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Do You Have a Plan? Creating a Feasible Plan in Uncertain Economic Times

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Creating a Feasible Plan in Uncertain Economic Times



Focal Points

- Economic Overview
- Feasibility
- Sourcing Capital for Restructuring
- Selling Assets
- Structuring the Plan and Getting Creditor Buy-In
- Considering Chapter 11 Alternatives



Economic Overview

- **Headwinds**
 - Inflationary Pressures
 - Interest Rate Environment
 - Access to Capital Markets
 - Labor Costs and Availability
 - Material Costs
 - Rippling Effect of Kinks in the Supply Chain
 - Government Spending Cuts and Regulatory Changes
 - Reduced Demand
 - Tariffs and Trade Policy Uncertainty
- **Affected Industries**



Feasibility

To confirm a chapter 11 plan, the plan proponent must show that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.” 11 U.S.C. § 1129(a)(11).



Feasibility

- **The standards are fact intensive.**
 - The plan must offer a reasonable prospect of success and be workable. *Search Mkt. Direct, Inc. v. Jubber (In re Paige)*, 685 F.3d 1160, 1187 (10th Cir. 2012).
 - The plan proponent must show a reasonable assurance of success, but success does not need to be guaranteed. *FB Acquisitions Prop. I, LLC v. Gentry (In re Gentry)*, 807 F.3d 1222, 1225-26 (10th Cir. 2015).
 - “The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts’ of the case.” *Id.* (quoting *Clarkson v. Cooke Sales & Serv. Co. (In re Clarkson)*, 767 F.2d 417, 420 (8th Cir. 1985)).



Feasibility

- **Typically Shown Through Cash Flow Projections**

- Projections should show ability to fund future operations and plan payments.
- Projections should be “firmly rooted in predictions based on objective fact” and “not be speculative, conjectural, or unrealistic.” *F.H. Partners, L.P. v. Inv. Co. of the Southwest, Inc. (In re Inv. Co. of the Southwest, Inc.)*, 341 B.R. 298, 311 (B.A.P. 10th Cir. 2006).
- A plan proponent typically does not need to anticipate the unexpected. *Id.* (“When a court finds that the financial projections presented to support the plan are derived from ‘realistic and reasonable assumptions which are capable of being met, the fact that unexpected events may defeat those projections does not make the plan unfeasible as a matter of law or fact.’”).



Feasibility

- **Court Considerations**

- A Reasonable Probability of Plan Success.
- Ability to Fund Plan Obligations
- Evidence
 - Viable Business Model
 - Sound Financial Projections
 - Management



Feasibility

- **Core Principles for Credible Projections**

- **Transparency:** Clear disclosure of assumptions, sources, and methodology.
- **Flexibility:** Multiple scenarios (best case, base case, worst case).
- **Supportability:** Tied to historical performance, current contracts, market data, etc.
- **Risk Mitigation:** Show contingency plans and adaptability in model.



Feasibility

- **Evaluating Cash Flow Projections**

- Unrealistic or Overly Optimistic Assumptions
- Lack of Sensitivity or Scenario Analysis
- Inadequate Detail or Transparency
- Management Credibility and Track Record
- Absence of Contingency Planning
- Failure to Account for Known Risks
- Overcomplication
- Post-Confirmation Liquidity



Feasibility

• Best Practices for Developing Cash Flow Projections

- Ground Assumptions in Verifiable Data
- Create a Structured / Transparent Model
- Develop “Base Case” Plus Scenarios
- Align Projections with Plan Terms
- Collaborate Closely with Management
- Account for Operational Constraints and Risks
- Address Liquidity and Working Capital
- Update Regularly Until Confirmation



Exit Financing – Key Trends & Takeaways

- **Banks Stepping Back** - Private creditors are filling the gap.
 - **CURO Group**: \$70M DIP-to-exit financing provided entirely by existing lenders (Debtwire, 2024).
- **Third-Party Financing Rare** - < 10% of DIP involves new lenders.
 - **Incora (Aerospace)**: \$300M DIP converted to exit notes: additional \$100M new capital directly from creditors (Debtwire, 2025).
- **Expensive Capital** – 15-17% effective rates are common, with hefty fees and PIK interest.
 - **Ligado Networks**: DIP facility carried a 15.5% cash rate + 17.5% PIK interest; total cost over 20% (Practical Law, 2025).
- **Short-Term-Maturities** – Lenders favor 2–3 year payback horizons, pushing for quick operational turnarounds.
 - **Mitel Networks (Tech)**: Filed a prepackaged Chapter 11 and exited with a \$64.5M facility requiring turnaround within 2–3 years (Debtwire, 2025).
- **DIP-to-Exit Conversion Increasing** – Streamlines financing but gives lenders long-term control.
 - **WeWork (Real Estate)**: \$400M DIP equitized at exit; SoftBank and bondholders provided backstop financing to maintain control (Reuters, 2024).
- **Debt-for-Equity Swaps Common** – Creditors are converting debt into equity to secure upside and board influence.
 - **WeWork (Real Estate)**: Bondholders and SoftBank converted debt into equity positions post-bankruptcy for governance control.



Asset Sales – Key Trends & Case Examples

- **Asset Sales Have Become a Primary Chapter 11 Strategy**
 - Companies increasingly file specifically to pursue 363 asset sales rather than full reorganizations.
- **Timing and Valuation Volatility Are Critical**
 - Selling too early can limit creditor recovery; delayed sales risk asset devaluation.
- **Stalking Horse & Credit Bids Are Dominating**
 - Insider and creditor bids often shape sale outcomes, reducing the external buyer participation.
- **Strategic Breakup of Assets Often Maximizes Value**
 - Selling business units or assets individually can produce higher proceeds than a whole-company sale.



