Pub. L. 103–394, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

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.

§ 1122. Classification of claims or interests

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2631.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

This section codifies current case law surrounding the classification of claims and equity securities. It requires classification based on the nature of the claims or interests classified, and permits inclusion of claims or interests in a particular class only if the claim or interest being included is substantially similar to the other claims or interests of the class.

Subsection (b), also a codification of existing practice, contains an exception. The plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

§ 1123. Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507(a)(2), 507(a)(3), or 507(a)(8) of this title, and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) specify the treatment of any class of claims or interests that is impaired under the plan;

(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

(5) provide adequate means for the plan's implementation, such as—

(A) retention by the debtor of all or any part of the property of the estate;

(B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;

(C) merger or consolidation of the debtor with one or more persons;

(D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;

(E) satisfaction or modification of any lien;

(F) cancellation or modification of any indenture or similar instrument;

(G) curing or waiving of any default;

(H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;

(I) amendment of the debtor's charter; or

(J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and

(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.

(b) Subject to subsection (a) of this section, a plan may—

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(3) provide for—

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a

security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506(b), 1129(a)(7), and 1129(b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2631; Pub. L. 98–353, title III, § 507, July 10, 1984, 98 Stat. 385; Pub. L. 103–394, title II, § 206, title III, §§ 304(h)(6), 305(a), title V, § 501(d)(31), Oct. 22, 1994, 108 Stat. 4123, 4134, 4146; Pub. L. 109–8, title III, § 321(b), title XV, § 1502(a)(7), Apr. 20, 2005, 119 Stat. 95, 216.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1123 of the House amendment represents a compromise between similar provisions in the House bill and Senate amendment. The section has been clarified to clearly indicate that both secured and unsecured claims, or either of them, may be impaired in a case under title 11. In addition assumption or rejection of an executory contract under a plan must comply with section 365 of title 11. Moreover, section 1123(a)(1) has been substantively modified to permit classification of certain kinds of priority claims. This is important for purposes of confirmation under section 1129(a)(9).

Section 1123(a)(5) of the House amendment is derived from a similar provision in the House bill and Senate amendment but deletes the language pertaining to ''fair upset price'' as an unnecessary restriction. Section 1123 is also intended to indicate that a plan may provide for any action specified in section 1123 in the case of a corporation without a resolution of the board of directors. If the plan is confirmed, then any action proposed in the plan may be taken notwithstanding any otherwise applicable nonbankruptcy law in accordance with section 1142(a) of title 11.

SENATE REPORT NO. 95–989

Subsection (a) specifies what a plan of reorganization must contain. The plan must designate classes of claims and interests, and specify, by class, the claims or interests that are unimpaired under the plan. Priority claims are not required to be classified because they may not have arisen when the plan is filed. The plan must provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a different, but not better, treatment of his claim or interest.

Paragraph (3) applies to claims, not creditors. Thus, if a creditor is undersecured, and thus has a secured claim and an unsecured claim, this paragraph will be applied independently to each of his claims.

Paragraph (4) of subsection (a) is derived from section 216 of chapter X [section 616 of former title 11] with some modifications. It requires the plan to provide adequate means for the plans execution. These means may include retention by the debtor of all or any part of the property of the estate, transfer of all or any part of the property of the estate to one or more entities, whether organized pre- or postconfirmation, merger or consolidation of the debtor with one or more persons, sale and distribution of all or any part of the property of the estate, satisfaction or modification of any lien, cancellation or modification of any indenture or similar instrument, curing or waiving of any default, extension of maturity dates or change in interest rates of securities, amendment of the debtor's charter, and issuance of securities.

Subparagraph (C), as it applies in railroad cases, has the effect of overruling *St. Joe Paper Co. v. Atlantic Coast Line R. R.*, 347 U.S. 298 (1954). It will allow the trustee or creditors to propose a plan of merger with another railroad without the consent of the debtor, and the debtor will be bound under proposed 11 U.S.C. 1141(a). See Hearings, pt. 3, at 1616. ''Similar instrument'' referred to in subparagraph (F) might include a deposit with an agent for distribution, other than an indenture trustee, such as an agent under an agreement in a railroad conditional sale or lease financing agreement.

Paragraphs (5) and (6) and subsection (b) are derived substantially from Section 216 of Chapter X ([former] 11 U.S.C. 616). Paragraph (5) requires the plan to prohibit the issuance of nonvoting equity securities, and to provide for an appropriate distribution of voting power among the various classes of equity securities. Paragraph (6) requires that the plan contain only provisions that are consistent with the interests of creditors and equity security holders, and with public policy with respect to the selection of officers, directors, and trustees, and their successors.

Subsection (b) specifies the matters that the plan may propose. The plan may impair or leave unimpaired any claim or interest. The plan may provide for the assumption or rejection of executory contracts or unexpired leases not previously rejected under section 365. The plan may also provide for the treatment of claims by the debtor against other entities that are not settled before the confirmation of the plan. The plan may propose settlement or adjustment of any claim or equity security belonging to the estate, or may propose retention and enforcement of such claim or interest by the debtor or by an agent appointed for that purpose.

The plan may also propose the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of the sale among creditors and equity security holders. This would be a liquidating plan. The subsection permits the plan to include any other appropriate provision not inconsistent with the applicable provisions of the bankruptcy code.

Subsection (c) protects an individual debtor's exempt property by prohibiting its use, sale, or lease under a plan proposed by someone other than the debtor, unless the debtor consents.

