

Navigating Bankruptcy: Understanding Plan Confirmation Requirements Across Chapters Part 2

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For individuals and businesses facing financial distress, bankruptcy offers a structured path towards a fresh start or reorganization. A critical step in any bankruptcy case is the confirmation of a repayment or reorganization plan. Completion of the plan is typically what entitles the debtor to a discharge. The plan outlines how the debtor will address their debts, and its approval by the bankruptcy court is essential for the case to proceed. While the fundamental goal of confirmation remains consistent across different chapters, the specific requirements vary significantly depending on the type of bankruptcy filed.

This article, part of continuing series on bankruptcy plans, provides an overview of the key requirements for confirming a bankruptcy plan under Chapter 11 of the U.S. Bankruptcy Code.

Chapter 11: Reorganization

Chapter 11 bankruptcy is primarily designed for businesses that seek to continue operations while reorganizing their financial affairs. It is also available to individuals with debt that exceeds the limits for a Chapter 13 plan (currently set at \$1,580,125 of secured debt and \$526,700 of unsecured debt, adjusted every three years for inflation).

I. Plan Validity and Good Faith

- **Proper Proposal and Disclosure:** The entity proposing the plan (the proponent) must be entitled to do so and must have complied with all disclosure and solicitation requirements outlined in the Bankruptcy Code. This includes providing adequate information to creditors for them to make an informed decision about the plan.
- **Good Faith:** The plan must be proposed in good faith and not by any means forbidden by law.



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Fundamental Requirement A traditional Chapter 11 plan may be confirmed through the cramdown process once the requirements of a consensual plan are met, except for 11 U.S.C. §§ 1129(a)(8) (unanimous class consent).

- **No Unfair Discrimination:** The plan must not discriminate unfairly among classes.
- **Fair and Equitable Treatment:** The plan must provide fair and equitable treatment for impaired classes of creditors that have not accepted the plan. This includes specific requirements for different types of creditors:
 - **Secured Creditors:** Secured creditors must receive one of the following: (1) retention of their lien plus cash payments totaling the amount of their claim with a present value equal to their interest in the property as of the effective date; (2) sale of the collateral with the lien attaching to the proceeds; or (3) the realization of the “indubitable equivalent” of their claims.
 - **Unsecured Creditors:** Each impaired unsecured class and all classes junior to them must be treated according to the absolute priority rule, meaning senior creditors are paid in full before junior creditors or equity holders can receive any payments.
 - **Equity Interest Holders:** Equity interest holders will receive either the greater of their fixed liquidation preference, or redemption price—unless the absolute priority rule applies, in which case equity holders may receive nothing.

V. Feasibility of the Plan

A Chapter 11 plan must be feasible, meaning it is likely to succeed and not result in further liquidation or reorganization.

- **Likelihood of Success:** Adequate means for the plan's execution must be provided, and confirmation of the plan is not likely to be followed by liquidation or further reorganization.
- **Factors for Feasibility:** The court will consider several factors when assessing feasibility, including:
 - The adequacy of the debtor's capital structure
 - The earning power of the business
 - Economic conditions
 - The ability of the debtor's management
 - The probability of the continuation of the same management
 - Any other related matters that determine the prospects of a sufficiently successful operation to enable performance of the plan's provisions
- **Regulatory Approval:** If the debtor's rates are subject to the jurisdiction of a regulatory commission, any rate change proposed in the plan must be approved by that commission.

VI. Additional Considerations for Individual and Corporate Debtors

Specific requirements also apply depending on whether the debtor is an individual or a corporation.

- **Individual Debtor:**
 - **Postpetition DSO:** Postpetition domestic support obligations (DSO) must be current.
 - **Disposable Income:** If an unsecured creditor



- **Proper Classification:** All classes of claims and interests must be properly classified and designated within the plan.
- **Acceptance by an Impaired Class:** At least one impaired class of claims, excluding any insider claims, must have accepted the plan.
- **Plan Confirmation:** Generally, each impaired class must accept the plan. A class is considered to have accepted the plan if more than half in number and at least two-thirds in amount of the creditors who vote in that class vote in favor of the plan. Only those who vote are counted. If an impaired class has not accepted the plan, the debtor may still be able to confirm the plan through “cramdown” provisions, discussed below.

II. Treatment of Expenses and Priority Claims

The plan must appropriately address administrative expenses and various priority claims.

- **Disclosure and Approval of Payments:** Any payments for services already made or proposed to be made under the plan must be disclosed and either approved as reasonable or subject to approval by the court.
- **Current Fees:** All filing and quarterly fees must be current or slated for payment by the plan's effective date.
- **Administrative and Involuntary Gap Expenses:** Generally, all administrative expenses must be paid in full on the effective date of the plan, unless the holder of such a claim agrees to different

terms.

- **Priority Tax Claims:** Priority tax claims must be paid in full with interest over a period not exceeding five years from the date of the order for relief.
- **Priority Non-Tax Claims:** Priority non-tax claims (such as domestic support obligations, wages, prepetition benefit plan contributions, and consumer deposits) must be paid in accordance with specific provisions. If the class has accepted the plan, they are typically paid in full with interest within the plan; if not, they are paid in full on the effective date.

III. Best Interests of Creditors

Any proposed plan of reorganization must satisfy the “best interests of creditors” test (otherwise known as the “liquidation test”). This means that each dissenting holder of a claim or interest must receive or retain property of a value, as of the effective date of the plan, that is not less than the amount they would receive if the debtor were liquidated under Chapter 7. Holders of non-recourse claims must receive at least the value of their interest in their collateral.

IV. Cramdown: When Impaired Classes Don't Accept

If at least one impaired class has not accepted the plan, the plan may still be confirmed under the “cramdown” provisions, provided it meets specific fairness and equity standards and at least one impaired class has accepted the plan.





objects, the plan must meet the liquidation test, and all of the debtor's projected disposable income for five years must be devoted to the plan

- **Corporate Debtor:**

- **Postconfirmation Management:** The plan must disclose postconfirmation directors, officers, voting trustees, and insiders, whose service must be consistent with the interests of creditors, equity holders, and public policy. The identity and compensation of any insider to be employed or retained must also be disclosed.
- **Retiree Benefits:** The plan must provide for all retiree benefits to be paid for the duration of the period the debtor is obligated to pay such benefits.
- **Nonprofit Entities:** If the debtor is a nonprofit entity, any transfers under the plan must comply with applicable nonbankruptcy law, such as required governmental authorization.

Conclusion

Confirming a bankruptcy plan is a multifaceted process, with each chapter of the Bankruptcy Code presenting unique challenges and requirements. Understanding these distinctions is crucial for debtors, creditors, and legal professionals alike. While the “best interests of creditors” and “feasibility” tests are common threads, the nuanced differences found in the cramdown provisions, for example, reflect the distinct purposes and policy considerations behind each bankruptcy Chapter.

While successfully navigating the plan confirmation process can seem overwhelming, Frost Law’s dedicated team of bankruptcy professionals is here to help clients meet these challenges, offering experienced and personalized guidance throughout the entire process.

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