

plans, as set out in present section 77(e) [section 205(e) of former title 11]. Subsection (a) specifies the findings which the court must make before approving a plan: (1) The plan complies with the applicable provisions of the chapter; (2) the proponent of the plan complies with the applicable provisions of the chapter; (3) the plan has been proposed in good faith; (4) any payments for services or for costs or expenses in connection with the case or the plan are disclosed to the court and are reasonable, or, if to be paid later, are subject to the approval of the court as reasonable; (5) the proponent of the plan has disclosed the identity and affiliations of the individuals who will serve as directors, officers, or voting trustees, such appointments or continuations in office are consistent with the interests of creditors, equity security holders, and the proponent the public, and has disclosed the identity and compensation of any insider who will be employed or retained under the plan; (6) that rate changes proposed in the plan have been approved by the appropriate regulatory commission, or that the plan is contingent on such approval; (7) that confirmation of the plan is not likely to be followed by further reorganization or liquidation, unless it is contemplated by the plan; (8) that the plan, if there is more than one, is the one most likely to maintain adequate rail service and (9) that the plan provides the priority traditionally accorded by section 77(b) [section 205(b) of former title 11] to claims by rail creditors for necessary services rendered during the 6 months preceding the filing of the petition in bankruptcy.

Subsection (b) continues the present power of the court in section 77(e) [section 205(e) of former title 11] to confirm a plan over the objections of creditors or equity security holders who are materially and adversely affected. The subsection also confirms the authority of the court to approve a transfer of all or part of a debtor's property or its merger over the objections of equity security holders if it finds (1) that the "public interest" in continued rail transportation outweighs any adverse effect on creditors and equity security holders, and (2) that the plan is fair and equitable, affords due recognition to the rights of each class, and does not discriminate unfairly against any class.

Subsection (c) permits modification of a plan confirmed by a final order only for fraud.

#### HOUSE REPORT NO. 95-595

[Section 1172] This section [enacted as section 1173] requires the court to confirm a plan if the applicable requirements of section 1129 (relating to confirmation of reorganization plans generally) are met, if the best interest test is met, and if the plan is compatible with the public interest.

The test in this paragraph is similar to the test prescribed for ordinary corporate reorganizations. However, since a railroad cannot liquidate its assets and sell them for scrap to satisfy its creditors, the test focuses on the value of the railroad as a going concern. That is, the test is based on what the assets, sold as operating rail lines, would bring.

The public interest requirement, found in current law, will now be decided by the court, with the ICC representing the public interest before the court, rather than in the first instance by the ICC. Liquidation of the debtor is not, per se, contrary to the public interest.

#### Editorial Notes

##### AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-353 substituted "consistent" for "compatible".

#### 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.

#### § 1174. Liquidation

On request of a party in interest and after notice and a hearing, the court may, or, if a plan has not been confirmed under section 1173 of this title before five years after the date of the order for relief, the court shall, order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of this title.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2644.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Section 1174 of the House amendment represents a compromise between the House bill and Senate amendment on the issue of liquidation of a railroad. The provision permits a party in interest at any time to request liquidation. In addition, if a plan has not been confirmed under section 1173 of the House amendment before 5 years after the date of order for relief, the court must order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as if the case were a case under chapter 7 of title 11. The approach differs from the conversion to chapter 7 under section 1174 of the Senate bill in order to make special provisions contained in subchapter IV of chapter 11 applicable to liquidation. However, maintaining liquidation in the context of chapter 11 is not intended to delay liquidation of the railroad to a different extent than if the case were converted to chapter 7.

Although the House amendment does not adopt provisions contained in sections 1170(1), (2), (3), or (5), of the Senate amendment such provisions are contained explicitly or implicitly in section 1123 of the House amendment.

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

Section 1174 permits the court to convert the case to a liquidation under chapter 7 if the court finds that the debtor cannot be reorganized, or if various time limits specified in the subchapter are not met. Section 77 [section 205 of former title 11] does not authorize a liquidation of a railroad under the Bankruptcy Act [former title 11]. If the railroad is not reorganizable, the only action open to the court is to dismiss the petition, which would in all likelihood be followed by a State court receivership, with all of its attendant disadvantages. If reorganization is impossible, the debtor should be liquidated under the Bankruptcy Act.

#### SUBCHAPTER V—SMALL BUSINESS DEBTOR REORGANIZATION

#### § 1181. Inapplicability of other sections

(a) IN GENERAL.—Sections 105(d), 1101(1), 1104, 1105, 1106, 1107, 1108, 1115, 1116, 1121, 1123(a)(8), 1123(c), 1127, 1129(a)(15), 1129(b), 1129(c), 1129(e), and 1141(d)(5) of this title do not apply in a case under this subchapter.

(b) COURT AUTHORITY.—Unless the court for cause orders otherwise, paragraphs (1), (2), and (4) of section 1102(a) and sections 1102(b), 1103, and 1125 of this title do not apply in a case under this subchapter.

(c) SPECIAL RULE FOR DISCHARGE.—If a plan is confirmed under section 1191(b) of this title, section 1141(d) of this title shall not apply, except as provided in section 1192 of this title.

(Added Pub. L. 116-54, §2(a), Aug. 23, 2019, 133 Stat. 1079.)

