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BANKRUPTCY LAW IN MEXICO

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PREFACE

This work aims to elucidate the bankruptcy law in Mexico. I address each aspect of the law without focusing on merely procedural or formal topics. Regarding the cross-border insolvency regime, my work *"CROSS-BORDER INSOLVENCY: Recognition of foreign proceeding under the Mexican Bankruptcy Law"* is available at https://works.bepress.com/francisco-rodrigueznepote/.

The numbers in parenthesis refer to articles of the bankruptcy law, and the unofficial translation, in plain English, is located in the appendix.

Bankruptcies in Mexico are tried within a judicial proceeding. Judicial proceedings in Mexico are timeous and bankruptcies take even longer. A bankruptcy proceeding takes at least four years. My firm has been participating in a particular bankruptcy proceeding since 2010, and it is still not finalized. Bankruptcies are drawn-out processes because the judicial proceeding is heavily contested due to motions for reconsideration, appeals, and *amparo* trials.

Few bankruptcies are finalized in Mexico. According to the Federal Insolvency Institute, from 2000 to the present, approximately 80 bankruptcies were filed per year. There is no convenience for individuals to file for bankruptcy, provided that there is no legal discharge of their debts, but all discharges come from the plans reached with the creditors. That is why there are almost zero filings of bankruptcies for individuals; I am aware of only one.

Furthermore, bankruptcies in Mexico are expensive. The debtor must pay the fees of the insolvency officers. The fees are calculated based on the total liabilities, irrespective of whether such liabilities may be subject to the reorganization plan.

Finally, bankruptcies in Mexico are not predictable. There are insufficient judicial precedents from Mexican courts that interpret and construe the statutes, and sometimes the statutes are unintelligible. Hence, the parties are not confident of the judicial outcome once a case has commenced.

BANKRUPTCY LAW IN MEXICO

1. INTRODUCTION

Mexico, a federal state, gained its independence from Spain in 1821. Pre-independence law was still binding in Mexico after its independence, in particular, the commercial law contained in the Ordinances of Bilbao. The first Commercial Code promulgated in 1854 was based on the Commercial Code of Spain of 1829, which, at the same time, was based on the Commercial Code of France of 1807.

After the Commercial Code of 1854, there followed the codes of 1884 and 1889. The bankruptcy matter contained in the Commercial Code was superseded when a special law was promulgated in 1934, the *Ley de Quiebras y Suspensión de Pagos* (the previous law).

In Mexico, insolvency is handled according to whether the debtor is a merchant or not. The creditors of a common insolvent debtor must concur in the same proceeding, which is termed a *Concurso* or concourse. If it is a concurring of a non-merchant debtor, a civil debtor, the concourse is civil and it is known as a civil concourse. Civil insolvency proceedings are governed by local law, not federal.

When the debtor is a merchant, the concurring will not be civil but, rather, a commercial or mercantile concourse, and that is precisely the name of our law: *Ley de Concursos Mercantiles* (LCM), which is a federal law.

The previous law, from 1934 to 2000, distinguished hard bankruptcy and soft bankruptcy. Hard bankruptcy was triggered when a debtor ceased his payments, whereas soft bankruptcy was triggered when a debtor was in a suspension of payments. Therefore, our previous bankruptcy law was named *Ley de Quiebras y Suspensión de Pagos*, that is, the Bankruptcy (hard, cessation of payments) and Suspension of Payments (soft, suspension of payments) Law. According to the previous law, the debtor was authorized to conclude the bankruptcy, both hard and soft, through a reorganization plan. However, under soft bankruptcy (suspension of payments), the debtor did not lose possession of the company.

The current law (LCM) unifies hard bankruptcy and soft bankruptcy in a single procedure: a mercantile concourse. Now, the bankruptcy is not triggered by a cessation or suspension of payments, but rather by a general default. The soft bankruptcy was substituted by the reorganization stage *(etapa de conciliación)* and the hard bankruptcy by the liquidation stage *(etapa de quiebra)*. However, as in the previous law, both stages may be concluded through a reorganization plan, and one of the main differences between the stages remained the same: in the liquidation stage, the debtor is removed, whereas, in the reorganization stage, the debtor maintains possession.

1. INTRODUCTION

LEY DE QUIEBRAS Y SUSPENSIÓN DE PAGOS		*LEY DE CONCURSOS MERCANTILES*	
Quiebra (hard bankruptcy)	Triggered by the cessation of payments	*Etapa de quiebra*: liquidation stage (hard bankruptcy)	Triggered by general default
	The procedure may conclude with a reorganization plan.		The procedure may conclude with a reorganization plan.
	The debtor is removed.		The debtor is removed.
Supensión de pagos (soft bankruptcy)	Triggered by the suspension of payments	*Etapa de conciliación*: reorganization stage (soft bankruptcy).	Triggered by general default
	The procedure may conclude with a reorganization plan.		The procedure may conclude with a reorganization plan.
	The debtor in possession		The debtor in possession

The insolvency, or general default of companies, is a matter of public policy (1) and the bankruptcy proceeding records are available to the public (7).

Bankruptcy in Mexico has two successive stages: reorganization and liquidation. When reorganization is not possible, bankruptcy is converted to the liquidation stage (2). The purpose of the reorganization stage is to maintain the enterprise and pay the allowed creditors through a reorganization plan. The purpose of the liquidation stage is to sell the enterprise – as a going concern or in segments – and pay the allowed creditors (3). Provided that bankruptcies in Mexico are tried under a unitary proceeding, the effects of the bankruptcy adjudication are similar in the reorganization and liquidation stages. However, while the debtor retains possession of the enterprise during the reorganization stage, in the liquidation stage, the debtor is removed and the liquidation officer assumes possession of the enterprise.

1. INTRODUCTION

1.1. PARTIES IN BANKRUPTCY

1.1.1. The debtor

Firstly, we might state that the subject matter of the bankruptcy is a merchant debtor, whether an individual or a legal entity. Hence, there must be a debtor, and that debtor must be a merchant to commence a bankruptcy. However, that is not entirely true, because there could be bankruptcies of non-merchant debtors and bankruptcies of no debtor at all, as in the case of deceased debtors and trusted estates in trusts of commercial affairs, provided that the legal capacity terminates at death and that the trusts are not legal entities in Mexico. Therefore, at the very essence, the subject matter of bankruptcy is not a merchant debtor but, rather, an enterprise.

a. *Merchant debtor*. A merchant debtor may be an individual or a legal entity. Individuals are considered merchants when they engage in commerce as their ordinary occupation.[1] Legal entities are considered merchants if they are incorporated according to mercantile laws.[2] The bankruptcy proceeding is the same whether the debtor is an individual or a legal entity.

b. *Non-merchant debtor*. A non-merchant debtor may be adjudicated in bankruptcy. That is the case when a bankrupt is a legal entity, and its partners have unlimited liability because the bankruptcy adjudication of the legal entity is extended to its partners, but not *vice versa*. As mentioned, an individual is considered a merchant if he conducts trade as a profession. However, being a partner of an unlimited liability company, that alone, does not fall within the said concept. That is how a non-merchant debtor may be adjudicated in bankruptcy. As will be demonstrated further, general default triggers the bankruptcy adjudication; however, in cases of unlimited liability companies in general default, the unlimited partners do not need to be in general default for them to be adjudicated in bankruptcy. They cannot elude bankruptcy adjudication on the grounds of not being in general default. The unlimited partner can only avoid such adjudication by paying the debts of the company. The bankruptcy proceeding of the company and its partners will be tried together but will be documented on different judicial records (14).

c. *Deceased debtor*. The legal capacity of a natural person ends at death. While the dead do not have legal capacity, the bankruptcy proceeding of a deceased merchant debtor may take place if one of the following two conditions is met: if the enterprise held by the deceased continues operating or if the statute of limitations of the creditor's action has not expired. The bankruptcy proceeding of a deceased debtor will be tried against the estate's executor or the heirs. Hence, a distinction

[1] Commercial Code, article 3 section I.
[2] Commercial Code, article 3 section II.

must be drawn if the succession is finished. If the succession is not finished, the executor will represent the debtor's estate in the bankruptcy proceedings. The estate of a deceased person is not a legal entity, but while the estate's property is formally transferring to the heirs, the estate's executor will be a constructive representative of the estate until his work is complete. If the succession is indeed finished, the debtor's heirs will represent the debtor's estate in the bankruptcy proceedings, and they will respond to the debtor's creditors only with the inherited assets because, in Mexico, the heirs have the benefice of estate's inventory (12).

d. *Suspended debtor*. The debtor, knowing that he is in general default, may try to avoid a bankruptcy adjudication by suspending or terminating the operation of his company. To frustrate the intentions of the debtor, bankruptcy adjudication of a debtor is permitted even if the operation of his enterprise is suspended or terminated (13).

e. *Debtor of mixed-economy (state-owned companies)*. The State may participate in the equity of a legal entity. If that legal entity was incorporated under mercantile laws, then it falls within the concept of merchant debtor. Hence, state-owned companies may be subject to bankruptcy proceedings (4, 5). The problem arises in majority state-owned companies.

Majority state-owned companies are part of the Federal Executive Branch in the parastatal division, that is, part of the government.[3] Then, if *"the government is always solvent",*[4] how can a majority state-owned company be subject to a bankruptcy proceeding, which is triggered by a general default?

Before the amendment of 2019, a provision permitted a state-owned company to be adjudicated in bankruptcy, but there was a debate raged on whether majority state-owned companies could be too. The 2019 amendment expressly provides that majority state-owned companies can be adjudicated in bankruptcy only when they are disincorporated from the Executive Branch.

f. *Foreign debtor's branches*. A foreign company may be recognized as a merchant[5] and, therefore, be adjudicated in bankruptcy (16). However, the adjudication shall only include the goods and rights that have been located and are payable, as the case may be, in Mexico, and to the creditors of transactions conducted with said branches.

The possibility to adjudicate a foreign company in bankruptcy under article 16 of the LCM is not superseded by the provisions regarding cooperation in foreign insolvency proceedings, because the article establishes the possibility of filing –

[3] Federal Law of Parastatal Entities, articles 1 and 46.
[4] Federal Code of Civil Procedure, article 4.
[5] Commercial Code, articles 4 and 5.

before a Mexican court – a voluntary or involuntary petition against a foreign company and start within Mexico the bankruptcy proceeding, whereas, in the cooperation in foreign insolvency proceedings, the bankruptcy was already adjudicated by a foreign court.

g. *Trusted estates in trusts for commercial affairs*. In Mexico the trustee holds the property of the trust as the legal owner, but only legally authorized legal entities may act as trustees, for example, banks (credit institutions) and other financial institutions.

Section II of Article 4 of the LCM provides the bankruptcy proceeding, not of the trustee nor the settlor nor the trust beneficiary, but rather, of the trusted estate, that is, of the patrimony that was transmitted to the trustee. Trusts are contracts – not legal entities.

As stated, bankruptcy proceedings do not always require a merchant debtor, but they do require an enterprise. If a trustee holds the enterprise, the enterprise could be subject to bankruptcy adjudication without the trustee being subject to the same process. This is possible because the trustee must carry separate accounts, each for every trust where the institution acts as a trustee.[6]

1.1.2. The equity owners

Before the 2014 amendment, only the legal representative of the entity had to sign the petition. The amended law now requires proof that the partners of the entity authorized the legal representative to file the petition (20 VII). No special or express legal requirement is needed regarding the quorum and kind of meeting where such a decision must be taken. Besides that, the equity owners do not participate in the bankruptcy proceeding, provided that they are not creditors unless the company is dissolved or a shareholder used his withdrawal right, in which case they become equity subordinated.[7] There are two other types of subordinated creditors: contractually subordinated and statutory subordinated.

1.1.3. The court

Mexico is a federation with a republican regime, both for the federal and local governments. The powers in Mexico are divided into three branches: Executive, Legislative, and Judicial. The powers of the states that form part of the Federation

[6] General Negotiable Instruments and Credit Operations Law, article 386. Banking Law, article 79.
[7] General Business Company Law, articles 21, 234, 243 and 246.

are similarly divided. All powers not explicitly vested by the Constitution on federal authorities are reserved to the states.[8]

The Federal Judicial Branch consists of the Supreme Court of the Nation, the Electoral Tribunal, Collegiate and Unitary Circuit Courts, and the District Courts.[9]

District judges of the Federal Judicial Branch are the competent courts for bankruptcy proceedings, excluding courts of the states. For purposes of the Federal Judicial Branch, Mexico is divided into circuits. Presently, each circuit consists of one state, but before, a circuit could have comprised two or more states. Thus, there are 32 circuits.

Each circuit has District Judges, Unitary Tribunals, and Collegiate Tribunals. Depending on the population and workload of cases, the District Judges may have specialized jurisdiction over certain matters, but circuits with low populations and case workloads have district judges of general jurisdiction, that is, with jurisdiction over criminal, administrative, labor, and civil affairs, where bankruptcy falls.

In bankruptcy proceedings, the competent court is the one that has jurisdiction where the debtor's domicile is located. In cases of joint petitions of a debtor that forms part of a group of companies, the domicile of one of the members of the group will determine the court's competence (15 Bis, 17).

1.1.4. The creditors

Creditors are a key factor in bankruptcy. The following is an initial and broad distinction of creditors, and a specific distinction on classes and ranks will be analyzed further.

a. *Generic creditors*. During the pre-bankruptcy proceeding, generic creditors do not participate; only the debtor and the visitor take part in voluntary petitions; and the debtor, the visitor, and the plaintiff (whether a single or group of creditors or the Fiscal Attorney) participate in involuntary petitions.

