

The Long-Term Viability of United States Automakers Act (LTVUSA)

- The LTVUSA Act is new legislation directed at providing government financing to facilitate the financial viability of U.S. automakers.
- The bill creates a Financial Viability Advisor (FVA) in the Department of Commerce. The FVA has two main purposes:
 - For each U.S. automaker that seeks financial assistance, bring all major stakeholders into negotiations to achieve a plan for long-term financial viability.
 - Submit a negotiated plan to the Congress within 60 days (or 90 days with an extension) or, failing that, submit within 15 days of failure an FVA plan to the Congress that sets forth steps needed to create a financially viable firm through reorganization under Chapter 11.
- Bridge financing: The FVA is authorized to provide bridge financing to any automaker if he concludes (a) the automaker would likely go bankrupt during the negotiation period and (b) the major stakeholders in the automaker are participating in good faith in negotiations to achieve a plan for long-term viability.
 - This bridge financing will be secured by the assets or equity of the automaker, and limited to the amount the FVA determines is needed for the automaker to maintain ongoing operations during the timeframe described below (in the extreme, no more than 105 days).
 - Bridge financing provided to the automaker would be senior to all other secured debts of the automaker.
 - The bill expands the allowable uses of §136 funds, so that §136 funds may be used for bridge financing.
 - A scoring problem with §136 funds is fixed, to clarify that the amount available through that program is the \$25 billion that Congress intended.
- Long-term viability financing: The FVA will report a plan for long-term viability to the Congress.
 - If the major stakeholders reach agreement within 60 days of appointment of the FVA (or 90 days if the FVA extends the negotiating period), and if the FVA determines that the negotiated agreement meets the test for long-term viability, then the FVA will report that negotiated agreement to the Congress as the plan for long-term viability.
 - If the major stakeholders fail to reach agreement within the time allotted, the FVA will report to the Congress the failure of negotiations and the reasons for failure. The FVA then has another 15 days to report to the Congress his recommended plan to achieve long-term viability through reorganization under Chapter 11 with the assistance of debtor-in-possession financing. In this case, any short-term bridge financing provided to the automaker would be immediately repayable to the Federal Government.
 - Except for the bridge financing, and for the Advanced Technology Vehicle loans for the purposes stated in §136 of EISA 2007, after the FVA has reported to the President and the Congress, the bill requires that government financing would be available only to implement the negotiated plan or the Chapter 11 plan recommended by the FVA.

- As is true of any bridge financing, any long-term viability financing would be senior to all other secured debts of the automaker.
- The bill establishes the test for financial viability as:
 - The automaker will have a positive net present value taking all existing and future costs into account, using conservative assumptions;
 - The subsidy cost to the taxpayer of the bridge and long-term viability financing provided by the government shall be treated as a cost in this calculation (assuming normally functioning credit markets).
 - and the automaker has a reasonable prospect to repay financing consistent with statutorily specified terms;
 - and the automaker has a product mix and cost structure that is competitive in the United States marketplace, which requires a satisfactory plan to address, among other things:
 - labor, management, and legacy costs
 - debt structure
 - dealer network costs
 - capacity utilization
 - fuel efficiency standards
 - plans for new and existing products
- The bill establishes strong taxpayer protections, including that the bill:
 - Entitles the Government to a share of the ownership and gains of any participating automaker through the use of such instruments as stock and stock options;
 - Significantly limits senior executive compensation, including bonuses, during the period of financial assistance;
 - Prohibits golden parachutes;
 - Prohibits the automakers from paying dividends while obligations to the Government are outstanding; and
 - Prioritizes Government claims over other secured claims and exempts Government claims from discharge under, and the automatic stay of, Chapter 11.