries

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.

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[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 be-

fore 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.
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.

SUBCHAPTER V—SMALL BUSINESS DEBTOR REORGANIZATION

1181. Inapplicability of other sections.
1182. Definitions.
1183. Trustee.
1184. Rights and powers of a debtor in possession.
1185. Removal of debtor in possession.
1186. Property of the estate.
1187. Duties and reporting requirements of debtors.
1188. Status conference.
1189. Filing of the plan.
1190. Contents of plan.
1191. Confirmation of plan.

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| Sec. | |
| 1192. | Discharge. |
| 1193. | Modification of plan. |
| 1194. | Payments. |
| 1195. | Transactions with professionals. |

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 perpetuation 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 discussion of the history of this important achievement is useful to an appreciation of the monumental reform embraced in chapter 11.

Under the existing Bankruptcy Act [former title 11] debtors seeking reorganization may choose among three reorganization chapters, chapter X, chapter XI, and chapter XII [chapters 10, 11, and 12 of former title 11]. Individuals and partnerships may file under chapter XI or, if they own property encumbered by mortgage liens, they may file under chapter XII. A corporation may file under either chapter X or chapter XI, but is ineligible to file under chapter XII. Chapter X was designed to facilitate the pervasive reorganization of corporations whose creditors include holders of publicly issued debt securities. Chapter XI, on the other hand, was designed to permit smaller enterprises to negotiate composition or extension plans with their unsecured

creditors. The essential differences between chapters X and XI are as follows. Chapter X mandates that, first, an independent trustee be appointed and assume management control from the officers and directors of the debtor corporation; second, the Securities and Exchange Commission must be afforded an opportunity to participate both as an adviser to the court and as a representative of the interests of public security holders; third, the court must approve any proposed plan of reorganization, and prior to such approval, acceptances of creditors and shareholders may not be solicited; fourth, the court must apply the absolute priority rule; and fifth, the court has the power to affect, and grant the debtor a discharge in respect of, all types of claims, whether secured or unsecured and whether arising by reason of fraud or breach of contract.

The Senate amendment consolidates chapters X, XI, and XII [chapters 10, 11, and 12 of former title 11], but establishes a separate and distinct reorganization procedure for "public companies." The special provisions applicable to "public companies" are tantamount to the codification of chapter X of the existing Bankruptcy Act and thus result in the creation of a "two-track system." The narrow definition of the term "public company" would require many businesses which could have been rehabilitated under chapter XI to instead use the more cumbersome procedures of chapter X, whether needed or not.

The special provisions of the Senate amendment applicable to a "public company" are as follows:

(a) Section 1101(3) defines a "public company" as a debtor who, within 12 months prior to the filing of the petition, had outstanding \$5 million or more in debt and had not less than 1000 security holders;

(b) Section 1104(a) requires the appointment of a disinterested trustee irrespective of whether creditors support such appointment and whether there is cause for such appointment;

(c) Section 1125(f) prohibits the solicitation of acceptances of a plan of reorganization prior to court approval of such plan even though the solicitation complies with all applicable securities laws;

(d) Section 1128(a) requires the court to conduct a hearing on any plan of reorganization proposed by the trustee or any other party;

(e) Section 1128(b) requires the court to refer any plans "worthy of consideration" to the Securities and Exchange Commission for their examination and report, prior to court approval of a plan; and

(f) Section 1128(c) and section 1130(a)(7) requires the court to approve a plan or plans which are "fair and equitable" and comply with the other provisions of chapter 11.

The record of the Senate hearings on S. 2266 and the House hearings on H.R. 8200 is replete with evidence of the failure of the reorganization provisions of the existing Bankruptcy Act [former title 11] to meet the needs of insolvent corporations in today's business environment. Chapter X [chapter 10 of former title 11] was designed to impose rigid and formalized procedures upon the reorganization of corporations and, although designed to protect public creditors, has often worked to the detriment of such creditors. As the House report has noted:

The negative results under chapter X [chapter 10 of former title 11] have resulted from the stilted procedures, under which management is always ousted and replaced by an independent trustee, the courts and the Securities and Exchange Commission examine the plan of reorganization in great detail, no matter how long that takes, and the court values the business, a time consuming and inherently uncertain procedure.

The House amendment deletes the "public company" exception, because it would codify the well recognized infirmities of chapter X [chapter 10 of former title 11], because it would extend the chapter X approach to a large number of new cases without regard to whether the rigid and formalized procedures of chapter X are needed, and because it is predicated upon the myth that provisions similar to those contained in chapter X