After the bankruptcy adjudication but before the ruling on the allowance of claims, those acting as creditors may participate in the bankruptcy as *generic creditors*.

b. *Allowed creditors*. Allowed creditors are those that acquire such nature by the judgment on the allowance of claims (4 I). As we will see, the allowance of claims is a structured process within the bankruptcy proceeding. The products of this process are the allowed creditors, which have the right to participate in the very

[8] Mexican Constitution, articles 40, 49, 115, 116 and 124.
[9] Mexican Constitution, articles 94 and 97.

essence of the goals of bankruptcy: to vote the reorganization plan or to receive the dividends following the liquidation.

c. *Not allowed creditors*. The creditor that was not allowed in the first instance ruling may challenge it through an appeal. The appeal may reverse the appealed ruling and allow the claim, but until then, the appellant will not have the right to participate as an allowed creditor (143).

Another kind of creditor, which *prima facie* will not be allowed in a bankruptcy, is the spouse of a debtor that grounds his or her claim on onerous contracts or repetition for payments of the debtor's debts unless evidence indicates that the credits have been constituted and that the debts have been paid with goods belonging to the spouse (126). This presumption derives from a necessity to deprive a spouse of an easy mechanism to impair the other spouse's creditors from getting their credits paid, provided the special relationship between spouses.

d. *Creditor's representatives*. Generic and allowed creditors might, individually, hire their lawyers to represent them in the bankruptcy proceeding. They may also, acting in a group or individually, depending on the amount of the claim, request the court to appoint representatives that will have powers and duties different from the attorneys. The appointing creditors will pay the fees of the creditor's representatives (63). As will be seen further, the allowed creditors acquire such quality until the first or second instance ruling on the allowance of claims. Before the said ruling, the insolvency officer will present a provisional and definitive list of claims. The judge will determine the claim amount required for the appointment of the creditor's representatives based on the provisional list, the definitive list, the first or second instance ruling on the allowance of claims. As the creditor's representatives act individually, there is no creditor committee in the LCM.

1.1.5. The insolvency officers

Insolvency officers are assistants of the court and are appointed by the Insolvency Institute. For the pre-bankruptcy procedure, the insolvency officer is called the visitor *(visitador)*. Once the bankruptcy is adjudicated, the insolvency officer for the reorganization stage is known as the conciliator *(conciliador),* and for the liquidation stage, the officer is known as the syndic *(síndico)*.

For purposes of this work, we will refer to the conciliator as the reorganization officer and the syndic as the liquidation officer, even though a reorganization plan may also be submitted in the liquidation stage.

a. *Registration*. The Insolvency Institute will appoint as insolvency officers only those that are already registered. The law requires that candidates to be registered as insolvency officers must meet certain requirements, such as five years'

experience in legal, accounting, managing, or financial fields. The registration may be suspended or definitively canceled by the Executive Board of the Insolvency Institute for violation of the LCM (325, 326, 334, 336, 337, 338).

b. *Appointment*. Registered insolvency officers are randomly selected and appointed by the Insolvency Institute (335). Once appointed, the insolvency officers must submit a guarantee to respond to the possible liabilities in their charge (327).

In the case of the visitor, once the petition is admitted, the court will notify the admission to the Insolvency Institute requesting his appointment (29). For the reorganization officer, once the debtor is adjudicated as bankrupt in the reorganization stage, the court will notify the Insolvency Institute of the adjudication and requests his appointment, unless a pre-package petition is filed, where the debtor and creditors agreed to appoint a reorganization officer that is not registered in the Insolvency Institute (146, 149). Finally, for the liquidation officer, if the liquidation stage was converted from the reorganization stage, the law permits the Insolvency Institute to ratify the reorganization officer as a liquidation officer or to appoint someone else. The debtor and certain creditors may appoint a liquidation officer that is not registered in the Insolvency Institute (169, 170, 172).

c. *Impediments and excuses.* The Insolvency Institute may not appoint an insolvency officer if the conditions of article 328 of the LCM are met. However, if the Insolvency Institute does appoint an insolvency officer, such person must recuse himself. Moreover, the court by its own motion, or the debtor, or any of the creditors or creditor's representatives may request the Insolvency Institute, through the court, to appoint a new one (328, 329, 330, 331).

d. *Removals*. Articles 56 and 57 of the LCM refer to the removal with cause, which includes any of the hypotheses contained in article 328. When the removal is granted, the Insolvency Institute appoints a substitute visitor, reorganization officer, or liquidation officer.

e. *Substitution*. The LCM permits the debtor and certain creditors to agree upon and substitute and appoint a reorganization officer or liquidation officer that is not registered with the Insolvency Institute. The appointment of such reorganization officers may apply at the outset of the bankruptcy, in the pre-package petition, or once the bankruptcy has been adjudicated for either the reorganization or the liquidation officer (147, 174).

1.1.6. Insolvency Institute.

The Insolvency Institute is not a direct party in the bankruptcy proceeding, as we will see further. The name in Spanish of the Insolvency Institute is *Instituto Federal de Especialistas en Concursos Mercantiles* or Federal Institute of Specialists

in Mercantile Concourses. For purposes of this work, it is referred to as the Insolvency Institute.

a. *Nature*. The Insolvency Institute is an auxiliary body of the Federal Judicial Council (311). The Federal Judicial Council is a body entitled to the management, supervision, and discipline of the Judicial Branch of the Federation, except for the Supreme Court of Justice of the Nation.[10]

b. *Organization*. The Insolvency Institute has an Executive Board and a General Director. As mentioned, the Insolvency Institute is an indirect participant in a bankruptcy procedure. One of such indirect participation is, among others, issuing general rules. The general rules issued by the Executive Board of the Insolvency Institute are binding on the bankruptcy court, and they include the approval of the fee amount that the insolvency officers are entitled to receive and the publications of auctions.

1.2. PARTIES' ROLE IN BANKRUPTCY

1.2.1. The debtor

As demonstrated throughout this work, the debtor has several duties and obligations in the pre-bankruptcy and bankruptcy procedure (43 VI, VII, 150). Failure of the debtor to comply with such duties may subject him to sanctions such as fines, administrative arrest, or judicial contempt. The reorganization stage can be converted to the liquidation stage with anticipation if the debtor fails to cooperate with the reorganization officer. The debtor, once adjudged bankrupt, does not lose the property of his estate. However, provided that from such estate the creditors will obtain the payment of their credits, the debtor, even in the reorganization stage, is obliged to take care of the assets as if he were not the owner, but rather a depositary.

The debtor, whether in the reorganization or liquidation stage, is not entitled to assume or reject executory contracts; he does not have the power to set aside fraudulent conveyances; he has the power to submit a plan but does not have the authority to classify the claims.

1.2.2. The equity owners

Only in the case of voluntary petitions of a legal entity, the equity owners must approve the authorization of the legal representative to file it. Once the legal entity is adjudged bankrupt, the equity owners do not have a further role in the bankruptcy.

[10] Mexican Constitution, articles 94 and 100.

1.2.3. The court

The court is the most powerful party in a bankruptcy proceeding and functions as the director of the proceeding. However, according to constitution principles, any authority of the State must act within the limits of the law. Thus, the court's power in a bankruptcy proceeding is limited to that which is determined by the law (7).

Article 7 of the LCM was amended in 2014 to expressly forbid the court to modify any term or period stipulated by the law. This amendment was a response to the landmark bankruptcy of the airline *Mexicana de Aviation*. In such a case, the court, grounded on article 7 and to avoid the disappearance of the enterprise, several times suspended and amplified the period stipulated by the law to submit the reorganization plan and to avoid liquidation. These actions were heavily criticized and led to the 2014 amendment.

If the bankruptcy parties do not obey the court, it may use its coercive measures, which include fines, administrative arrests, and the assistance of law enforcement administrative agencies (269, 270).

1.2.4. The creditors

a. *Generic creditors*. Before bankruptcy adjudication, the generic creditors cannot participate in the pre-bankruptcy procedure. Once the debtor is adjudged as bankrupt (and before being allowed as creditors in the allowance of claims ruling), the generic creditors have the following rights and powers:

1. They have access to the judicial record, the annexes that the debtor submitted with the voluntary petition, the visitor's report, the bi-monthly reports presented by the reorganization and liquidation officers to the court, the appraisals submitted by the reorganization or liquidation officers, if applicable, and finally, any other document submitted to the court.

2. To submit their proof of claims, to lodge an objection to the provisional list of claims, and to appeal the first instance ruling on the allowance of claims.

3. To pay for the publication of the bankruptcy adjudication in the Federal Official Gazette if the debtor fails to do so. This expense will be regarded as a claim against the estate (46).

4. To challenge the appointment of the reorganization officer or the liquidation officer.

5. To inform the court of any misconduct of the reorganization or liquidation officer.

6. To request the court to appoint a representative if the amount of credit fulfills the requirements of article 63 of the LCM.

7. To request an extension of the retroactive date.

8. To request the setting aside of fraudulent conveyances.

9. In cases of a pre-package petition, to appoint, with the debtor, a reorganization officer.

10. To meet with the reorganization or liquidation officer.

11. To press charges for criminal offenses against the debtor.

b. *Allowed creditors*. Allowed creditors have, in addition to the rights of generic creditors, the following rights and powers:

1. To sign, vote on, or veto the reorganization plan.

2. To request, with the debtor, an extension of the period for submitting a reorganization plan.

3. To institute a liability action against those that committed fraudulent conveyances, when the number of claims or the amount of the claim meets the requirements of article 113 Bis of the LCM.

4. To request an amendment of the reorganization plan.

5. To request the compulsory enforcement of the reorganization plan.

6. To appoint, with the debtor, a reorganization or liquidation officer.

7. To appeal the ruling that converts the bankruptcy from the reorganization stage to the liquidation stage.

8. To bid in auctions for the debtor´s estate.

9. To veto the permission for the liquidation officer to sell the assets out of auction.

10. To veto an offer made by any interested party in the liquidation stage.

11. To receive payment from the proceeds of the liquidation of the debtor's assets.

12. To appeal the ruling on the conclusion of the bankruptcy proceeding.

c. *Creditor's representatives*. The powers of the creditors' representatives are as follows (62, 64):

1. To gain access to the judicial record, the annexes that the debtor submitted with the voluntary petition, the visitor's report, the bi-monthly reports submitted by the reorganization and liquidation officers to the court, the appraisals submitted by the reorganization or liquidation officers, if applicable, and any other document submitted to the court (59).

2. To pay for the publication of the bankruptcy adjudication in the Federal Official Gazette, if the debtor fails to do so. This expense will be regarded as a claim against the estate.

3. To oppose the exclusion actions.

4. To challenge the appointment of the reorganization officer or the liquidation officer.

5. To supervise the debtor, reorganization, and liquidation officer and to inform the court of any misconduct of the reorganization or liquidation officer.

6. To opine about the reorganization officer's approval about taking new credits, substituting or constituting new collaterals, or selling assets not needed to operate the enterprise (76).

7. To opine about the reorganization officer's petition to the court for the suspension, whether partial or total, temporal or definitive, regarding the operation of the debtor's enterprise.

8. To request an extension of the retroactive date.

9. To institute a liability action against those that committed fraudulent conveyances.

10. To appeal the ruling on the allowance, classification, and ranking of claims.

11. To veto the permission granted to the liquidation officer to sell the assets out of auction.

12. To veto an offer made by any interested party in the liquidation stage.

13. To opine about the abandonment of the estate.

1.2.5. The insolvency officers

Insolvency officers are obliged to maintain confidentiality duty (61, 332). They have the right to be remunerated for their services, whose fees are considered post-petition claims (333), and to hire assistants (55).

The principal task of the visitor is to visit the debtor's enterprise, analyze his accounts and records, and draft a report in the Insolvency Institute's formats on which he will determine whether the debtor is in general default.

The reorganization officer's principal task is to conciliate the interests of the debtor and his creditors to reach to a reorganization plan. With the 2014 amendment, a reorganization plan is also permitted in the liquidation stage; hence, a liquidation officer also must reach a reorganization plan, even though it is not expressed as such in the law (148, 149). Furthermore, the other duties and powers of the reorganization officer include the following:

1. To publish the bankruptcy adjudication in the Federal Official Gazette (46).

2. To record the bankruptcy adjudication in the Public Registry of Commerce.

3. To assist the judge in the allowance, classification, and ranking of claims, by receiving from the creditors their proof of claims, and elaborating the provisional and definitive list of claims.

4. To request that the court substitute any asset that is the subject matter of both a labor attachment and a secured credit.

5. To oppose the exclusion actions.

6. To supervise the debtor in possession of the enterprise; to remove the debtor and assume the operation of the enterprise as a liquidation officer would do before court authorization, or to request the court to implement the partial, total, temporal, or definitive suspension of the operation of the enterprise.

7. To assume or reject executory contracts and to terminate other non-executory contracts.

8. To take new credits, to give or substitute collaterals on the assets of the debtor or sell assets not linked to the operation of the enterprise.

