

Cramdowns

If one or more class of creditors votes against the bankruptcy plan, the company can ask the court to use the cramdown provision to overrule the objections and confirm the plan. The court will only agree to do so if at least four conditions are satisfied.

The company filing for bankruptcy must first show that the plan does not unfairly discriminate against a group of creditors. The unfair discrimination test looks at the difference between the company's value as a going concern and its liquidation value. There can be discrimination in how the plan pays out this surplus, but it must not be unfair. For example, the court would regard the plan as unfairly discriminatory if there were two or more creditors of the same class and one creditor received a much lower recovery than the others in that class.

Second, the company must demonstrate that the plan is fair and equitable to creditors. This means that the plan must not violate the absolute priority rule by making payments to the more junior creditors before the senior ones are fully paid. In addition no creditor may be paid more than it is owed.

Third, a secured creditor must receive the entire value of the asset securing the claim or the entire value of the claim, whichever is smaller.

Finally, a plan can only be confirmed if it pays each creditor as much as it would have received under a Chapter 7 liquidation, unless those who receive less do not object.