

德汇美国破产法问答（系列之六） Dorsey U.S. Bankruptcy Law Q&A Series Six

by Samuel S. Kohn, Alessandra Glorioso, Catherine X. Pan-Giordano, Rachel P. Stoian, and Abby Fang

德汇外国供应商破产法团队

Dorsey & Whitney Bankruptcy Team for Foreign Suppliers

We hope that you found the five previous Q&A series regarding what to do when a U.S. customer files for Chapter 11 bankruptcy protection helpful. You can check them out here: [\[One, Two, Three, Four, and Five\]](#). This Series Six will address questions relating to the plan process, including the disclosure and solicitation process, what happens if a plan is or is not confirmed, and how that impacts your right to a distribution.

希望我们之前五篇关于“如何应对美国客户申请第 11 章破产保护”的美国破产法问答系列文章（[点击查看](#)）对您有所裨益。本文为该系列第六篇文章，将解答与第 11 章计划程序相关的问题，包括披露和意见征集程序、第 11 章计划通过与否的不同后果，以及该等后果将如何影响您获得破产财产分配的权利。

1. Question: What is a Chapter 11 plan and are there different types?

问题 1：什么是第 11 章计划？是否存在不同类型？

A Chapter 11 plan, once approved by the bankruptcy court, governs the debtor's exit from bankruptcy and the treatment of claims against and interests in the debtor's estate.

A Chapter 11 plan may either provide for reorganization or liquidation of the debtor.

Whereas reorganization will involve the debtor itself continuing operations, liquidation will often involve the sale of substantially all of the debtor's assets to a new company. A debtor may accomplish a number of other transactions through a plan, including a merger, the creation of a liquidating trust, modification of liens, or issuance of new debt or equity.

一经破产法院批准，第 11 章破产计划将决定债务人如何从破产程序中退出，以及各项权利主张和利益在债务人财产中的分配。第 11 章计划可以规定债务人的重组或清算。重组会涉及债务人本身的持续经营，而清算往往涉及将债务人的绝大部分资产出售给另一家新公司。债务人可以通过第 11 章计划完成一系列其他交易，包括合并、创设清算信托、修改留置权或发行新债或新股。

Related People

- Samuel S. Kohn
- Alessandra Glorioso
- Catherine X. Pan-Giordano
- Rachel P. Stoian
- Abby Fang

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- Corporate Trust Services

2. Question: How can I learn more about a proposed plan and its effects?

问题 2：我如何评估一项拟议计划及其影响？

A debtor is required to file and serve upon all creditors a disclosure statement containing adequate information regarding the proposed plan to enable a creditor to make an informed judgment regarding whether or not to vote in favor of the plan. The disclosure statement will include information regarding, among other things, the treatment of different types of claims and estimated recoveries, what led to the bankruptcy filing, and what has taken place during the bankruptcy case. Both the proposed plan and disclosure statement tend to be lengthy, detailed documents and it would be worthwhile to retain U.S. bankruptcy counsel to review them on your behalf, to determine how your rights will be affected and to guide you through the confirmation process.

债务人必须提交一份披露声明，并将该声明送达所有债权人。该披露声明应包含关于拟议计划的所有相关信息，以使债权人能够就是否通过该计划作出合理且明智的判断。此外，披露声明将包括不同类型的权利主张的处理方式和预计赔偿金额、导致破产申请的原因以及在破产案件中所发生的事件等内容。拟议计划和披露声明基本都是详细而冗长的文件，因此，我们建议您聘请美国破产法律师为您审查该等计划和声明，以判断您的权利可能受到何种影响，并指导您完成计划确认过程。

3. Question: What is the proposal, solicitation, and confirmation process like and what role do suppliers play?

问题 3：提案、意见征集和确认流程是什么样的？供应商在这些过程中扮演什么角色？

Chapter 11 debtors are given the exclusive right to file a plan during the early months of the case, and are often the only party to do so even after the exclusive period comes to an end. The plan proponent will first request approval of a disclosure statement and solicitation and notice procedures with respect to the proposed plan. Once approved, the plan proponent solicits acceptance of the plan in accordance with the approved procedures. The solicitation materials will include copies of the plan and disclosure statement, a ballot, directions and deadlines for submitting the ballot and objecting to confirmation, and notice of the confirmation hearing. When solicitation is complete, a confirmation hearing will be held before the bankruptcy court.