9. To opine about the continuation of the foreclosure of assets that are not linked to the operation of the enterprise.

10. To summon the administrative bodies of the debtor in the cases of legal entities.

11. To supervise the participation of the debtor in any judicial process or arbitration regarding nonexempt assets.

12. To request an extension of the retroactive date.

13. To appeal the ruling on the allowance of claims.

14. To request the first extension of the period to submit a reorganization plan.

15. To request the anticipatory termination of the reorganization stage and conversion to the liquidation stage.

16. To submit the proposed and definitive reorganization plan.

17. To opine about the amendment of the reorganization plan previously approved.

18. To challenge, through appeal, the ruling that converts the bankruptcy to the liquidation stage.

19. To challenge, through appeal, the ruling on the conclusion of the bankruptcy proceeding.

The liquidation stage aims to reduce the assets to cash, liquidate them, and then pay the creditors. The bankruptcy adjudication in the liquidation stage or the conversion from the reorganization to the liquidation stage removes the debtor from the administration of the enterprise by operation of law. Hence, the principal duties and powers of the liquidation officer are to administer the debtor's enterprise and sell the assets of the debtor. However, according to the 2014 amendment, the liquidation stage can also terminate through a reorganization plan. The liquidation officer has the same duties and powers of the reorganization officers, in addition to the following:

1. To take possession of any goods or assets of the debtor, including those in possession of third parties.

2. To sell the assets on or outside auctions.

3. To request the assistance and presence of the debtor.

4. To oppose a separate foreclosure by a secured creditor on an asset linked to the operation of the enterprise.

5. To request the authorization of the estate's abandonment.

1.2.6. The Insolvency Institute

In the bankruptcy proceeding, the Insolvency Institute's only role is to appoint the insolvency officers and act as a consulting body, issuing non-mandatory opinions to the insolvency officers or the court (311 IX).

2. COMMENCEMENT OF A CASE

Bankruptcies commence either voluntary or involuntary. Bankruptcy adjudication is not automatic, and even in voluntary petitions, a prebankruptcy procedure needs to be initiated before the bankruptcy adjudication. In the prebankruptcy, the parties will submit evidence to prove whether the debtor is in general default. It is not sufficient that the debtor merely confesses a general default to the court. The report made by the visitor is the preponderant evidence to prove the general default. However, the visitor does not substitute the court, and the court makes the final determination. For instance, if the visitor concluded that the debtor is indeed in general default but the involuntary petition was filed by a creditor that lacked legal standing, the court will not adjudicate the debtor in bankruptcy. The only exception to elude the prebankruptcy proceeding is by the submission of a pre-package petition, where the debtor and a certain number of creditors acknowledge the situation of general default.

2.1. VOLUNTARY

A debtor may file a petition to be adjudicated in bankruptcy in one of three ways: the ordinary petition, the pre-package petition, and the imminent general default petition. Before the 2007 amendment, all petitions, even voluntary, were only permitted to request bankruptcy adjudication in the reorganization stage. The debtor was barred from requesting the direct opening in the liquidation stage, as the law aimed to conserve the enterprise and prevent its disappearance. As a result of the 2007 amendment, the debtor could file a voluntary petition to be opened in the liquidation stage, provided that the law recognized that, in certain cases, there was no reason to waste time in the reorganization stage. Moreover, the 2007 amendment established the second petition method: the prepackage petition. The 2014 amendment introduced the third petition method: the imminent general default petition.

Finally, the LCM does not oblige the debtor to file a voluntary petition within a certain time after he knows that he is in general default.

2.1.1. Ordinary petition

The debtor must file the bankruptcy petition in the formats provided by the Insolvency Institute (20) and it must be accompanied by the following:

- Financial statements. The financial statements must be audited by a certified public accountant when the law requires so.

- The causes of the general default. The debtor must explain why and how he reached a general default.
- List of creditors and inventory. The visitor corroborates the information. If the debtor, despite filing a voluntary petition, does not cooperate with the visitor and hinders the visit, his bankruptcy will not be grounded on the information submitted in the petition list or credits and inventory, but as a legal consequence of hindering the visit.
- List of proceedings. There is no automatic stay, as the stay results from the bankruptcy adjudication, but even before that adjudication, the court may grant provisional measures and one of which is a stay order against all types of attachments or seizures against the debtor. The list of proceedings will be useful information to determine whether or not grant, upon request or by the court's own motion, a stay as a provisional measure.
- Article 24's guarantee. The preponderant evidence of the general default is the visitor's report. The visitor is entitled to be compensated. The court will determine the final amount of his compensation through an ancillary proceeding. Article 24 of the LCM requires to guarantee a certain amount in advance of the visitor's fees if the petition is admitted, unless if the Public Prosecutor files the involuntary petition. Even a voluntary petition may be dismissed, that is why the law does not require to submit along with the petition the guarantee, but only to make a promise that when the petition is admitted, the petitioner will submit the guarantee of the visitor's fees. Said guarantee must be submitted through a public check issued by a state or federal treasury.
- Corporate's decision. If the debtor is a legal entity, the law requires proof that the partners of such entity authorized the legal representative to file the petition. There is no special or express legal requirement as to the quorum and kind of meeting where such a decision must be taken.
- The proposed reorganization plan. The reorganization plan which approval will close the bankruptcy proceeding may be an entirely different plan than the one proposed by the debtor within his voluntary petition. Either way, the law requires the debtor to submit it, unless the debtor requested the opening of the liquidation stage.
- Conservation of the enterprise. The bankruptcies of deceased debtors and trusted estates confirm that the subject matter of bankruptcies is not debtors, but rather, enterprises, either in operation or suspended. The law requires the debtor to submit a plan on how he will maintain the enterprise during the bankruptcy proceeding.

2.1.2. Imminent general default petition

For a voluntary petition to be granted, the debtor must, at the time of the filing, be in general default, that is, that at the time of the filing, one or both of the hypotheses presented in any of the two sections of article 10 of the LCM are met. There could be cases where, at a certain moment, none of the hypotheses of either two sections of article 10 are met, but the debtor is convinced that it will be soon. Because time is a significant factor and an earlier bankruptcy petition facilitates maintaining and protecting the enterprise, the law was amended in 2014 to allow the debtor to file a bankruptcy petition even if, at the time of the filing, the debtor is not in general default but it is a likelihood within ninety days after the petition is filed (20 Bis).

2.1.3. Prepackage petition

If the prepackage petition is not dismissed, it produces the adjudication in the debtor as bankrupt without the prebankruptcy procedure (339, 341). The reorganization plan, signed and submitted by the debtor and his creditors, will not necessarily be the final plan submitted for approval, because the creditors that signed it might not be allowed as creditors or because they do not meet the majority while other creditors that did not sign the initial plan do. However, a bankruptcy adjudication cannot be reversed if the creditors that signed the prepackage petition are not allowed.

2.2. INVOLUNTARY

An involuntary petition is, in essence, a lawsuit against the debtor. The petitioner is a plaintiff and the debtor is the defendant. If the defendant is not willing to be adjudicated as bankrupt, he may respond to the lawsuit in various ways. Firstly, he may deny that the plaintiff is his creditor. Secondly, he may state that he is not in general default. Thirdly, even though the plaintiff is a creditor and the debtor may be in general default, if he is a small business debtor, he might state that he is not willing to submit to a bankruptcy proceeding. These defenses, demurrers, and evidence are tried in the prebankruptcy procedure in combination with the visit by the visitor.

2.2.1. Plaintiff's legal standing

A single creditor can file the involuntary petition. No express provision requires a creditor to hold a defaulted or due credit against the debtor. The public prosecutor can also file an involuntary petition (21), as can foreign representatives, irrespective of not being recognized the foreign proceeding yet (288).

2.2.2. Defendant's legal standing

Generally, all debtors can be adjudicated in bankruptcy if they are merchants. The exception to the rule includes non-merchant debtors (when the debtor is a partner of an unlimited liability company that is adjudicated in bankruptcy) and debtors that no longer are merchants (suspended debtors). However, a merchant debtor may not be adjudicated in bankruptcy even if he is in general default, which is the case with small merchants. Small merchants are those whose liabilities do not exceed four hundred thousand UDIs at the time of filing the voluntary or involuntary petition.[11] In cases of involuntary petitions, the small merchant will not be adjudicated in bankruptcy if he does not submit to the application of the bankruptcy law. The voluntary petition implies submission to the application of the bankruptcy law.

2.2.3. Forms of the involuntary petition

Involuntary petitions must be filed in the formats provided by the Insolvency Institute. Involuntary petitions are, essentially, lawsuits filed by the petitioner, as the plaintiff, and against the debtor, as the defendant. The involuntary petition must contain relevant facts regarding that the debtor is in general default. Within the petition, the plaintiff must submit documentary evidence that proves he is a creditor of the defendant (22, 23) and to specify at which stage the bankruptcy must commence. Before 2014, the involuntary petition, if granted, would open the bankruptcy in the reorganization stage. The 2014 amendment allows involuntary petitioners to request the opening of the case directly in the liquidation stage, which will only be opened if the debtor, in response to the lawsuit, accepts it.

The plaintiff must describe in the petition the facts that motivate the petition for bankruptcy and submit evidence that he holds a credit against the debtor. The bankruptcy adjudication is granted when the debtor is in general default. General default is a juridical concept that, for purposes of the law, is triggered when the debtor is in default for a certain period and amount of debt or when the debtor does not have current assets to honor his due debts. These facts can only be proved with the cooperation of the debtor by permitting the visitor to conduct the visit in the prebankruptcy proceeding. Only the debtor knows whether he is in general default, but external appearances offer an indication and the report of the visitor will provide confirmation. These are known as acts of bankruptcy.

[11] About USD$120,000.00 in the exchange rate of September 2020.

2. COMMENCEMENT OF A CASE

2.2.4. Acts of bankruptcy

According to article 11 of the LCM, acts of bankruptcy take place in the following cases (309):

- Absence or insufficiency of debtor's assets to seize
- The default of payment to two or more creditors
- Absence without leaving someone in charge that can comply with the enterprise's administrative or operative obligations
- In similar circumstances as that of the last case, the closing of the enterprise's premises; resorting to fraudulent, fictitious, or ruinous practices to deal with or cease compliance of his obligations
- The default of financial obligations included in a reorganization plan approved in a previous bankruptcy proceeding
- In any similar cases
- When a Mexican court recognizes a foreign main proceeding.

Acts of bankruptcy are rebuttable presumptions of law that the debtor is in general default. The debtor can rebut the presumption with evidence to the contrary.

2.3. ADMISSION OF THE PETITION

The court may dismiss voluntary and involuntary petitions (24). Grounds for dismissal include personal jurisdiction (debtor's domicile is outside the territorial jurisdiction of the court); subject matter jurisdiction (debtor is not a merchant); the standing of the creditor (e.g., if the debtor is a financial institution, only financial regulatory agencies may file the involuntary petition); or the petitioner failed to amend the petition when required by the court.

Even if a petition is admitted, the court might not adjudicate the debtor as bankrupt. The court cannot dismiss the petition on the grounds that can only be analyzed when determining whether to adjudicate the debtor as bankrupt.

Once the petition is admitted, the prebankruptcy proceeding takes place and the visitor visits the debtor's domicile. The court will notify the fiscal authorities of the admission of the petition. The decree of admission is suspended until the petitioner submits the guarantee of the visitor's fees (24).

2.4. PREBANKRUPTCY PROCEDURE

2. COMMENCEMENT OF A CASE

The debtor will be adjudicated in bankruptcy if he is in general default. To determine that, the visitor analyzes the debtor's accounting records and books. Usually, the visitor is an accountant by profession, and he will visit the debtor's domicile and report on the debtor's accounting, records, and books and interview the debtor's external counsels. The nature of such a report is that of an expert witness. Once the visitor concludes the report, he submits it to the court, and the court notifies the parties of its submission so that they can submit conclusions. After that, the court issues an adjudicative or non-adjudicative ruling (29, 30, 34, 40, 41, 42).

2.5. PROVISIONAL MEASURES

Provisional measures advance the effects of a future resolution or maintain the *status quo ante* to protect the subject matter of the process to avoid the perils that may arise from the date of the petition to the date of the final resolution. The final resolution in a bankruptcy petition is the bankruptcy adjudication. The provisional measures in bankruptcy protect the debtor's enterprise and may be requested by the debtor, the involuntary petitioner, the visitor, or by the court on its own motion (25, 26). The following provisional measures may be granted (37):

- Prohibiting the payment of due obligations before the date of admission of the petition
- The stay of all enforcement proceedings against the estate of the debtor
- Prohibiting the debtor from conveying his estate
- The freezing of property
- The receivership
- Prohibiting the transfer of money or securities to third parties
- Placing the debtor on home confinement to prevent him from leaving the domicile without leaving an attorney-in-fact with proper instructions and power of attorney
- Any similar measure.

2.6. ADJUDICATION IN BANKRUPTCY

The debtor will be adjudicated in bankruptcy when the court deems that sufficient evidence proves that the debtor is in general default. General default is a juridical concept that comprises two events: a default by a certain time of a certain

amount of debt and the lack of current assets. For voluntary petitions, either of the two events must be proved; for involuntary petitions, both events are required.

In certain cases, however, a debtor may be adjudicated in bankruptcy without evidence that he is in general default. These include cases of adjudication by default, by a declaration under oath, and by extension of the adjudication of another debtor.

2.6.1. When the substantial requirements are met

General default is triggered, in cases of voluntary petitions, when the debtor has two or more creditors and the debtor is in one of the following events: significant delay or lack of sufficient liquid assets. In an involuntary petition, the debtor must be in those two events (9, 10). We will explain such a hypothesis.