Asset Sales – Sector Spotlights & Case Examples

- **Retail & Consumer** – With consumer spending down in 23-24, more retail companies have utilized asset sales to sell their assets.
 - **Bed Bath & Beyond:** Filed to sell assets; brand and IP sold to Overstock for \$21.5M after no going-concern buyer emerged (Reuters, 2023).
 - **Party City:** Used bankruptcy to close underperforming stores and sell remaining assets (Bloomberg, 2023).
- **Transportation**
 - **Yellow Corp:** Broke up and sold terminal assets for \$1.88B, outperforming bulk sale offers (WSJ, 2023).
- **Crypto & Technology**
 - **FTX:** Early sales missed \$ 500M+ in upside; later recovered value by selling Anthropic stake for \$1.4B (FT, 2025).
 - ❖ Demonstrating how selling too early or too late can have a major effect on recovery.
- **Real Estate** – Properties more often face foreclosure more than bankruptcy sales.
- **Healthcare & Energy** – Regulatory hurdles and environmental liabilities make asset sales in these sectors complex and often less attractive to buyers.



Structuring the Chapter 11 Plan and Getting Creditor Buy-In

• Plans with Asset Sales

- Pot plan following a 363 sale.
- Conduct the sale through the plan.
- Consider plan alternatives: dismissal or conversion.

• Reorganization Plans

- Exit Financing to Take out Lender.
- Raising Capital with New Equity.
- Restructure Pre-Petition Loans and Unsecured Obligations.
- Debt for equity swaps.
- 100-Cent Plans.



Considering Chapter 11 Alternatives

- Out of Court Sale, Refinancing, or Capital Raise
- Receivership
- Assignment for Benefit of Creditors
- Dissolution

Faculty

Adam L. Hirsch is a partner at Davis Graham & Stubbs LLP in Denver, where he focuses his practice on representing clients across the U.S. in all aspects of bankruptcy, business restructuring, and distressed M&A and related transactions. He advises secured and unsecured lenders, DIP lenders, chapter 11 plan sponsors, acquirers of assets in § 363 asset sales, landlords and tenants, equipment lessors and lessees, IP licensors and licensees, and providers of various goods and services. He also represents clients in transactional matters involving financially distressed parties and chapter 11 debtors. Mr. Hirsch has experience in representing companies in varied economic conditions, and offers an in-depth understanding of commercial creditor and debtor rights under the Bankruptcy Code. He is admitted to practice in Colorado and New York, as well as before the U.S. Court of Appeals for the Tenth Circuit and the U.S. District Courts for the District of Colorado, the Southern and Eastern Districts of New York. Prior to joining DGS, Mr. Hirsch was a partner in Kutak Rock LLP's Denver office and worked for a large New York law firm, where he represented clients in a range of bankruptcy and finance-related matters during the 2008 financial crisis and subsequent economic recession. He was selected in 2018 as one of ABI's "40 Under 40" and has been listed in *Colorado Super Lawyers*. Mr. Hirsch currently serves on the leadership of the Turnaround Management Association's Rocky Mountain Chapter and as head of its Programming Committee. He received his B.A. in 2001 from Northwestern University and his J.D. *magna cum laude* in 2004 from Tulane University Law School, where he was admitted to the Order of the Coif.

Bryan S. Perkinson is a managing director and founding partner of Sonoran Capital Advisors in Mesa, Ariz. Prior to founding Sonoran, he worked as a director for international insolvency firm KRYG Global. Prior to that, he worked for another advisory firm, Odyssey Capital Group. Mr. Perkinson is an attorney and restructuring advisor that has experience in both financial restructurings as well as complex litigations. He has been involved in multiple billion-dollar litigations involving intellectual property, fraud and fraudulent-transfer issues. Mr. Perkinson has experience advising debtors, secured creditors and unsecured creditors committees in both in- and out-of-court restructurings as financial advisor, CRO, trustee, receiver, independent board member and investment banker. He also serves as a subchapter V trustee. Mr. Perkinson is a member of the Arizona Bar, ABI, INSOL and TMA. In addition, he has published articles for the *Arizona Bar*, INSOL and ABI. Mr. Perkinson received his undergraduate degree from Utah State University and his J.D. and M.B.A. from Arizona State University.

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cost-control measures, and reconstructing financial and operating information. Mr. Strong received his B.S. from Westminster College and his M.P.A. from the University of Utah.

Hon. Kimberley H. Tyson is Chief U.S. Bankruptcy Judge for the District of Colorado in Denver, initially appointed to the bench in May 2017 and appointed Chief Judge in 2021. Prior to that, she was in private practice, where she concentrated in workouts, bankruptcy and related commercial litigation. From March 2011 until her appointment to the bench, Judge Tyson served as a chapter 7 trustee. She has served as the Tenth Circuit representative on the National Conference of Bankruptcy Judge's Board of Governors, and she is a member of the Colorado Bar Association's Bankruptcy Subcommittee and its former chair. Judge Tyson is an active ABI member and has served on the advisory board of its annual Rocky Mountain Bankruptcy Conference since 2003. After law school she clerked for Hon. John K. Pearson of the U.S. Bankruptcy Court for the District of Kansas and Hon. Jerry G. Elliot of the Kansas Court of Appeals. Judge Tyson received her B.A. at Smith College and her J.D. at the University of Kansas School of Law.