第 11 章债务人享有在破产案件开始后的几个月内提交计划的专属权利，并且，即使在专属期限届满后，债务人通常也是唯一提交计划的当事方。计划发起人将首先就与拟议计划有关的披露声明、意见征集和通知程序寻求批准。一旦获得批准，计划发起人将按照经批准的程序，就该计划征集意见。意见征集材料将包括计划和披露声明的副本、选票、提交选票和拒绝确认该计划的相关指引和截止日期，以及确认听证会的通知。当征集过程完成后，破产法院将举行确认听证会。

To the extent a supplier's pre-bankruptcy claim against a debtor does not qualify as a reclamation claim or for "critical vendor" treatment (see Series Two), its claim will typically be classified as general unsecured. General unsecured claims are placed near the back of the line for distribution, behind several other typical classes of claims, e.g. secured and administrative. As a result, suppliers' pre-bankruptcy, non-reclamation, non-critical vendor claims are often impaired, meaning they will not receive a full recovery. 如果供应商对债务人的破产前债权不构成货物召回权，或不能享有“关键供应商”的待遇

(见系列二)，其债权通常被归类为一般无担保债权。一般无担保债权处于债权偿付的最后顺位，排在其他几种典型债权之后，例如，有担保债权和行政费用债权。因此，供应商破产前的、非货物召回权的以及非关键供应商的债权通常会受到影响，即无法得到全额偿付。

Holders of impaired claims are entitled to vote on a plan unless they are not entitled to any distribution, in which case they are typically deemed to reject the plan. A plan may be confirmed over the objection of a dissenting impaired class if the plan satisfies certain requirements, including that at least one impaired class has accepted the plan and the plan is fair, equitable, and does not unfairly discriminate as to classes of claims and interests.

在通常情况下，权利受损的债权人都有权对计划进行表决，但在债权人不能基于其债权得到偿付时，其无权对该计划进行表决，并且该债权人将被视为拒绝确认该计划。如果计划满足特定要求，这些要求包括至少有一个无法得到全额偿付的债权人接受了该计划、该计划是公平和公正的，并且该计划未对各种索赔请求和利益造成不公平的歧视，那么即使无法得到全额偿付的债权人反对该计划，该计划仍可得到确认。

4. Question: What happens if the bankruptcy court confirms a proposed plan?

问题 4：如果破产法院确认了一项拟议的第 11 章计划会有什么影响？

If the bankruptcy court confirms a proposed plan, the debtor consummates the transactions contemplated by the plan on an effective date. This will likely include distributions to creditors, such as administrative expense creditors that provided goods and services to the debtor during the bankruptcy case. To the extent such suppliers are not paid in the ordinary course during the bankruptcy case, they must be paid in full on the effective date in order for the plan to be confirmed. General unsecured creditors may receive a distribution of cash or securities on the effective date, but often plans provide for the creation of a liquidating trust out of which distributions to general unsecured creditors are made depending on the extent to which the trust successfully liquidates assets and prosecutes claims on behalf of the post-confirmation estate.

如果破产法院确认了一个拟议的第 11 章计划，则债务人应在该计划规定的一个生效日完成该计划规定的交易。这可能包括分配给债权人的偿付款项，例如在破产案件中向债务人提供货物和服务的行政管理费用债权人。如果行政管理费用债权人在破产案件中未能通过正常流程获得偿付的，他们在生效日也必须得到全额偿付，这是破产重组计划的确认要求之一。一般无担保债权人可在计划生效日起得到现金或证券方式的偿付。但通常第 11 章计划会规定设立清算信托，根据信托成功清算的资产和代表第 11 章破产计划确认后的债务人财产提起索赔的程度，向一般无担保债权人分配偿付款项。

Confirmation of the plan will result in the discharge of all pre-bankruptcy liabilities of the debtor, meaning creditors cannot pursue their pre-bankruptcy claims against the debtor even if the confirmed plan does not pay such claims in full. Indeed, the plan substitutes a debtor's pre-bankruptcy obligations to its creditors with those obligations set forth in the plan.

随着计划的确认，债务人破产前的所有债务将会被解除。这意味着即使有些债权人无法得到全额偿付，他们也不能就破产前的债权向债务人进行索赔。事实上，第 11 章计划用其

中规定的义务替代了债务人破产前的义务。

5. Question: What happens if the bankruptcy court denies confirmation of a proposed plan?

问题 5：如果破产法院拒绝确认拟议计划，会发生什么？

If a bankruptcy court denies confirmation of a proposed plan, the debtor may amend its plan and seek confirmation of the amended plan, or the debtor or another party in interest may propose an alternative plan. If the estate lacks liquidity to continue reorganization proceedings, the bankruptcy court may convert the case to a liquidation under Chapter 7 of the Bankruptcy Code or dismiss it entirely. If the case is converted to Chapter 7, the debtor's business operations will cease and a trustee will be appointed to marshal and liquidate the debtor's assets for the benefit of creditors. In that event, the costs of administering the Chapter 7 case will take first priority, meaning general unsecured creditors are one step farther back in the line for distributions.