- *Two or more creditors.* If the debtor has only one creditor, there is no need for the bankruptcy, as bankruptcies presuppose the concurrence of more than one creditor. There is no concurrence of one creditor alone.
- *Significant cessation of payments.* If at least thirty-five percent of a debtor's total debts are in default for thirty days at the date of the petition filing, then the debtor is on a significant delay and, in this case, the debtor may be adjudicated in bankruptcy for a voluntary petition. If the petition is involuntary, then, in addition to the significant delay, it must be proved that the debtor lacks current assets.
- *Balance sheet or acid test.* The debtor may have adequate assets that, when reduced to cash, can pay all his debts and still be adjudged as bankrupt. What matters is the availability of such assets to be used to pay the debts due. Hence, only the current assets minus inventory must be sufficient to pay at least eighty percent of the debts due at the date of the filing of the petition (10, II).

2.6.2. By default

a. *For not answering the lawsuit*. An involuntary petition is a true lawsuit against the debtor. The debtor, as a defendant, must answer the lawsuit, and failure to do so indicates that the facts contained in the lawsuit are accepted by the defendant (26). This is a rebuttable presumption of law, and the defendant can submit evidence to contradict it. However, if the defendant also fails to submit such evidence, the presumption will be regarded as conclusive and preponderant evidence to adjudicate the debtor in bankruptcy.

b. *For hindering the visit*. To conclude that the debtor is in general default, the judge places significant weight on the visitor's report. For the visitor to conduct his visit, the debtor must cooperate, that is why the law sanctions the debtor to be

bankrupt if he hinders such visit or does not cooperate with the visitor, even if the debtor is not actually in general default (31, 33, 35).

2.6.3. By declaration under oath

The judge will immediately adjudge the debtor as bankrupt if a prepackage petition is signed by the debtor and a certain number of creditors stating, under oath, that the debtor is in general default (339, 341).

2.6.3. By extension

When a bankrupt is a legal entity, and its partners have unlimited liability, the bankruptcy adjudication of the legal entity is extended to its partners, but not vice versa, irrespective that its partners are not in general default (14).

If a debtor is part of a group of companies, the bankruptcy adjudication of one of them will produce the adjudication in the others. The bankruptcy proceedings of the companies that form the group will be tried jointly without consolidating the estate. For the LCM, a group of companies consists of holders and subsidiaries (15, 15 Bis).

2.7. NON-ADJUDICATIVE RULING

An involuntary petition, as a true lawsuit, subjects the defendant to advance certain costs, for example, attorneys and expert witness fees (48). If the plaintiff obtains no relief, that is, if a non-adjudicative in bankruptcy ruling is issued, then he must reimburse the defendant debtor for the legal costs as the prevailing party. The law states that the same is applicable when the debtor files his petition in bankruptcy and, after the prebankruptcy proceeding, obtains no relief. However, there is no prevailing party in a voluntary petition in bankruptcy, provided that during the prebankruptcy proceeding, the parties consist only of the debtor and the visitor. We regard this as an error in the law. The adjudicative or non-adjudicative ruling may be challenged through an appeal by the debtor, the visitor, or the involuntary petitioners (49).

2.8. NOTICE TO CREDITORS

The bankruptcy adjudication will be notified, in addition to the debtor, to the Institute and visitor, to the union representative or the Labor Defense Attorney and

the creditors personally, through the court's clerk, by certified mail or other means established by law (43 XIV, 44, 45). Any creditor not notified through such means is regarded as notified through the publication in the Federal Official Gazette of the summary of the adjudication resolution. The effects of such publication are twofold: to serve as a notice to the creditors and, if the bankruptcy commenced in the reorganization stage, to serve as the starting point of the time to submit and approve the reorganization plan to avoid the conversion to the liquidation stage (167 II).

In the case of foreign creditors, following the UNCITRAL Model Law on Cross-Border Insolvency, the notification will not take place through letters of rogatory and must indicate forty-five days for filing claims. It must also specify the place for their filing, whether secured creditors need to file their secured claims, and it must contain any other information needed in such notification to creditors according to Mexican law and the orders of the court (291).

3. EFFECTS OF THE ADJUDICATION IN BANKRUPTCY

The effects of the bankruptcy adjudication in the reorganization stage are similar to those in the liquidation stage (176, 177), except what is established in Chapter II of Title Six of the LCM.

3.1. ON PREPETITION CLAIMS

Generally, upon bankruptcy adjudication, the debtor is enjoined from paying prepetition claims (43 VIII). This rule is founded in the *pari passu* principle. The exceptions to that general rule are tax claims (69), labor claims (66), and critical trade vendors, of which the debtor must inform the court, but not request prior authorization, within the next seventy-two hours (43 VIII).

Tax credits will continue to increase, as will the generation of interest and fines, all of which will be condoned if the debtor reaches a reorganization plan in the reorganization stage, not the liquidation stage (69).

3.2. ON THE DEBTOR'S LEGAL CAPACITY

The bankruptcy adjudication does not deprive the debtor of his legal capacity; it only limits his rights and property. The scope of the limitation depends on the stage of the bankruptcy. The limitation in the reorganization stage as a soft bankruptcy is less than in the liquidation stage, as a hard bankruptcy.

3.2.1. During the reorganization stage

Unlike the liquidation stage, during the reorganization stage, the debtor retains possession of his enterprise and it is "business as usual," with certain limitations. However, even in the reorganization stage, the debtor can be removed by a court order at the request of the reorganization officer.

a. "*Business as usual."* During the reorganization stage, the debtor retains possession of his enterprise, but under the surveillance of the reorganization officer (74, 75). The debtor, however, cannot make compositions between his creditors. Any composition made upon the bankruptcy adjudication, even in the reorganization stage, will be declared null, and the creditor will lose any right derived from the bankruptcy (154).

3. EFFECTS OF THE ADJUDICATION IN BANKRUPTCY

A goal of bankruptcy is to maintain the enterprise and avoid its disappearance. Even in the liquidation stage, a sale on a going concern basis is preferable to other kinds of sales. However, if it is costly and onerous, the debtor and the reorganization officer may agree to terminate its operation. If, despite debtor opposition, the reorganization officer deems that it is advisable to terminate the enterprise's operation to prevent the growth of liabilities or deterioration, following the approval of the creditor's representatives, if applicable, he may submit a petition to the court to close the enterprise. The petition is conducted through an ancillary proceeding, where the reorganization officer is the plaintiff and the debtor is the defendant (79).

b. *Debtor's removal as manager*. In the reorganization stage, the debtor retains possession of his enterprise under the supervision of the reorganization officer, unless the reorganization officer requests the court to remove the debtor, in which case the reorganization officer will take charge as the liquidation officers do in the liquidation stage, being liable for fault or negligence. The petition is conducted through an ancillary proceeding, where the reorganization officer is the plaintiff and the debtor is the defendant (78, 81, 82).

3.2.2. During the liquidation stage

The liquidation stage is hard bankruptcy. The debtor, by operation of law, upon the bankruptcy adjudication in the liquidation stage or the conversion from the reorganization stage to the liquidation stage, is removed from the administration of his enterprise and he cannot dispose of goods and rights in respect to nonexempt assets. The liquidation officer becomes the new manager and legal representative of the debtor's enterprise and is liable for fault or negligence. The previous administrators, attorneys, or representatives are deprived of further representations. The debtor and his manager must cooperate with the liquidation officer (169, 178, 184, 189, 195, 196). If the debtor acts *pro se* without permission from the liquidation officer, those acts will be null, unless the estate benefits from them (192); even the debtor's debtors cannot make payments directly to him (193).

3.3. ON DEBTOR'S FREEDOM

Upon bankruptcy adjudication, to ensure that the debtor assists the operations of the bankruptcy proceeding, the debtor cannot leave the place where the bankruptcy proceeding takes place unless he appoints an attorney-in-fact and gives clear instructions and power of attorney with a general or special mandate with powers for acts of ownership, acts of administration, and lawsuits and collections (47).

3. EFFECTS OF THE ADJUDICATION IN BANKRUPTCY

3.4. ON DEBTOR'S PROPERTY: EXEMPTED AND NONEXEMPTED ASSETS

Upon bankruptcy adjudication, the debtor retains ownership of his properties, but while the insolvency officer takes possession of his charge, the debtor will be deemed as a depositary of his assets, with all the duties that derive from a deposit contract (43 I). The debtor will respond to his debts with his patrimony,[12] that is, with his estate (4 V), but not with all the property of the estate. There are exempted assets. The LCM defers to local laws to determine what assets are exempted (179).

If a bankruptcy proceeding is opened under the LCM upon recognition of a principal foreign proceeding against a debtor with an establishment in Mexico, the estate will only include the assets of the debtor that are located in Mexico and, to the extent necessary for cooperation and coordination under articles 304 and 305, to other assets of the debtor that, under Mexican law, should be administered in that proceeding (306).

3.5. ON GENERAL CONTRACT LAW

3.5.1. Conditions and terms

An obligation can be pure and simple or subject to terms and conditions.

a. *Terms*. The obligations subject to a term not due at the bankruptcy adjudication will be regarded as due (88 I).

b. *Suspensive condition*. In the case of credits that are subject to a suspensive condition, the condition will be regarded as not having been met (88 II).

c. *Resolutory condition*. Credits that are subject to a resolutory condition will be regarded as if the condition was met without the parties having to return the benefits received to each other while the obligation subsisted (88 III).

3.5.2. Periodic or successive installments

The amount of the credit for periodic or successive benefits shall be determined at their current value, considering the previously agreed-upon interest rate or, by default, what is applied to the market in similar operations, taking into consideration the relevant currency or unit and, if this is not possible, interest at the legal rate (88 IV).

[12] Federal Civil Code, article 2964.

3.5.3. Obligations with the undetermined amount

The obligations that have an undetermined or uncertain amount will need to be valued in monetary terms (88 VI).

3.5.4. Interests and currencies

As they are regarded as post-petition claims, upon bankruptcy adjudication, all interests payable to general unsecured creditors are suspended. The suspension of interest for secured creditors applies only to the value of the collateral. Furthermore, irrespective of the currencies on which they are based, all claims will be converted in UDI's, except for the secured creditor, whose claims will remain in the original currency (89). The UDI is a price-level-adjusting unit of account of real constant value (which eliminates the inflation effect). The value of the UDI changes every day and is calculated based on the inflation information from the previous two weeks, which is calculated and published by the Banco de México.

3.5.5. Setoffs

Allowing setoffs would violate the *pari passu* rule because a creditor would be paid ahead of another creditor that is not the debtor's debtor. Hence, upon bankruptcy adjudication, only the following may be offset (90):

- The rights in favor of and the obligations attributable to the debtor that derive from the same transaction and that the latter is not interrupted upon the adjudication
- The rights in favor of and the obligations attributable to the debtor that expired before the adjudication and whose offsetting is provided in the laws
- The rights and obligations that derive from repo agreements, securities loan agreements, futures, and derivatives
- The fiscal credits in favor of and against the debtor.

3.5.6. On public contracts with the State

The State may enter into contracts with private individuals or entities. Such contracts are governed by public law provided that they compromise public resources. State agencies must manage the public resources in contracts according to principles of efficiency, effectiveness, economy, openness, and honesty.[13] The bankruptcy adjudication stigmatizes the debtor, as the dependencies and entities of

[13] Mexican Constitution, article 134.

the State will not accept proposals from, award contracts to,[14] or enter into public-private partnerships[15] with a bankrupt debtor.

3.5.7. On the statute of limitations

The bankruptcy adjudication does not toll or suspend the time for the statute of limitations to run off. The submission of proof of claims, objection to the provisional list, and filing an appeal against the ruling on the allowance of claims, will interrupt the period of the applicable statute of limitations (134).

3.6. ON EXECUTORY CONTRACTS

3.6.1. General rule

The debtor must fulfill the preparatory or definitive contracts whose execution is pending unless the insolvency officer rejects them for not being in the best interest of the estate. The debtor's counterparty in the executory contract can request the insolvency officer to decide on the assumption or rejection. If the insolvency officer does not decide within twenty days, the counterparty can terminate the executory contract. If the insolvency officer assumes the contract, the debtor must fulfill or secure its performance (92).

3.6.2. Executory sales agreement

The following rules apply when the thing has not yet been delivered, nor the price paid. If the thing has been delivered and the price is not paid, then the seller must move to an exclusion action against the bankrupt buyer. If the price has been paid and the thing not delivered, the bankrupt seller cannot elude the delivery to the buyer.

a. *When the buyer is bankrupt*. If the debtor is the buyer on a sale agreement and if the seller has not already delivered the goods before the bankruptcy adjudication, the seller is not compelled to deliver the goods unless the debtor pays the price or secures its fulfillment, despite that the price is not due yet (93, 96, 97, 98). This is a right of retention granted in favor of the seller.

If the goods are in transit to be delivered and not yet paid, the seller may oppose, through an ancillary proceeding, the delivery by changing the consignment despite not having the necessary documents to change it (94).

[14] Public Works and Related Services Act, article 51 section V.
[15] Public-Private Partnership Law, article 42 section VII.

b. *When the seller is bankrupt*. When the bankrupt is the seller in an immovable sales agreement, he will not be compelled to deliver unless the buyer pays the price (95).

