

CHAPTER 3**Reorganization Proceedings****SECTIONS**

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Editor's note: This chapter on Reorganization Proceedings was created by PL 13-73 § 25.

§ 301. Approval of application; Suspension, dismissal or conversion of pending reorganization.

(1) An application for the reorganization of a debtor that is a corporation may be filed by the debtor pursuant to the requirements of sections 103 and 104 of this subtitle, provided that, in addition to the requirements of those sections, an application for reorganization shall also allege that

- (a) there is a reasonable likelihood that the debtor can be successfully reorganized so as to be able generally to pay debts incurred in continuing to do business and
- (b) such reorganization is in the best interests of the creditors.

(2) The court shall permit the application and permit debtor to continue to operate its business during the pendency of reorganization proceedings if:

- (a) there is no objection by an Interested Party; or
- (b) the court finds that the party or parties objecting to the application have failed to establish that it is in the best interests of the creditors and the estate that the application be dismissed.

(3) Notwithstanding subsections (1) and (2) of this section, the court may, at any time prior to the

confirmation of a plan of reorganization, and after notice and a hearing, dismiss a pending reorganization proceeding, suspend such a proceeding or convert a reorganization proceeding to a receivership proceeding under chapter 2 of this subtitle, whichever is in the best interests of the creditors and the estate, if it finds

- (a) that there is continuing reduction of the debtor's assets and absence of a reasonable likelihood of a successful reorganization of debtor;
- (b) that there is an inability to effectuate a plan;
- (c) that there has been unreasonable delay by the debtor that is prejudicial to creditors; or
- (d) that there has been a failure by the debtor to submit a plan of reorganization in the time permitted by this chapter or by order of the court.

Source: PL 13-73 § 26.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Case annotations: A debtor is not entitled to a discharge from creditors' claims if the debtor has transferred property with intent to defraud after date of application and the debtor may also be denied a discharge for a fraudulent transfer of a debtor's interest in property incurred within one year before the application for receivership. *In re Panuelo*, 16 FSM R. 339, 344 & n.1 (Pon. 2009).

The Bankruptcy Act's purpose is to fairly balance the interests of creditors and debtors in circumstances where the debtor is unable to meet his financial obligations when due, and to do this a receiver is required to marshal all of the debtor's non-exempt assets and to manage those assets, during the pendency of the proceeding, in the estate's best interest, and at the end of the proceeding, give the debtor who has not abused the bankruptcy system an opportunity to get a fresh start. But a debtor who has abused the bankruptcy system is not entitled to a discharge of his debts and a fresh start. *In re Panuelo*, 16 FSM R. 339, 344-45 (Pon. 2009).

The Bankruptcy Act gives the bankruptcy court three choices in the case of disputed claims: the court may summarily determine the matter upon motion, conduct a trial on the claim, or refer the matter to another court for determination. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

A bankruptcy court's summary determination of disputed claims is properly reserved for those cases where there are no debtor's assets left to make any payments to the unsecured creditors so the amount of the debtor's liability matters little since there will never be any money to pay it. *In re Panuelo*, 15 FSM R. 23, 28 (Pon. 2007).

A creditor's disputed claim could be tried as part of a bankruptcy case, but when that would entail a full-blown trial with witnesses and evidence and another trial would still have to be conducted because the debtor is not the only defendant to the lawsuit, that would be a wasteful use of scarce judicial resources and leave the danger of inconsistent judgments. *In re Panuelo*, 15 FSM R. 23, 29 (Pon. 2007).

§ 302. Operation of the debtor's business and appointment of trustee.

The business of the debtor, during the pendency of the reorganization proceeding, shall be operated by the management that existed on the application date, except that the court may at any time, after notice and a hearing, appoint a trustee to replace that management if it finds that such replacement is in the best interests of the debtor and the creditors.

Source: PL 13-73 § 27.

§ 303. Powers of debtor or trustee.

During the pendency of the reorganization proceeding, the debtor, or the trustee if one has been appointed, shall have the following powers, subject to any limitations ordered by the court:

- (1) the power to use, sell and lease property of the debtor;
- (2) the power to obtain credit on behalf of the debtor;
- (3) the power to assume and reject executory contracts and leases of the debtor;
- (4) the power to abandon or disregard property of inconsequential value of the debtor; and

(5) the power to avoid preferences and fraudulent conveyances upon the same terms and in the same circumstances as a receiver as provided in sections 205, 206 and 207 of this subtitle.

Court approval is required for actions taken pursuant to subsection (1) and (2) of this section unless the activity occurs in the ordinary course of business. Court approval is also required for actions taken pursuant to subsection (3), (4) and (5) of this section.

Source: PL 13-73 § 28.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

Editor's note: PL 13-73 § 28 designates the subsections of § 303 as (a) through (e) rather than (1) through (5). This has been changed to comport with standard code format.

§ 304. Filing of a plan.

(1) The debtor may file a plan of reorganization at the time of filing its application under this chapter, or at any other time during the course of a proceeding under this chapter, provided that the court may, by order, set a time within which the debtor must file a plan.

(2) Any other interested party may file a plan of reorganization only if:

(a) a trustee has been appointed by the court;

(b) the debtor has failed to file a plan within 90 days of the commencement of a proceeding under this chapter, or such longer or shorter period as may be ordered by the court;

(c) the debtor has failed to file a plan that has been approved by a vote of creditors as described in subsection 308 of this chapter, within 120 days of the commencement of a proceeding under this chapter, or such shorter or longer period as may be ordered by the court; or

- (d) the court so orders after notice and a hearing.

Source: PL 13-73 § 29.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 305. Classification of claims.