如果破产法院拒绝确认一项拟议计划，债务人可以修改其计划并寻求对修改计划的确认，或者债务人或其他利益相关方可以提出替代计划。如果破产财产由于缺乏流动性无法继续进行重组程序，破产法院可根据《破产法》第 7 章将该案件转为清算案件，或将案件完全驳回。如果该案件被转为第 7 章的清算案件，债务人的业务将停止，并且被指定的受托人将会为债权人的利益，管理和清算债务人的资产。在破产案件转为清算案件的情况下，管理第 7 章案件的行政费用将得到优先偿付，这也意味着一般无担保债权人的债权偿付顺序将进一步置后。

6. Question: What is the likelihood that a Chapter 11 case will be successful?

问题 6：第 11 章案件成功的可能性有多大？

Chapter 11 is open to businesses of all sizes and to individuals. As a result, a considerable proportion of Chapter 11 cases filed in the United States are unsuccessful and result in dismissal or conversion to liquidation under Chapter 7. However, in our experience, larger cases (meaning those where the debtor has over \$10 million in assets or liabilities) are dramatically more likely to succeed, particularly because they are more likely to have the resources needed to complete a successful reorganization under Chapter 11. Often, larger cases will involve the sale of substantially all of the debtor's assets to a new company, the proceeds of which are used to pay creditors.

第 11 章适用于各种规模的企业和个人。因此，在美国提交的第 11 章案件中，有相当一部分是不成功的，并且被驳回，或根据第 7 章转为清算案件。然而，根据我们的经验，标的额较大的案件（指债务人资产或负债超过 1000 万美元的案件）成功的可能性要大得多，主要是因为它们具备根据第 11 章进行重组所需的资源。通常，标的额较大的案件将涉及将债务人的大部分资产出售给一家新公司，而所获收益将用于偿付债权人。

While a successful Chapter 11 case may result in some creditors receiving less than they are due, the ultimate result is usually that a business is able to continue operating which benefits the nation's economy as a whole. As such, reorganization in the U.S. is appropriately viewed as an essential element of our capitalist system.

虽然一个成功的破产法第 11 章案例可能会导致一些债权人收到的偿付款项少于其到期应收款项，但一个企业最终能够继续经营，这对整个国家的经济都有好处。因此，重组被视

为美国资本主义制度的一个基本要素。

We do hope that you enjoyed these series and now have a fuller understanding of the Chapter 11 process, at least as it may impact the rights of foreign suppliers of bankrupt U.S. companies. From the outset of the bankruptcy case, a creditor's rights are directly impacted – whether through imposition of the automatic stay which prohibits further collection efforts or through the imposition of a 20-day deadline to file reclamation claims measured from the filing date. As such, as soon as you learn of a customer's bankruptcy filing, you should contact your trusted U.S. bankruptcy counsel to guide you through the process, ensure you do not miss any key dates or deadlines, and obtain the greatest recovery possible.

我们希望您通过美国破产法问答系列文章，对第 11 章的程序有更全面的认识，至少了解该程序对破产美国公司的外国供应商权利的影响。自破产案件开始，债权人的权利就受到直接影响——无论是通过“自动中止令”禁止进一步债务催收，还是通过对提出货物召回权主张设置自破产申请之日起算 20 日的截止期限。因此，一旦您得知客户的破产申请，您应立即联系您信任的美国破产法律师帮助您，确保您不会错过任何关键日期或截止日期，并获得最大程度的偿付。

If you have more questions, please do not hesitate to reach out to the Dorsey & Whitney Bankruptcy Team for Foreign Suppliers.

如有您有任何问题，请随时联系美国德汇律师事务所外国供应商破产法团队。

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德汇律师事务所是一家拥有超过百年历史的国际律师事务所，在美国、加拿大、欧洲和亚洲（包括北京、上海和香港）设有 21 家办公室。德汇为各行各业的企业提供全方位法律服务，并被《钱伯斯美国》评选为“领先律师事务所”以及被 U.S. News 评选为“最佳律师事务所”。

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