3.7. ON PERFECTED CONTRACTS

3.7.1. General rule

As a general rule, the bankruptcy adjudication will not modify the terms and conditions agreed on contracts entered by the debtor (86). Any contractual stipulation that worsens the condition of the debtor by the sole fact of submitting a voluntary or involuntary petition or being adjudicated in bankruptcy shall have no effect (87).

3.7.2. Deposit, credit opening, mercantile commission, and civil mandate

The bankruptcy adjudication of one of the parties shall not terminate those contracts unless the insolvency officer considers that must be terminated (100).

3.7.3. Current accounts

The current accounts shall be closed early and shall be put into a condition of liquidation to demand or cover their balances, upon bankruptcy adjudication, unless the debtor, with the authorization of the insolvency officer, expressly assumes its continuation (101).

3.7.4. Repo agreements, securities loan agreements, futures, and derivatives

The bankruptcy adjudication shall terminate the repo agreements executed by the debtor (102), the securities loan agreements (103), and the future contracts and the financial derivative transactions (104).

3.7.5. Leases

The bankruptcy adjudication of the lessor or the lessee does not terminate the real estate lease agreement. However, in this last case, the insolvency officer may opt for the termination of the contract. In case of termination, the indemnification agreed in the contract for this case must be paid to the lessor or, by default, an indemnification equal to three months of rent, for the accelerated maturity (106). The termination is not automatically because of the bankruptcy adjudication of the lessee. In some cases, keeping the lease may be for the benefit of the creditors, because

the enterprise will continue its operations in the leased premises. That is why it is up to the insolvency officer to decide. If the lessee, having the insolvency officer opted for the continuation of the lease, defaults in his payments, said claims would be classed as claims against the estate, and the lessor can move to exclude the leased asset through the exclusion actions.

3.7.6. Contracts on exempted assets

The bankruptcy adjudication does not affect the validity of the contracts executed on personal goods, non-patrimonial goods, or exempt assets whose administration and disposal are retained by the debtor (91, 107).

3.7.7. Construction contracts

The lump-sum contract for construction works is terminated upon the bankruptcy adjudication of one of the parties, unless the debtor, with the authorization of the insolvency officer, agrees to fulfill the contract with the counterparty (108).

3.7.8. Insurance

The bankruptcy adjudication of the insured party does not rescind the insurance contract if the insured object is real estate. However, if it is personal property, the insurer might rescind it. Upon bankruptcy adjudication, the insolvency officer must report the adjudication to the insurer within thirty calendar days, or the insurance contract will be rescinded (109) because, upon bankruptcy adjudication, the risk increases if the estate will be in possession of persons other than the insured party. Regarding life insurances, the debtor, with authorization of the insolvency officer, may assign the insurance policy and reduce the insured capital in proportion to the premiums paid, according to the calculations of the insurance company for the contract and being aware of the risks taken. Likewise, the debtor may engage in any transaction that provides an economic benefit for the estate (110). The rights that derive from a life insurance policy are property of the estate, and the appointment of the beneficiary will be suspended upon bankruptcy adjudication, unless the debtor waived his right to revoke the appointment or if the appointees are his spouse or descendants, who may decide to take the place of the insured debtor.[16]

[16] Insurance Contract Law, articles 178-181.

3. EFFECTS OF THE ADJUDICATION IN BANKRUPTCY

3.7.9. Debtor's participation in a company

Upon bankruptcy adjudication, the debtor, as a partner, has the right to separate from a general partnership, limited liability company, or unlimited liability partnership unless the debtor and the insolvency officer decide that the debtor should remain in it (111).

3.7.10. Life annuity

The life annuity creditor has the right to have his credit recognized at its market replacement value or, by default, at its current value calculated according to the commonly accepted practices (88 V).

3.8. ON PENDING, NEW, OR *RES JUDICATA* ACTIONS COMMENCED AGAINST OR BY THE DEBTOR

3.8.1. General rule

All actions or proceedings instituted against the debtor, before or after the bankruptcy adjudication, will continue by the debtor under the surveillance of the insolvency officer (84) unless only exempted assets are at stake (85). Such proceedings will not be stayed or added to the judicial record of the bankruptcy proceeding – only the enforcement executions derived from those proceedings stay (43 IX, 65). This stay is not at the court's discretion; it is mandated by law as a consequence of the bankruptcy adjudication and may not be lifted until the case is closed.

3.8.2. Labor actions

There are two types of labor credits: labor credits against the estate and ordinary labor credits. The attachment or seizure following a labor proceeding regarding a labor claim against the estate is beyond the scope of the stay order issued upon bankruptcy adjudication. The labor creditor against the estate can continue the execution outside the bankruptcy proceeding before the labor courts. The debtor is regarded as a depositary of the attached asset.

If the asset seized by the labor creditor against the estate is also collateral for a secured creditor, the insolvency officer may submit before the labor court a petition to substitute the attached asset with a bond. If the substitution is not possible and the labor court executes the attached asset, the secured creditor will be registered as a claim against the estate for the value of the collateral and the remaining amount as a general unsecured claim (65, 67, 68).

3.8.3. Tax actions

Upon bankruptcy adjudication in the reorganization stage, the administrative proceeding to collect taxes is stayed (69).[17] If the bankruptcy converts to the liquidation stage or if the debtor defaults in the reorganization plan concerning the tax credits, the administrative proceeding will resume.

3.8.4. Actions brought by secured creditors

The actions brought by secured creditors are stayed during the reorganization stage unless the asset that serves as collateral is not linked to the operation of the enterprise. In such a case, the court, based on the opinion of the reorganization officer, may authorize the secured creditor to commence or continue his action (75). However, if the reorganization plan unimpairs the secured claim or the value of the collateral is paid, the execution will cease (160).

During the liquidation stage, the secured creditors may commence or continue their actions in a separate proceeding to which the liquidation officer is a party (213). However, if the collateral is linked to the operation of the enterprise, the liquidation officer may, within the thirty days following the opening of the liquidation stage, prevent its foreclosure outside bankruptcy if he deems that a sale as a going concern maximizes the value of the estate (214).

If the secured creditor did not exercise his right of self-appraisal, the collateral would be foreclosed within the bankruptcy proceeding based on the appraisal of the liquidation officer. If the secured creditor used his right of self-appraisal and it is lower than the appraisal of the liquidation officer, the secured creditor will be paid at the amount of his appraisal. However, if the self-appraisal value is greater than the appraisal of the liquidation officer, the secured creditor will receive the amount of the liquidation officer's appraisal. In either case, the difference between the amount of the secured claim and the collateral's appraisal will be regarded as a general unsecured claim. The secured creditor may challenge the liquidation officer's appraisal through an ancillary proceeding, but the alienation will not be suspended (214).

In the reorganization and the liquidation stage, the payment for the claims against the estate and the singularly privileged creditors will be deducted from the proceeds of the sale (216, 226).

Finally, the execution from a secured repo, future, or derivate agreements does not stay and can be executed automatically (105).

[17] Federal Tax Code, article 144.

3.8.5. *Res judicata* claims

If a judgment in a proceeding other than the bankruptcy becomes conclusive before the relation back period, it is regarded as *res judicata* for the allowance of claims, and the creditor does not have to submit proof of his claims other than the judgment. However, if it becomes conclusive within the relation back, it will be a superfluous judgment, provided that it lacks a legal outcome under the bankruptcy proceeding (127).

3.9. ON DEBTOR'S MANAGERS LIABILITY

The debtor that has been adjudicated in bankruptcy or, in the case of a legal entity, the shareholder that represents a certain percentage of the shares (270 Bis 1), may institute a liability action against the members of the board of directors or the relevant employees under a range of circumstances: if they voted or made determinations related to the debtor's property, despite having a conflict of interest; if they benefited a shareholder or group of shareholders to the detriment of the other shareholders; if, under their charge, they obtained a benefit for themselves or third parties; if they knowingly generated, disseminated, published, provided, or ordered false information; if they manipulated financial statements; or if they committed illegal acts under the LCM or other laws (270 Bis).

This liability action may also be initiated by a certain percentage of the allowed creditors or creditor's representatives if the members of the board of directors or the relevant employees committed fraudulent conveyances (113 Bis).

3.10. ON POST-PETITION TRANSACTIONS

During the prebankruptcy procedure (37), the reorganization stage (75), and liquidation stage (189), the court may authorize contracting the new credits necessary to maintain the ordinary course of business and the necessary liquidity during the bankruptcy proceeding, whose payments will not be suspended.

4. CLAIMS ALLOWANCE PROCEEDING

For a bankruptcy proceeding to be closed, it is necessary to conclude the allowance of claims proceeding. Allowed creditors will vote on and sign the plan, and the approval will conclude the bankruptcy. Moreover, in the liquidation stage, once the assets are reduced to cash and the allowed creditors have received it, even if they have not been paid in full, the bankruptcy proceeding will conclude. Hence, the allowance of claims is one of the most important issues in bankruptcy.

The allowed claim results from a multiparty litigation that consists of the following steps: 1) the insolvency officer inspects the debtor's accounting books and records, and with this information and the proof of claims that the creditors submit, elaborates a provisional list of claims; 2) the provisional list might be objected to, and upon such objections, the insolvency officer will elaborate a definitive list of claims; 3) upon the definitive list and objections, the judge issues a first-instance ruling on the allowance of claims; and 4) the ruling may be challenged through an appeal.

The allowance of claims proceeding is often the most time-consuming aspect of the overall bankruptcy proceeding. Only documentary evidence is admitted in the lower court, but in the appeal, any type of evidence is permitted: documents, witnesses, debtor or creditor depositions, expert witnesses, and court's inspections.

All creditors must appear before the bankruptcy proceeding and submit proof of their claims, except tax and labor creditors.

The Public Treasury does not have to submit evidence to have its tax credits allowed in the bankruptcy proceeding,[18] and the proof of those credits can be submitted at any time (124). The Second Chamber of the Supreme Court of the Nation held that *"it is incorrect that the Federal Public Treasury has to appear to the bankruptcy proceeding, to get, within said proceeding, the way and the proportion in which the tax credits must be paid."*[19]

Labor creditors also are not compelled to submit evidence for their credits to be allowed in the bankruptcy proceeding.[20] The Supreme Court of the Nation, acting in full-court, held that *"workers do not need to appear to bankruptcy proceedings since their credits are excluded from the bankruptcy procedure, and consequently, they must deduct their claims, to have them covered, only before the labor authorities."*[21]

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[18] Federal Code of Civil Procedure, article 504. Federal Tax Code, article 149.
[19] *Amparo administrativo en revisión* 9676/41.
[20] Federal Labor Law, article 114.
[21] *Amparo en revisión* 6846/57 & 7273/57.

4. CLAIMS ALLOWANCE PROCEEDING

Labor claims before labor authorities are adjudicated not by a preponderance of the evidence or by law, but rather, through equity and judicial discretion. Civil and commercial claims before other authorities and the bankruptcy court are adjudicated based on evidence and according to the law, not equity. Hence the incompatibility to compel the workers to appear before the bankruptcy court. The Second Chamber of the Supreme Court of the Nation held:

> The bankruptcy judge does not have the jurisdiction to adjudicate on the labor conflicts between the bankrupt and his workers; otherwise, either of these two extremes would have to be accepted: the bankruptcy judge could adjudicate them under fairness and conscience, which is contrary to the nature and functions of the judicial authorities, or that, by the bankruptcy adjudication, an act to which the workers are strangers, they will be deprived of the rights guaranteed by article 123 of the Constitution, since, instead of going before the Labor Court, they would have to go before the judge of the law, adjusting to the lengthy procedures of bankruptcy, to achieve payment, which would be notoriously unfair, since the bankruptcy is adjudicated without the fault of the workers …[22]

4.1. SUBMITTING A PROOF OF CLAIM

The publication of the summary of the bankruptcy adjudication triggers the first chance to submit a proof of claim before the insolvency officer. If the creditor fails to do so, he can submit a proof of claim through the objection to the provisional list of claims and the appeal against the first instance rule on the allowance of claims (122, 125).

4.2. PROVISIONAL LIST OF CLAIMS

The insolvency officer must elaborate a provisional list of claims based on the information in the accounting books, the records of the debtor's accounting, and the documents submitted as proof of claims by the creditors (121, 123, 128). Based on the provisional list of claims, the court will determine whether a creditor or group of creditors can appoint a creditor's representative.

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[22] *Amparo administrativo en revisión* 3651/27.

4. CLAIMS ALLOWANCE PROCEEDING

4.3. OBJECTION AGAINST THE PROVISIONAL LIST

If a creditor was not considered in the provisional list, he might submit a proof of claim through an objection against the list. This objection is utilized as the second mean by which a creditor can submit a proof of claim. The objection also requests the insolvency officer to modify the terms of the provisional list (122, 129).

The debtor or creditor may object to the provisional list and request the insolvency officer to exclude or include someone as a creditor, or to modify the amount of the claim allowed, or to modify the class or the priority.

Only documentary evidence may be attached to the objections. Then, if the objecting party bases the objection on false documents or inaccurate records, expert witness testimony cannot be submitted through the objection. The objecting party must wait until the appeal, and then any kind of evidence can be submitted, perfected, and rendered before the appeal court.

4.4. DEFINITIVE LIST OF CLAIMS

The insolvency officer, when elaborating the definitive list of claims, may accept or reject the objections against the provisional list of claims. In the definitive list, the officer will add the subsequent proof of claims that were further submitted. Furthermore, he may add the claims based on *res judicata* judgments and other labor and tax credits that were notified to the debtor (130).

