

ORDER CONFIRMING PLAN

Official Form 15 is used in chapter 11 cases to confirm a plan of reorganization. This form, while legally sufficient for its purpose is often simply a starting point for the drafting of a longer order containing additional provisions applicable to the particular case. Although issued in the name of the court, the Order Confirming Plan normally will be drafted by the attorney for the debtor or other plan proponent. The additional provisions in a proposed confirmation order are subject to objection and may be the focus of extensive negotiation among the parties in interest. All provisions in the order also are further subject to approval by the judge.

I. APPLICABLE LAW AND RULES

The Bankruptcy Code requires the court, after notice, to hold a hearing on the confirmation of a plan. 11 U.S.C. § 1128.

At or after the confirmation hearing, the court may confirm the plan and thereby make it binding on all creditors and equity security holders, if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class of creditors and the holders of two-thirds in amount of equity security interests in each class voting on the plan. Before confirmation can be granted, the court also must be satisfied that there has been compliance with the other requirements of confirmation set forth in section 1129 of the Code, even in the absence of any objections. In order to confirm the plan, the court must find that the plan is feasible, is proposed in good faith, and that the plan and the proponent of the plan are in compliance with the Code. In addition, the court must find the confirmation of the plan is not likely to be followed by liquidation or the need for further financial reorganization, unless it is proposed in the plan. 11 U.S.C. § 1129(a)(11). For a complete list of requirements for confirmation of a plan, parties in interest may refer to section 1129 of the Code.

In the event the required acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class or classes rejecting it and otherwise satisfies the requirements of section 1129(b) of the Code. This procedure is sometimes referred to as a “cramdown.”

Upon confirming a plan of reorganization, the court will enter an order of confirmation. The order of confirmation must conform to the Official Form. Rule 3020(c) of the Federal Rules of Bankruptcy Procedure (referred to as “Bankruptcy Rule” or “Fed. R. Bankr. P.”)

Notice of the entry of the order must be mailed to the debtor, the trustee, creditors, equity security holders, other parties in interest, and the United States trustee. Fed. R. Bankr. P. 2002(f), 2002(k), 3020(c). If known, the notice also must be mailed to any identified entity subject to an injunction provided for in the plan against conduct not otherwise enjoined under the Code. Fed. R. Bankr. P. 3020(c)(2).

After the entry of the order of confirmation, the court may issue any other order necessary to administer the estate. Fed. R. Bankr. P. 3020(d).

Under section 1141(a) of the Code, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor. Although certain exceptions listed in subsections 1141(d)(2) and (d)(3) apply, the general rule is that a confirmed plan binds all such entities, regardless of whether their claims or interests are impaired or whether those entities have accepted the plan. 11 U.S.C. § 1141(a).

All property of the estate vests in the debtor upon confirmation of the plan, unless the plan or order confirming the plan states otherwise. 11 U.S.C. § 1141(b). Moreover, property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor, with some exceptions provided by subsections 1141(d)(2) and (d)(3). 11 U.S.C. § 1141(c).

Unless the plan or order confirming the plan states otherwise, the confirmation of a plan generally discharges the debtor from any debt that arose before the confirmation of the plan and any debt specified under section 502(g), (h), or (i). 11 U.S.C. § 1141(d)(1)(A). Moreover, the confirmation terminates the rights and interests of equity security holders and general partners provided for by the plan. 11 U.S.C. § 1141(d)(1)(B).

Rather than being discharged at confirmation, an individual debtor generally must complete the plan payments before receiving a discharge. 11 U.S.C. § 1141(d)(5). An individual debtor is not discharged from any debt excepted from discharge under section 523 of the Code. . 11 U.S.C. § 1141(d)(2). A corporate debtor is not discharged from the debts set out in section 1141(d)(6).

In addition, confirmation does not discharge the debtor if the plan is a liquidating plan, the debtor does not engage in business after consummation of the plan, and the debtor would be denied a discharge under section 727(a) of the Code if the case were under chapter 7. 11 U.S.C. § 1141(d)(3).

Finally, the court may approve a debtor's written waiver of the discharge that is executed by the debtor after the order for relief under chapter 11. 11 U.S.C. § 1141(d)(4).

In addition to the Bankruptcy Code and the Bankruptcy Rules, each district may have local bankruptcy court rules that may contain further requirements. Links to local bankruptcy rules are posted on the Judiciary's Internet web site at <http://www.uscourts.gov/rules/bk-localrules.html>.

II. DIRECTIONS

1. The Official Form should be used with alterations as may be appropriate. Fed. R. Bankr. P. 9009. As stated above, in most cases an order confirming a plan will contain additional provisions applicable to the particular case.

2. The caption should be placed at the top of the page and should be in conformance with Official Form 16A. Instructions for Official Form 16A, Caption (Full), are posted with the form.

3. A person who files a disclosure statement and plan of reorganization is referred to below as a “plan proponent” or “proponent of a plan.”

4. The plan proponent should place the proponent’s name on the first line after the words “filed by.”

5. The plan proponent should state the date the plan was filed with the court on the second line after the word “on.”

6. If appropriate, the date that any modification to a plan was filed should appear in the blank space after the words “modification filed on.”

After the phrase, **“IT IS ORDERED that:”**

7. The plan proponent should place the proponent's name on the first line after the words “filed by.”

8. The plan proponent should place the date the plan was filed with the court in the blank space after the word “on.” If appropriate, the date that any modification to a plan was filed and any pertinent details of modifications to the plan should appear after the date the plan was filed.

9. The date that the judge signs the order should be stated after the word “Dated.” The bankruptcy judge's signature should appear on the signature line.

10. The Order Confirming Plan must be filed and a copy mailed to those parties in interest specified in Bankruptcy Rule 3020(c), discussed above. A copy of the confirmed plan should be attached.