

CHAPTER 11 CONFIRMATION CHECKLISTA. VALIDITY

1. The proponent is entitled to propose a plan at this time and has complied with the disclosure and solicitation requirements of Code §§ 1123 and 1125. Code § 1129(a)(1) and (2).
2. The plan is proposed in good faith and not by any means forbidden by law. Code § 1129(a)(3).
3. The principal purpose of the plan is not the avoidance of taxes or registration under the Securities Act of 1933. Code § 1129(d).
4. All classes of claims and interests have been properly classified and designated. Code §§ 1129(a)(1), 1122, and 1123(a)(1).
5. At least one impaired class, exclusive of insiders, has accepted the plan. Code § 1129(a)(10).
6. Each impaired class has accepted the plan (if not, go to requirements set out in section D). Code § 1129(a)(8). A class accepts if more than half in number and at least 2/3 in amount of those creditors vote in favor of the plan. Only those voting are counted. Code § 1126(c) and (d).

B. TREATMENT OF ADMINISTRATIVE EXPENSES AND PRIORITY CLAIMS

1. The proponent has disclosed all payments for services already made or proposed to be made under the plan, and they have been approved as reasonable or are subject to approval. Code § 1129(a)(4).
2. All filing and quarterly fees are current or to be paid by plan's effective date. Code § 1129(a)(12).
3. All administrative and involuntary gap expenses will be paid in full on the effective day of the plan unless the holder has agreed otherwise. Code § 1129(a)(9)(A).
4. All priority tax claims will be paid in full with interest over a period of time not to exceed 5 years after the date of the order for relief. Code § 1129(a)(9)(C) and (D).

5. Priority non-tax claims (DSO, wage, prepetition benefit plan contributions, and consumer deposits) will be paid in accordance with the provisions of Code § 1129(a)(9)(B) -- payment in full with interest in plan if class has accepted, at effective date if not.

C. BEST INTERESTS OF CREDITORS (LIQUIDATION TEST) -- FOR EACH DISSENTING CREDITOR OR STOCKHOLDER

All dissenting holders of claims or interests will receive or retain 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 (holders of non-recourse claims must receive at least the value of such creditor's interest in its collateral). Code § 1129(a)(7).

D. CRAMDOWN -- IF THERE ARE IMPAIRED CLASSES THAT HAVE NOT ACCEPTED THE PLAN

1. The plan does not discriminate unfairly. Code § 1129(b)(1).
2. The plan provides for fair and equitable treatment of impaired classes of creditors which have not accepted the plan. Code § 1129(b)(1).

Secured creditors (Code § 1129(b)(2)(A)):

- a. Lien retention plus cash payments that total amount of claim and have a present value, as of plan's effective date, of creditor's interest in property,
- b. Sale of collateral with lien to attach to proceeds, or
- c. Realization of "indubitable equivalent" of such claims.

Unsecured creditors: Each impaired unsecured class and all below it in priority are treated according to the absolute priority rule. Code § 1129(b)(2)(B).

Equity interest holders (Code § 1129(b)(2)(C)):

- a. Holder will receive greater of fixed liquidation preference, redemption price, or actual value, or
- b. Absolute priority rule – no junior class will receive anything.

E. FEASIBILITY

1. Adequate means for execution of the plan has been provided, and confirmation of the plan is not likely to be followed by liquidation or further reorganization. Code § 1129(a)(11).

Factors:

- a. Adequacy of the debtor's capital structure
 - b. The earning power of its business
 - c. Economic conditions
 - d. The ability of the debtor's management
 - e. The probability of the continuation of the same management
 - f. Any other related matters which determine the prospects of a sufficiently successful operation to enable performance of the provisions of the plan
2. Any regulatory commission with jurisdiction over the rates of the debtor has approved any rate change provided for in the plan. Code § 1129(a)(6).

F. INDIVIDUAL DEBTOR

1. Postpetition DSO is current. Code § 1129(a)(14).
2. If an unsecured creditor has objected, plan meets liquidation test and all of debtor's projected disposable income for five years is devoted to plan. Code § 1129(a)(15).

G. CORPORATE DEBTOR

1. The plan discloses postconfirmation directors, officers, voting trustees, and insiders, whose service is consistent with the interests of creditors, equity holders, and public policy. The plan discloses the identity and compensation of any insider that will be employed or retained. Code § 1129(a)(5).
2. The plan provides for all retiree benefits to be paid for the duration of the period debtor is obligated to pay such benefits. Code § 1129(a)(13).
3. If the debtor is a nonprofit entity, any transfers under the plan comply with applicable nonbankruptcy law (e.g., any required governmental authorization). Code § 1129(a)(16).