4.5. THE FIRST INSTANCE RULING ON THE ALLOWANCE OF CLAIMS

The insolvency officer does replace the court in its jurisdiction; he is merely an expert witness and an assistant to the court. Only the judge has jurisdiction over the allowance of claims, save for the labor and the tax credits. The judge considers the definitive list but is not bound by it, and he may exclude or include claims (132). The judge has only documentary evidence submitted before him, hence challenges on the validity or authenticity of a claim need to be proved by the interested party through other kinds of pieces of evidence, such as expert witnesses, deposition, before the appeal court. The creditors whose claims are allowed by such ruling are allowed creditors for purposes of the law.

4.6. APPEAL

The ruling on the allowance of claims may be challenged through an appeal. If a creditor was not considered in the first instance ruling, he can submit a proof of claim through the appeal. This appeal is the third and last mean by which a creditor can submit a proof of claim.

The debtor, any creditor, the creditor's representatives, and the insolvency officer may file the appeal, even if they did not previously object to the provisional list. Unlike the objection to the provisional list, any kind of evidence can be submitted in the appeal. The second instance is another judicial proceeding in which the appeal court will rule *de novo,* based on arguments, grounds, and evidence not submitted before the lower court (132, 136, 137, 138). A pending appeal does not suspend or stay the appealed resolution (135).

The admission of the appeal marks the multiparty litigation in the bankruptcy proceeding: the debtor vs. a creditor, a creditor vs. the debtor, a creditor vs. another creditor, or the insolvency officer vs. a creditor. When the appellant files the appeal, he may ask the appeal court to modify the appealed resolution, either by modifying the amount, the classification, the rank, or the allowance of the claim. The appellee must respond to the appeal brief and submit evidence to counter the arguments brought by the appellant. The reply brief is, in essence, an answer to a lawsuit, and the appellant is the plaintiff that seeks a resolution that may impair the defendant, which is the appellee.

For example, a creditor will naturally want a bigger piece of the pie, that is, a large dividend from the proceeds of the debtor's estate. Hence, a creditor may file an appeal against the resolution that allowed another creditor to exclude the latter so that the former is more likely to be paid in full. The appellee creditor must reply to the brief and submit and perfect the evidence of his claims to prevent the appeal court from excluding him as a creditor because of insufficient evidence.

The debtor also wants to appeal the resolution to include or exclude a claim if he is interested in including a claim of a creditor that is more willing to vote in favor of a plan, or vice versa.

In summary, real multiparty litigation occurs in the submission of the appeal brief and its reply by the appellees. The appeal court will try the taking of evidence and the evidence stage.

5. CLAIMS CLASSIFICATION

All creditors must be treated equally, but justice demands that only the equals be treated equally and un-equals be treated unequally. The classification of creditors is based on such inequalities. However, all creditors, irrespective of class, will have their claims met against the debtor's estate. Some creditors will be paid against a specific good of the estate with the exclusion of the other creditors. These exclusions are based on a statutory lien (creditors with special privilege), a judicial lien (labor judgment-creditors), or a contractual lien (secured creditors).

The classification of creditors determines the ranking of creditors and which creditors will be bound by the reorganization plan. The creditors are statutorily classified; the debtor does not have the power to classify or group the claims.

5.1. CLAIMS AGAINST THE ESTATE/ADMINISTRATIVE CLAIMS

The bankruptcy adjudication does not transfer the debtor's estate to another entity. The debtor continues to be the owner of his estate. The estate of the bankrupt is not a legal entity. However, Mexico follows a tradition where a certain class of creditors are not regarded as creditors against the debtor, but as creditors against the estate, as though the estate were a legal entity. Such terminology derives from the idea that there are certain creditors whose claims arise after the commencement of the case and produce a benefit to the estate, which is traduced in a benefit to the rest of the creditors. Hence, such creditors need to be prioritized over the remaining creditors against the debtor, because the debtor's estate and the debtor's creditors benefited from the acts that derived from the claims against the estate. Administrative claims would be better terminology.

Therefore, creditors against the estate are ahead of any other creditor. However, Mexican law focuses on the effects and not the causes. For example, under the Mexican Constitution, which is a product of the 1910 socialist revolution, labor creditors are ahead of any other kind of creditors in a bankruptcy. Labor creditors are not administrative creditors; they do not produce a benefice to the estate. However, to comply with the constitutional statute, the LCM included the labor creditors as creditors against the estate to obtain such super-priority (effects) even though they are not creditors against the estate (causes).

Aside from the labor creditors against the estate, the remaining creditors named as creditors against the estate truly fall within the concept because they produce a benefice to the estate and the other creditors. Such creditors include post-petition financial transactions; security, repair, conservation, and administration of

goods; judicial expenses; and, in cases of debtors of mixed economy, the claims of the Institute of Administration of Assets.

Before the 2007 amendment, the insolvency officer's fees were considered administrative claims. Now they are regarded as post-petition claims that must be paid as in the ordinary course of business.

5.1.1. Labor creditor against the estate

There are two kinds of labor creditors: labor creditors and labor creditors against the state (224 I). The latter are those that base their claims on subsection XXIII, section A, of article 123 of the Mexican Constitution that refers to claims of workers for wages or salaries earned during the preceding year and for severance.

5.1.2. Post-petition financial transaction

Section II of Article 224 of the LCM refers to two types of credits: those contracted for the administration of the estate, which only requires the authorization of the reorganization or liquidation officer, and those contracted to maintain the operation of the enterprise and to inject liquidity needed during the bankruptcy proceeding, which require the authorization of the court. The latter is known as post-petition financial transactions, which may be contracted during the prebankruptcy proceeding, the reorganization, or liquidation stage.

However, as we will see further, a post-petition financial transaction does not have a super-priority over the other administrative claims or other secured creditors. This could deter a lender from financing a debtor adjudicated in bankruptcy.

5.1.3. Security, repair, conservation, and administration of goods

Section III of article 224 of the LCM considers claims against the estate as those contracted to deal with normal expenses for the security of the goods of the estate, their repair, conservation, and administration. The credits contracted for said purposes benefit the estate and the creditors, hence the classification as administrative claims or credits against the estate. While not stated expressly, those credits must also be authorized by the reorganization or liquidation officer.

5.1.4. Judicial expenses

Judicial expenses are the credits arising from a judicial or extrajudicial proceeding that benefit the estate (224 I).

5.1.5. Institute of Administration of Assets

The Institute of Administration of Assets forms part of the Federal Executive Branch; its patrimony consists of national assets. If the institute deems it necessary to inject money for the conservation of the estate of the mixed-economy debtor, the nation must be assured that the money will be returned ahead of other creditors. Therefore, these claims are also classified as credits against the estate (4 II).

5.2. SINGULARLY PRIVILEGED CREDITORS

Singularly privileged creditors derive their credits from the debtor's burial costs if the adjudication occurs after his death or from the expenses of the illness that caused the death of the debtor if the adjudication occurs after his death (218). These creditors receive their class and priority on humanitarian grounds.

5.3. SECURED CREDITORS

Only creditors secured by mortgage or pledge are secured creditors in bankruptcy (219); deeds in trust, for example, are not included. If immovable property serves as collateral, the claims fall within the concept of mortgage creditors and within the concept of pledge creditor for personal property and movables, irrespective of whether the possession of such was transferred to the creditor.

Article 219 does not distinguish between the collateral property of the debtor's estate and the collateral property of third parties.

Secured creditors may lose such classification if the collateral was attached (judicial lien) by a labor claim against the estate and the substitution was not admissible by the labor court, in which case the claim is classified as a claim against the estate for the value of the collateral (68). The labor claim against the estate trumps the secured creditor.

Concerning the secured creditors, the suspension of interests upon bankruptcy adjudication does not apply to the extent of the value of the collateral. Furthermore, the credit remains in the original currency, that is, it will not be converted to UDIs for payment purposes, but only for the participation of the secured creditor irrespective of the value of the collateral, unless he uses his right of self-appraisal (89).

Secured creditors have the right to appraise by themselves their collaterals if they deem them to be undersecured, in which case, they will be regarded as secured

creditors for the self-appraisal and as general unsecured creditors for the difference. The secured creditor previously must waive in favor of the estate the proceeds obtained when foreclosing the collateral above the appraisal value (89). The self-appraisal right that the secured creditor utilized in the reorganization stage is also binding in the liquidation stage (213, 214).

5.4. CREDITORS WITH SPECIAL PRIVILEGE

Within the concept of creditors with special privileges are creditors with special privileges and creditors that have a retention right (220). By the retention right, a creditor has the right to detain a thing that belongs to the debtor as long as he is not paid. An example of a retention right occurs when a debtor does not pay the builder the price for the work.[23] In the case of transportation contracts, the carrier has retention right on the merchandise transported until its freight is paid for.[24]

The special privileges consist of a right or preference accorded by law to certain creditors only on certain property of the debtor (statutory lien). Special privileges are present in other laws. However, article 220 of the LCM limits them to those found in the Commercial Code or other commercial laws. For example, in a mercantile commission, the agent has a special privilege over the goods of the principal.[25] In a mercantile purchase agreement, the seller has a special privilege over the goods that have not been delivered to or paid by the buyer.[26]

5.5. OTHER LABOR CREDITORS

Labor creditors not indicated in subsection I of article 224 of the LCM are not labor creditors against the estate and are regarded as labor creditors without a super-priority (221).

5.6. TAX CREDITORS

Article 221 of the LCM refers to tax credits. Article 4° of the FTC defines tax credits as those that the State or its decentralized organizations have the right to

[23] Federal Civil Code, article 2644.
[24] Commercial Code, article 591 section VI.
[25] Commercial Code, article 306.
[26] Commercial Code, article 386.

receive that originate from contributions, their accessories or uses, including those derived from responsibilities that the State has the right to demand from its officials, employees, or individuals, as well as those to whom the laws give that character, and the State has the right to receive on behalf of others.

Other laws expressly state that tax credits include credits owed to the Mexican Social Security Institute, credits owed to the National Housing Institute for Workers, and fines imposed by the Consumer Protection Agency. State taxes are also included in the concept of tax credits.

5.7. GENERAL UNSECURED CREDITORS

General unsecured creditors are defined by exclusion as those that are not claims against the estate, singularly privileged creditors, creditors with special privilege, or subordinated creditors (222). This class includes claims that derive from torts, liabilities, crime compensations, and consumer creditors.

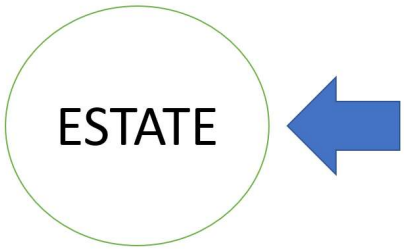
5.8. SUBORDINATED CREDITORS

There are three types of subordinated creditors: those who agreed to the subordination of their rights in respect of the general unsecured credits (contractually subordinated), those general unsecured claims held by related parties (statutory subordinated), and equity owners (equity subordinated).

6. CLAIM'S PRIORITY

For clarity on this topic, we will explain the priority regime in different scenarios. In the first scenario (Figure 5.1), there are no secured or specially privileged creditors. In this scenario, claims against the estate are seniors to the rest of the creditors. Within the claims against the estate, labor claims against the estate have priority (224), followed by the post-petition financial transactions, the claims derived from security, repair, conservation, and administration of goods, and finally, those derived from judicial expenses. After the claims against the estate, there are the singularly privileged creditors, within which debtor's burial costs are ranked first, and then illness expenses. The singularly privileged creditors are followed by the tax creditors and other labor creditors (221). After the tax creditors and other labor creditors, the general unsecured creditors and the subordinated creditors are positioned.

Figure 5.1

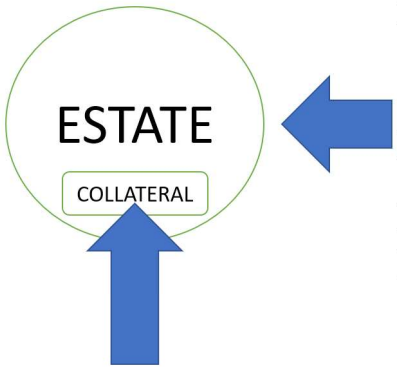


1	ADMINISTRATIVE CLAIMS/CLAIMS AGAINST THE ESTATE	
	i	Labor claims against the estate
	ii	Post-petition financial transaction
	iii	Security, repair, conservation, and administration of goods
	iv	Judicial expenses
2	SINGULARLY PRIVILEGED CREDITORS	
	i	Debtor's burial costs
	ii	Expenses of the illness
3	OTHER LABOR CLAIMS AND TAX CREDITS	
4	GENERAL UNSECURED CREDITORS	
5	SUBORDINATED CREDITORS	

The second scenario (Figure 5.2) has secured creditors. The rules applicable to the first scenario are also applicable to the second scenario, except that *vis-á-vis* the value of the collateral of the secured creditors, only labor claims against the estate, claims from security, repair, conservation and administration of goods; claims that derive from judicial expenses and singularly privileged creditors are ahead, but post-petition financial transactions are left outside (225). The labor claims against the estate have a super-priority *vis-á-vis* the secured creditors, but only to the extent that debtor's assets, besides the collateral, are not sufficient to pay them. Thus, if the labor claims against the estate can cover their credits with other assets, the collateral will remain intact (226, 227).