- (1) A plan may separate claims into multiple classes provided that a claim may be placed in a particular class only if it is substantially similar to other claims in that class, except as provided in subsection (2) of this section.
- (2) A plan may include a class of convenience claims all of which are:
- (a) less than an amount approved by the court as necessary for administrative convenience, or
 - (b) have been reduced to that amount by agreement of the creditors holding those claims.

Source: PL 13-73 § 30.

§ 306. Contents of the plan.

- (1) The plan shall—
- (a) designate, subject to the requirements of section 305 of this chapter, classes of claims;
 - (b) identify any class of claims that is not impaired under the plan;
 - (c) specify the treatment of each class of claims that is impaired under the plan;
 - (d) treat all claims within a class upon equal terms unless the holder of a claim has agreed to less advantageous treatment;
 - (e) provide adequate means for the plan's implementation, such as
 - (i) retention by the debtor of any assets of the debtor so as to enable the debtor to continue its business;
 - (ii) transfer of all or any part of the assets of the debtor to another person;
 - (iii) merger or consolidation with another person;
 - (iv) sale of any part of the debtor's assets to another person or distribution of such assets to a creditor that holds an interest in the assets; or
 - (v) cancellation of stock or other ownership interests in the debtor; and
 - (f) include such other information as the court, after notice and a hearing, may determine to be

necessary to adequately inform creditors for the purposes of voting on the plan.

(2) The plan may propose the resolution of claims against the debtor through the distribution to creditors of value in the form of

- (a) cash,
- (b) other assets of the debtor,
- (c) equity in the reorganized debtor,
- (d) secured or unsecured debt of the reorganized debtor, or
- (e) any combination thereof.

Subject to the provisions of section 308(7) of this chapter, the plan may propose that there be no distribution of value to one or more classes of creditors.

Source: PL 13-73 § 31.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 307. Impairment.

A class of claims is impaired under the plan unless the plan leaves unaltered or restores to the holders of the claims in the class all of the legal, equitable and contractual rights to which they would have been entitled in the absence of the commencement of the proceeding under this subtitle, except that no claim shall be considered impaired solely by reason of the plan's failure to give effect to any provision allowing a creditor:

- (1) to accelerate payment of a debt or
- (2) to foreclose or otherwise enforce a lien against property of the debtor based upon a default or other action occurring prior to or during the proceeding under this subtitle.

Source: PL 13-73 § 32.

Editor's note: Subsections (a) and (b) of this section redesignated as subsections (1) and (2) to comport with standard code formatting.

§ 308. Voting on the plan.

- (1) If, after notice and a hearing, the court finds that
 - (a) the proposed plan satisfies the requirements of section 306 of this chapter,

(b) is fair and equitable to the creditors, and

(c) has a reasonable likelihood of being successfully implemented, the plan shall be submitted to a vote of the creditors according to the terms of this section.

(2) Voting by the creditors on the plan shall be at such time and in such manner as may be determined by the court.

(3) Prior to voting on the plan, each creditor shall be given, in such manner as may be determined by the court,

(a) notice of the time and manner of voting

(b) a description of the rules of voting, and

(c) an opportunity to review the plan.

(4) A class of claims shall be deemed to have accepted the plan if creditors holding a majority of claims in number and two-thirds of claims in value in the class vote in favor of the plan.

(5) Persons holding claims that are not impaired by the plan shall be deemed to have voted to accept the plan, and need not be included in the voting.

(6) Persons holding claims that, under the plan, will receive no distribution or other value shall be deemed to have voted against the plan and need not be included in the voting.

(7) The plan will be deemed to have been accepted by the creditors if:

(a) At least one class of claims has voted in favor of the plan, or is deemed to have voted in favor of the plan as provided in subsection (5) of this section, and

(b) No class of claims that has voted to reject the plan will receive or retain, under the plan, less value than the holders of claims in that class would receive if debtor were liquidated under chapter 2 of this subtitle.

Source: PL 13-73 § 33.

Cross-reference: The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

§ 309. Plan rejection.

If, on a vote of the creditors under section 308 of this chapter, the plan has not been accepted, the court, after notice and a hearing, may take such action as it finds to be in the best interest of the creditors and the debtor, such as permitting modification of the plan, permitting other interested parties to submit a plan, converting the reorganization proceeding to a receivership proceeding under chapter 2 of this subtitle, or dismissing the reorganization proceeding.

Source: PL 13-73 § 34.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 310. Confirmation.

If, on a vote of the creditors under section 308 of this chapter, the plan has been accepted, the court shall enter an order confirming the plan. The confirmation order shall contain such terms and conditions as the court may find to be necessary and appropriate to the implementation of the plan. The confirmed plan and the confirmation order shall be binding on the debtor and upon all creditors. Except as specifically stated in the plan or the confirmation order, the entry of the confirmation order—

- (1) discharges the debtor from all debts that arose before the date of such confirmation order regardless of
 - (a) whether the debt was submitted as a claim in the proceeding under this subtitle and
 - (b) whether the creditor holding such debt voted in favor of the plan;
- (2) vests in the debtor all property of the debtor not otherwise dealt with in the plan; and
- (3) releases all property dealt with in the plan from all claims and liens except as identified in the plan.

Source: PL 13-73 § 35.

§ 311. Retention of jurisdiction.

(1) Following the entry of the order of confirmation, the court shall retain jurisdiction, for such time as it determines to be reasonable, for the purpose of resolving issues arising from the implementation of the plan.

(2) If, upon application by any interested party, and after notice and a hearing, the court finds that the debtor has failed or is unable to implement any portion of the plan or to comply with any provision of the confirmation order, the court may modify or revoke the confirmation order, or take such other action as it determines to be necessary and appropriate to accomplish the purposes of this chapter.

Source: PL 13-73 § 36.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.