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE

Section effective 180 days after Aug. 23, 2019, see section 5 of Pub. L. 116-54, set out as an Effective Date of 2019 Amendment note under section 101 of this title.

**§ 1182. Definitions**

In this subchapter:

(1) **DEBTOR.**—The term “debtor” means a small business debtor.

(2) **DEBTOR IN POSSESSION.**—The term “debtor in possession” means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

(Added Pub. L. 116-54, §2(a), Aug. 23, 2019, 133 Stat. 1079; amended Pub. L. 116-136, div. A, title I, §1113(a)(1), (5), Mar. 27, 2020, 134 Stat. 310, 311; Pub. L. 117-151, §2(d), (i)(1)(B), June 21, 2022, 136 Stat. 1298, 1300.)

**Editorial Notes**

## AMENDMENTS

2022—Par. (1). Pub. L. 117-151, §2(i)(1)(B), amended par. (1) generally. Prior to amendment, par. (1) consisted of subpars. (A) and (B) defining “debtor”.

Pub. L. 117-151, §2(d), amended par. (1) generally. Prior to amendment, text read as follows: “The term ‘debtor’ means a small business debtor.”

2020—Par. (1). Pub. L. 116-136, §1113(a)(5), amended par. (1) generally. Prior to amendment, par. (1) consisted of subpars. (A) and (B) defining “debtor”.

Pub. L. 116-136, §1113(a)(1), temporarily amended par. (1) generally. Prior to amendment, text read as follows: “The term ‘debtor’ means a small business debtor.”

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by section 2(d) of Pub. L. 117-151 applicable with respect to any case that is commenced under this title on or after Mar. 27, 2020, and with respect to a case that was commenced on or after Mar. 27, 2020, and before June 21, 2022, that is pending on June 21, 2022, see section 2(h)(2) of Pub. L. 117-151, set out as an Effective Date of 2022 Amendment; Retroactive Application note under section 101 of this title.

Pub. L. 117-151, §2(i)(1), June 21, 2022, 136 Stat. 1300, provided in part that the amendment made by section 2(i)(1)(B) is effective on the date that is 2 years after June 21, 2022.

## EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-136, div. A, title I, §1113(a)(3), Mar. 27, 2020, 134 Stat. 311, provided that: “The amendment made by paragraph (1) [amending this section] shall apply only with respect to cases commenced under title 11, United States Code, on or after the date of enactment of this Act [Mar. 27, 2020].”

Pub. L. 116-136, div. A, title I, §1113(a)(5), Mar. 27, 2020, 134 Stat. 311, as amended by Pub. L. 117-5, §2(a)(1), Mar. 27, 2021, 135 Stat. 249, provided in part that the amendment made by section 1113(a)(5) of Pub. L. 116-136 is effective 2 years after Mar. 27, 2020.

## EFFECTIVE DATE

Section effective 180 days after Aug. 23, 2019, see section 5 of Pub. L. 116-54, set out as an Effective Date of 2019 Amendment note under section 101 of this title.

**§ 1183. Trustee**

(a) **IN GENERAL.**—If the United States trustee has appointed an individual under section 586(b) of title 28 to serve as standing trustee in cases

under this subchapter, and if such individual qualifies as a trustee under section 322 of this title, then that individual shall serve as trustee in any case under this subchapter. Otherwise, the United States trustee shall appoint one disinterested person to serve as trustee in the case or the United States trustee may serve as trustee in the case, as necessary.

(b) **DUTIES.**—The trustee shall—

(1) perform the duties specified in paragraphs (2), (5), (6), (7), and (9) of section 704(a) of this title;

(2) perform the duties specified in paragraphs (3), (4), and (7) of section 1106(a) of this title, if the court, for cause and on request of a party in interest, the trustee, or the United States trustee, so orders;

(3) appear and be heard at the status conference under section 1188 of this title and any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan filed under this subchapter;

(C) modification of the plan after confirmation; or

(D) the sale of property of the estate;

(4) ensure that the debtor commences making timely payments required by a plan confirmed under this subchapter;

(5) if the debtor ceases to be a debtor in possession—

(A) perform the duties specified in section 704(a)(8) and paragraphs (1), (2), and (6) of section 1106(a) of this title; and

(B) be authorized to operate the business of the debtor;

(6) if there is a claim for a domestic support obligation with respect to the debtor, perform the duties specified in section 704(c) of this title; and

(7) facilitate the development of a consensual plan of reorganization.

(c) **TERMINATION OF TRUSTEE SERVICE.**—

(1) **IN GENERAL.**—If the plan of the debtor is confirmed under section 1191(a) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and section 1185(a) of this title.

(2) **SERVICE OF NOTICE OF SUBSTANTIAL CONSUMMATION.**—Not later than 14 days after the plan of the debtor is substantially consummated, the debtor shall file with the court and serve on the trustee, the United States trustee, and all parties in interest notice of such substantial consummation.

(Added Pub. L. 116-54, §2(a), Aug. 23, 2019, 133 Stat. 1079; amended Pub. L. 117-151, §2(e), June 21, 2022, 136 Stat. 1299.)

**Editorial Notes**

## AMENDMENTS

2022—Subsec. (b)(5). Pub. L. 117-151 substituted “possession—” for “possession,” designated remainder of existing provisions as subpar. (A), struck out “, including operating the business of the debtor” after