6. CLAIM'S PRIORITY

Figure 5.2



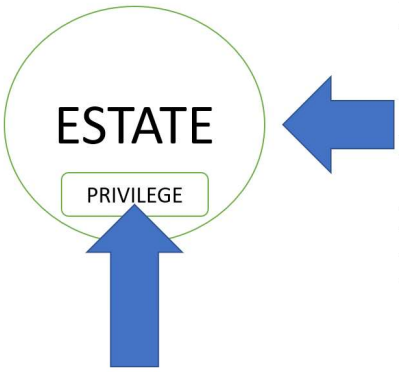
1	ADMINISTRATIVE CLAIMS/CLAIMS AGAINST THE ESTATE	
	i	Labor claims against the estate
	ii	Post-petition financial transaction
	iii	Security, repair, conservation, and administration of goods
	iv	Judicial expenses
2	SINGULARLY PRIVILEGED CREDITORS	
	i	Debtor's burial costs
	ii	Expenses of the illness
3	OTHER LABOR CLAIMS AND TAX CREDITS	
4	GENERAL UNSECURED CREDITORS	
5	SUBORDINATED CREDITORS	

1	ADMINISTRATIVE CLAIMS/CLAIMS AGAINST THE ESTATE	
	i	Labor claims against the estate
	ii	Security, repair, conservation, and administration of goods
	iii	Judicial expenses
2	SINGULARLY PRIVILEGED CREDITORS	
	i	Debtor's burial costs
	ii	Expenses of the illness
3	SECURED CREDITORS	

In the third scenario (Figure 5.3), there are specially privileged creditors. The rules applicable to the first scenario apply to the third scenario, except that *vis-á-vis* the value of the special privilege, only labor claims against the estate, claims derived from security, repair, conservation and administration of goods; claims derived from judicial expenses; singularly privileged creditors and tax credits and other labor credits are prioritized. Post-petition financial transactions, however, are not included (221, 225). The labor claims against the estate have a super-priority *vis-á-vis* the specially privileged creditors, but only to the extent that debtor's assets, besides the privilege, are not sufficient to pay them. Thus, if the labor claims against the estate can cover their credits with other assets, the privilege will remain intact (220, 226, 227).

6. CLAIM'S PRIORITY

Figure 5.3



1	ADMINISTRATIVE CLAIMS/CLAIMS AGAINST THE ESTATE	
	i	Labor claims against the estate
	ii	Post-petition financial transaction
	iii	Security, repair, conservation, and administration of goods
	iv	Judicial expenses
2	SINGULARLY PRIVILEGED CREDITORS	
	i	Debtor's burial costs
	ii	Expenses of the illness
3	OTHER LABOR CLAIMS AND TAX CREDITS	
4	GENERAL UNSECURED CREDITORS	
5	SUBORDINATED CREDITORS	

1	ADMINISTRATIVE CLAIMS/CLAIMS AGAINST THE ESTATE	
	i	Labor claims against the estate
	ii	Security, repair, conservation, and administration of goods
	iii	Judicial expenses
2	SINGULARLY PRIVILEGED CREDITORS	
	i	Debtor's burial costs
	ii	Expenses of the illness
3	OTHER LABOR CLAIMS AND TAX CREDITS	
4	SPECIAL PRIVILEGE	

7. FRAUDULENT CONVEYANCES

Creditors can set aside fraudulent conveyances of their debtors by a revocatory action, also known as *actio pauliana*. This action is not the same if the debtor is bankrupt. There is the non-bankruptcy *actio pauliana* and the bankruptcy *actio pauliana.* Civil codes govern the former and the LCM covers the latter. Creditors under the non-bankruptcy *actio pauliana* have fewer rights and benefits than those under the bankruptcy *actio pauliana*. The following table offers a comparison:

NON-BANKRUPTCY *ACTIO PAULIANA*	BANKRUPTCY *ACTIO PAULIANA*.
The petitioner must be a previous creditor.	The petitioner may be a previous or post creditor.
The act must effectively cause insolvency.	The act must affect the creditors.
The revocation only benefits the petitioner.	The revocation benefits all the creditors.
The petitioner gains access to limited presumptions of law.	The petitioner gains access to more presumptions of law.

Only the creditors, creditor's representatives, and insolvency officers are entitled to bring fraudulent conveyances actions – not the debtor or the debtor-in-possession.

7.1. RELATION BACK PERIOD/RETROACTIVE DATE

The bankruptcy adjudication ruling includes the retroactive date (43 X), which is the calendar day two hundred seventy before the date of the ruling, which is doubled for subordinated creditors. However, through an ancillary proceeding, the retroactive date can be pushed back further, but not more than three years (112). The limit to the relation back of the bankruptcy adjudication responds to a need for legal certainty regarding past transactions. The period from the date of the adjudication to the date of its relation back is known as the suspect period.

7. FRAUDULENT CONVEYANCES

7.2. ACTS COMMITTED BEFORE THE RELATION BACK PERIOD

For acts committed before the relation back period, the rules governing non-bankruptcy *actio pauliana* apply. The petitioner does not have access to the presumptions of law that the LCM grants for acts committed within the relation back period, hence he must prove that the debtor and the third party knowingly defrauded the debtor's creditors. This requirement is not necessary for gratuitous acts (113). A contract is onerous in which reciprocal benefits and burdens are stipulated, and gratuitous when the benefit is solely for one of the parties.[27]

7.3. ACTS COMMITTED WITHIN THE RELATION BACK PERIOD

Some acts committed within the relation back period are subject to conclusive presumptions of law while others are subject to rebuttable presumptions of law.

7.3.1. Fraudulent conveyances *per se*

The following acts that were committed within the relation back period are fraudulent *per se* with no possibility of rebuttal unless the estate takes advantage of them or the third parties returned what they received from the debtor (114).

a. *Gratuitous acts*. Whether they were committed outside of or within the relation back period, gratuitous acts are fraudulent *per se* (114 I).

b. *Conveyances with asymmetrical value*. Acts and alienations in which the debtor pays compensation of a value notably higher or receives compensation of a value notably lower than the benefit of his counterparty (114 II).

c. *Conveyances that ignore market conditions*. Transactions by the debtor in which conditions or terms were agreed that differ significantly from the prevailing conditions in the market in which they were executed, on the date of its execution, or of the commercial uses or practices (114 III).

d. *Remissions of debts*. Debt acquittals are gratuitous acts (114 IV).

e. *Payments of unexpired obligations* (114 V). Such payments are considered early payments.

f. *Discounts*. The discount made by the debtor from his effects, within the retroactivity date, shall be considered an early payment (114 VI).

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[27] Federal Civil Code, article 1837.

7.3.2. Fraudulent conveyances unless *bona fidei* is proven

The following acts that were committed within the relation back period are fraudulent unless the third party proves his good faith (115):

i. The granting of guarantees or increasing current guarantees, when the original obligation did not include said guarantee or increase.

ii. The payments of debts made in kind, when it differs from the originally agreed one or when the compensation agreed was in money (giving in payment/*datio in solutum*).

a. *When the debtor is an individual*. In the case of individual debtors, the following acts that were committed within the relation back period are fraudulent, unless the third party proves his good faith (116):

a.i. Those executed with his spouse, concubine, blood relatives up to the fourth degree, or up to the second degree if the kinship is through marriage, as well as relatives through civil kinship.

a.ii. Those executed with legal entities in which the persons mentioned above, or the debtor himself, are managers or part of the board of directors; or jointly or separately, directly or indirectly, hold rights that allow them to exercise the vote in respect of more than fifty percent of the capital, have decision-making power in their meetings, can appoint the majority of the members of the body of administration, or through any other means, have powers to take fundamental decisions of the legal entity.

b. *When the debtor is an entity*. In cases of legal entities, the following acts that were committed within the relation back period are fraudulent, unless the third party proves his good faith (117):

b.i. Those executed with the administrator, members of the board of directors or relevant employees of the debtor, or of the legal entities indicated in article 117 subsection IV, under what is outlined in article 270 Bis of the LCM, or with the spouse, female or male concubine, blood relative up to the fourth degree, or up to the second degree if the relation is through marriage, as well as relatives through the civil kinship of the persons mentioned above (117 I).

b.ii. Those executed with those individuals that jointly or separately, directly or indirectly, hold rights that allow them to exercise the vote in respect of more than fifty percent of the capital of the debtor, or of the legal entities indicated in article 117 subsection IV of the LCM that have decision-making power in their meetings can appoint the majority of the members of their body of administration or through any means have the powers to take the fundamental decisions of the debtor (117 II).

b.iii. Those executed with those legal entities where there is a coincidence of the managers, members of the board of directors, or relevant directors with those of the debtor (117 III).

b.iv. Those executed with those legal entities that are, directly or indirectly, controlled by the debtor, that exercise control over the latter, or that are controlled by the same company that controls the debtor (117 IV).

7.4. THIRD PARTY LIABILITIES ARISING FROM FRAUDULENT CONVEYANCES

Those who purchased assets through fraudulent conveyances in bad faith must respond before the estate for the damages and losses that are caused when the asset passed to a purchaser in good faith or if it was lost. The same liability falls on those who, to avoid the effects of the ineffectiveness that the creditors' fraud would cause, destroyed or hid the goods that are the subject matter thereof (118).

8. EXCLUSION OF ASSETS IN POSSESSION OF THE DEBTOR

8.1. GENERAL PROVISIONS

Upon bankruptcy adjudication, certain assets in possession of the debtor may be excluded from the estate, if they are identifiable assets (not fungible), and whose property has not been transferred to the debtor by a definitive and irrevocable title. The petition for exclusion must be submitted before the bankruptcy court. If the debtor, the insolvency officer, or the creditor's representatives oppose the exclusion, the petitioner must continue an ancillary proceeding between the petitioner, as the plaintiff, and the debtor and the insolvency officer as defendants (70).

8.2. ACTION GROUNDED ON REVENDICATION (PETITORY ACTION)

The proprietor may file the petition for exclusion of the asset of his property that is in possession of the debtor without having any legal relationship between them (71 I).

8.3. ACTION GROUNDED ON *VINDICATIS UTILIS*

In the revendication, the petitioner is the owner. In the *vindicatis utilis*, the debtor is the owner and the petitioner is the former owner.

Under a sales agreement, the buyer becomes the owner of the good irrespective of not having paid the price or received the good.[28] If the buyer becomes bankrupt and the price has not been paid but the thing was delivered, the seller (former owner) can file an exclusion action based on *vindicatis utilis*. If the thing has not yet been delivered, the seller cannot file an exclusion action but may oppose the delivery as in the executory contracts.

8.3.1. Unpaid and unregistered real estate sale

If the subject matter of the sale was a real estate and the sale was not recorded before the registrar, the seller can exclude the real estate from the debtor's estate (71 II).

[28] Federal Civil Code, articles 2014, 2248 and 2249.

8.3.2. Unpaid cash sales of movables

If the subject matter of a cash sale was movables and the price was not paid at the time of the adjudication, the seller can exclude the movables from the debtor's estate (71 III).

8.3.3. Installment sales

In the case of installment sales, the parties commonly agree that the contract will be rescinded following default in any of the installments. If the subject matter of the sale by installments was a real estate and the sale was recorded before the registrar, the seller can exclude such real estate from the debtor's estate. If the sale was not recorded, notwithstanding the clause on rescission, the seller cannot exclude it. In the case of movables, only certain sales of movables are subject to recordation before the registrar (71 IV).

8.4. ACTION GROUNDED ON PERSONAL RIGHTS

In this action, the petitioner may or not be the proprietor, but the debtor is bound with him and has the possession of the asset through a contract, for example, mercantile commission, deposit, lease, usufruct, administration or consignment, trusts, civil mandate. Moreover, despite the problem that arises in cases of fungible goods, such as money, the law provides for the exclusion action of taxes withheld, collected, or transferred by the debtor on behalf of the fiscal authorities (71 VI).

9. CLOSING OF A CASE BY PLAN APPROVAL

A case may be closed when a reorganization plan is approved, either in the reorganization or in the liquidation stage (266).

9.1. PERIOD FOR THE SUBMISSION AND APPROVAL OF A PLAN IN THE REORGANIZATION STAGE

Bankruptcy has two successive stages: reorganization and liquidation. If a plan is not submitted and approved within one hundred and eighty-five calendar days following the publication in the Federal Official Gazette of the summary of the adjudication, the reorganization stage is converted to the liquidation stage. The court can extend this period by ninety calendar days if the reorganization officer or a certain percentage of the allowed creditors request it. The court may grant a second extension if the debtor and a certain percentage of the allowed creditors request it. However, the period cannot exceed three hundred and sixty-five calendar days (145 II, 167).

If the reorganization officer deems that the debtor and his creditors are reluctant to reach a reorganization plan, he may request, through an ancillary proceeding, that the court anticipates the conversion to the liquidation stage (150).

9.2. WHO MAY SUBMIT THE REORGANIZATION PLAN?

Only the debtor or the reorganization officers can submit the proposed reorganization plan. Once submitted, the allowed creditors can opine or sign it within fifteen days. During this period, the debtor must disclose any information required by the reorganization officer and creditors. Once the plan is signed, the reorganization officer presents it to the court, duly executed by the debtor and at least the required majority of allowed creditors (161).