AMENDMENTS

2005—Subsec. (a)(1). Pub. L. 109–8, § 1502(a)(7), substituted ''507(a)(2), 507(a)(3)'' for ''507(a)(1), 507(a)(2)''.

Subsec. (a)(8). Pub. L. 109–8, § 321(b), added par. (8).

1994—Subsec. (a)(1). Pub. L. 103–394, §§ 304(h)(6), 501(d)(31), substituted ''507(a)(8) of this title,'' for ''507(a)(7) of this title''.

Subsec. (b)(5), (6). Pub. L. 103–394, § 206, added par. (5) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 103–394, § 305(a), added subsec. (d).

1984—Subsec. (a). Pub. L. 98–353, § 507(a)(1), in provisions preceding par. (1) substituted ''Notwithstanding any otherwise applicable nonbankruptcy law, a'' for ''A''.

Subsec. (a)(1). Pub. L. 98–353, § 507(a)(2), inserted a comma after ''classes of claims'' and substituted ''507(a)(7) of this title,'' for ''507(a)(6) of this title''.

Subsec. (a)(3). Pub. L. 98–353, § 507(a)(3), struck out ''shall'' before ''specify the treatment''.

Subsec. (a)(5). Pub. L. 98–353, § 507(a)(4), substituted ''implementation'' for ''execution''.

Subsec. (a)(5)(G). Pub. L. 98–353, § 507(a)(5), inserted ''of'' after ''waiving''.

Subsec. (b)(2). Pub. L. 98–353, § 507(b), substituted ''rejection, or assignment'' for ''or rejection'', and ''under such section'' for ''under section 365 of this title''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by sections 206, 304(h)(6), and 501(d)(31) of Pub. L. 103–394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, and amendment by section 305(a) of Pub. L. 103–394 effective Oct. 22, 1994, and applicable only to agreements entered into after Oct. 22, 1994, see section 702 of Pub. L. 103–394, set out as a note under section 101 of this title.

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.

§ 1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title or of a kind that section 365(b)(2) expressly does not require to be cured;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2633; Pub. L. 98–353, title III, § 508, July 10, 1984, 98 Stat. 385; Pub. L. 103–394, title II, § 213(d), Oct. 22, 1994, 108 Stat. 4126; Pub. L. 109–8, title III, § 328(b), Apr. 20, 2005, 119 Stat. 100.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 1124 of the House amendment is derived from a similar provision in the House bill and Senate amendment. The section defines the new concept of ''impairment'' of claims or interests; the concept differs significantly from the concept of ''materially and adversely affected'' under the Bankruptcy Act [former title 11]. Section 1124(3) of the House amendment provides that a holder of a claim or interest is not impaired, if the plan provides that the holder will receive the allowed amount of the holder's claim, or in the case of an interest with a fixed liquidation preference or redemption price, the greater of such price. This adopts the position contained in the House bill and rejects the contrary standard contained in the Senate amendment.

Section 1124(3) of the House amendment rejects a provision contained in section 1124(3)(B)(iii) of the House bill which would have considered a class of interest not to be impaired by virtue of the fact that the plan provided cash or property for the value of the holder's interest in the debtor.

The effect of the House amendment is to permit an interest not to be impaired only if the interest has a fixed liquidation preference or redemption price. Therefore, a class of interests such as common stock, must either accept a plan under section 1129(a)(8), or the plan must satisfy the requirements of section 1129(b)(2)(C) in order for a plan to be confirmed.

A compromise reflected in section 1124(2)(C) of the House amendment indicates that a class of claims is not impaired under the circumstances of section 1124(2) if damages are paid to rectify reasonable reliance engaged in by the holder of a claim or interest arising from the prepetition breach of a contractual provision, such as an ipso facto or bankruptcy clause, or law. Where the rights of third parties are concerned, such as in the case of lease premises which have been rerented to a third party, it is not intended that there will be adequate damages to compensate the third party.

SENATE REPORT NO. 95–989

The basic concept underlying this section is not new. It rests essentially on Section 107 of Chapter X ([former] 11 U.S.C. 507), which states that creditors or stockholders or any class thereof ''shall be deemed to be 'affected' by a plan only if their or its interest shall be materially and adversely affected thereby.''

This section is designated to indicate when contractual rights of creditors or interest holders are not materially affected. It specifies three ways in which the plan may leave a claim or interest unimpaired.

First, the plan may propose not to alter the legal, equitable, or contractual rights to which the claim or interest entitled its holder.

Second, a claim or interest is unimpaired by curing the effect of a default and reinstating the original terms of an obligation when maturity was brought on or accelerated by the default. The intervention of bankruptcy and the defaults represent a temporary crisis which the plan of reorganization is intended to clear away. The holder of a claim or interest who under the plan is restored to his original position, when others receive less or get nothing at all, is fortunate indeed and has no cause to complain. Curing of the default and the assumption of the debt in accordance with its terms is an important reorganization technique for dealing with a particular class of claims, especially secured claims.

Third, a claim or interest is unimpaired if the plan provides for their payment in cash. In the case of a debt liability, the cash payment is for the allowed amount of the claim, which does not include a redemption premium. If it is an equity security with a fixed liquidation preference, such as a preferred stock, the allowed amount is such liquidation preference, with no redemption premium. With respect to any other equity security, such as a common stock, cash payment must be equal to the ''value of such holder's interest in the debtor.''