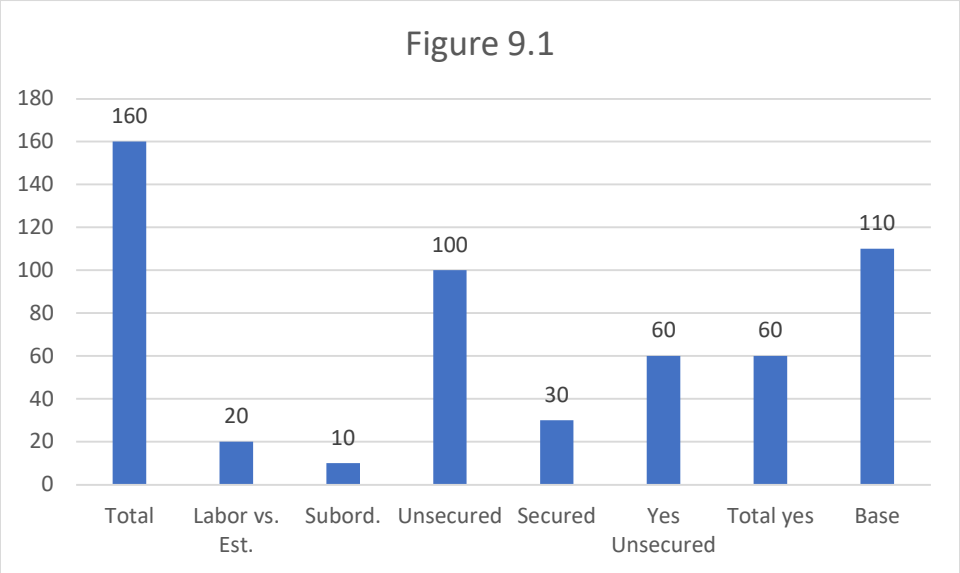
9.3. WHICH CREDITORS MAY VOTE THE REORGANIZATION PLAN?

While the law provides that all creditors may sign the reorganization plan (156), the reorganization plan can only be made approvable by the general unsecured creditors, subordinated creditors, secured creditors, and special privileged creditors (157). The secured and special privileged creditors that sign the

plan are not deprived of their collateral or privilege (165). The creditors do not need to meet to vote on or sign the plan (156).

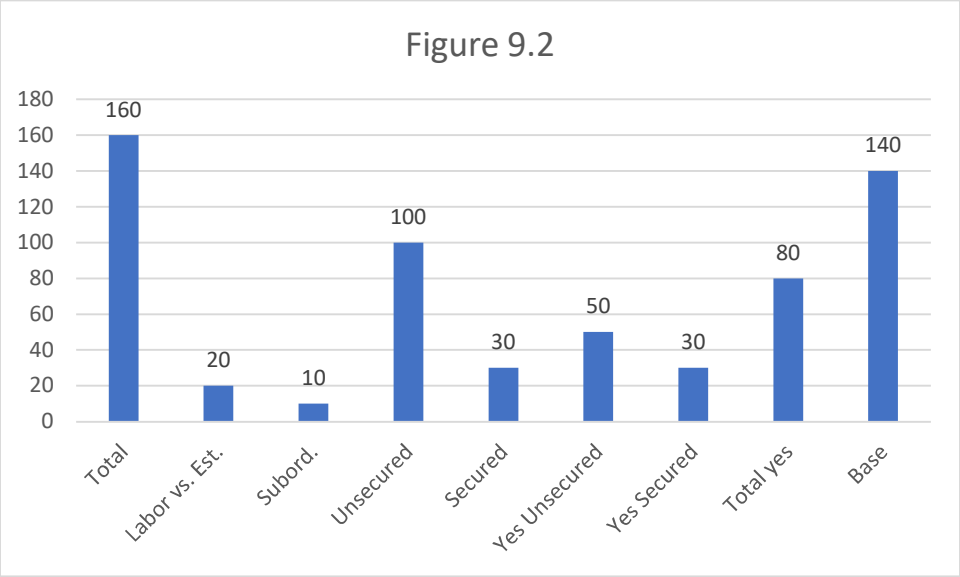
9.4. WHICH CLAIMS COUNT TO DETERMINE THE MAJORITY?

The reorganization plan, to be approvable, must be signed by the debtor and those general unsecured and subordinated creditors that represent a simple majority of the total amount of claims of the general unsecured creditors and subordinated creditors. For example (Figure 9.1), in a case where the total liabilities are 160 million, of which labor claims represent 20 million, secured creditors 30 million, subordinated creditors 10 million, and general unsecured creditors 100 million, the base upon which the majority will be taken into account will be only 110 million. This is the sum of the general unsecured and subordinated creditors. In this example, the signing creditors represent 60 million; in other words, more than the fifty percent of the sum of the general unsecured and subordinated creditors, irrespective of the number of creditors.



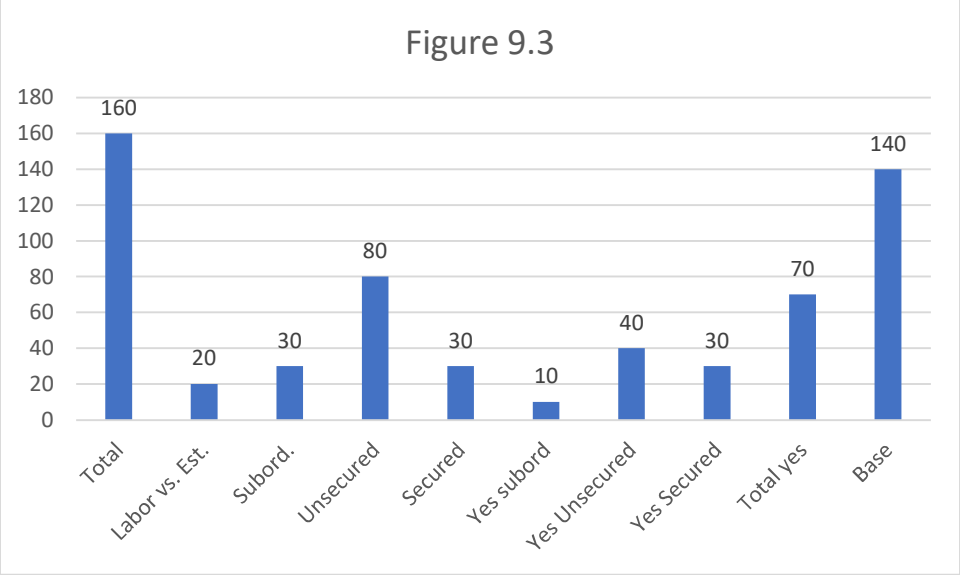
If a privileged or secured creditor signs the plan, the plan must be signed by a simple majority of the total amount of claims of the general unsecured creditors,

subordinated creditors, and those privileged and secured creditors that signed it. For example (Figure 9.2), in a case that is similar to the preceding example, but where the secured creditor signed the plan, the base upon which the majority will be taken into account would be 140 million, which is the sum of the general unsecured, the subordinated creditors, and the secured creditors that signed the plan. In this example, the signing creditors represent 80 million, in other words, more than the fifty percent of the sum of the general unsecured, subordinated creditors, and secured creditors that signed the plan, irrespective of the number of creditors. If the secured creditor did not sign the plan in this example, the base would decrease to 110 million. Thus, the general unsecured creditors alone could not acquire the majority. Therefore, if a secured creditor signs the plan, increases the base upon which the majority will be considered, but at the same time sums to the general unsecured and subordinated creditors that signed the plan, to acquire a majority and bind the rest that did not sign it.



If there are subordinated creditors that represent at least twenty five percent of the sum of the general unsecured, secured, and specially privileged creditors that signed the plan, their votes will not count unless they accept the same terms and conditions accepted by the unsecured creditors (157). For example (Figure 9.3), in this case, the total liabilities are 160 million, of which labor claims represent 20 million, secured creditors 30 million, subordinated creditors 30 million, and general

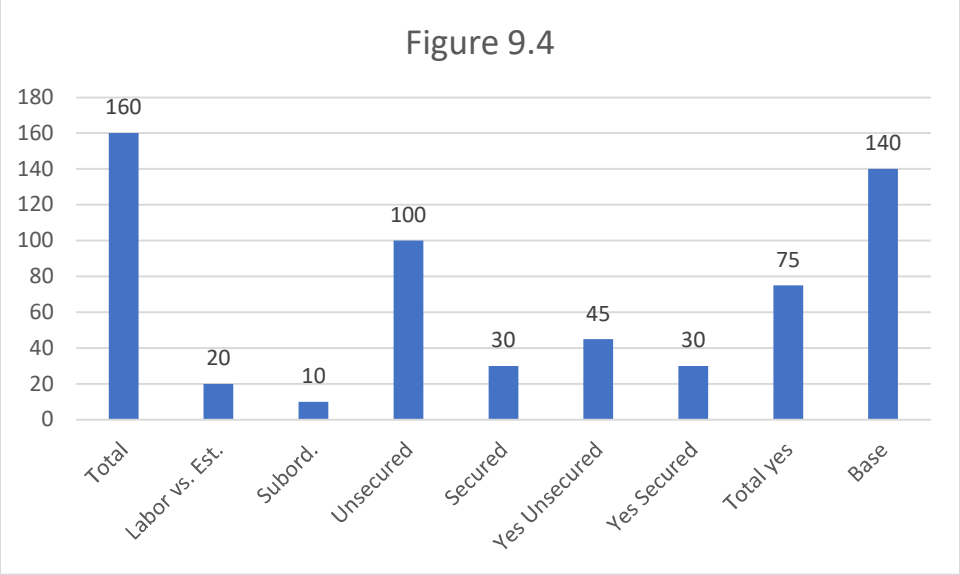
unsecured creditors 80 million. The secured creditors that represent 30 million signed the plan along with unsecured creditors that represent 40 million. The base upon which the majority will be considered is 140 million, which is the sum of the general unsecured, the subordinated creditors, and the secured creditors that signed the plan. In this instance, the signing creditors do not reach the majority; their claims equal exactly fifty percent of the base. However, a subordinated creditor (representing 10 million) then signs the plan. As a result, the sum of the claims of all the signing creditors is more than fifty percent of the base. But, provided that the subordinated creditors represent more than twenty-five percent of the sum of the general unsecured, secured creditors that signed the plan, their votes will not count, and the plan would not acquire the necessary majority unless the signing subordinated creditor agrees to sign the plan with the same terms and conditions as those of the general unsecured creditors.



9.5. WHICH CREDITORS MAY VETO THE REORGANIZATION PLAN?

When the plan is signed and submitted to the court, the judge will place it before the allowed creditors so that they can veto it (162, II). Only those unsecured general creditors that did not sign the plan and whose credits were not unimpaired can veto the plan (158). The plan will not be approved if it is vetoed by creditors that

represent more than fifty percent of the amount allowed to the general unsecured creditors (163). For example, if a secured creditor helped the unsecured creditors acquire a majority by signing the plan with the unsecured creditors whose claims are equal to or less than fifty percent of the amount allowed to the general unsecured creditors, then the unsecured creditors that did not sign the plan and were not unimpaired can veto it successfully if their claims represent more than fifty percent of the amount allowed to the general unsecured creditors (Figure 9.4).



9.6. MANDATORY CONTENT OF THE REORGANIZATION PLAN

The reorganization plan must consider the payment of the claims against the estate, the singularly privileged credits, and, where applicable, according to their respective guarantees and privileges, the secured and special privileged creditors that did not sign it (153) and were not unimpaired or paid at the value of his collaterals (158, 160). The LCM is silent on whether that payment must be in full or in accordance with what the creditors would have obtained in the liquidation stage.

9.7. IS THERE A LIMIT ON THE DEBT FORGIVENESS AND FORBEARANCES?

9. CLOSING OF A CASE BY PLAN APPROVAL

The previous law expressly established ex-ante a limit on the amount of debt forgiveness and forbearances that could be imposed on the general unsecured creditors that did not sign the plan. The actual LCM is silent on that respect. However, the foundations of the possibility of a plan to bind parties that did not sign it allow us to conclude that there is indeed a limit, though not expressly set forth ex-ante. The best-interest principle forms this foundation. In effect, the debtor's creditors form part of a community created by operation of law. They did not agree to form part of that community, and yet, because of the bankruptcy adjudication of their common debtor, they share a common problem with others, and sharing a common factor creates a community. In a community, the majority is the authority.

The principal solution of their common problem is to reduce to cash the debtor's estate and use its proceeds to pay the community. In the principal solution, a majority is not needed to bind the minority of the community. The alternate solution is to secure the payment through a plan. In such a community, the majority can impose its decision on the minority through the plan, but if the plan is the alternate solution, the alternate solution would at least need to be equal to or better than the principal solution. This is the best-interest principle, which is recognized as the foundation of a reorganization plan, both in the civil law *(convenio concursal, concordato, concordat)* and common law systems.

For the general unsecured and subordinated creditors that did not sign the plan, the best-interest principle needs to be analyzed by the court from the perspective of such creditors. In other words, how much would those creditors receive in liquidation after the senior creditors are paid? If by liquidating the assets and paying the senior creditors, the general unsecured or subordinated creditors would receive a dividend of one percent, then a reorganization plan that imposes on them debt forgiveness of ninety-nine percent would be in their best interest. The court, on its own motion, must analyze whether the plan complies with the best-interest principle, even if no one objected, provided that no plan is approved if it contravenes the public policy and paying the community of creditors at the estate's best outcome, whether in liquidation or reorganization, is a matter where the economy and the society of a country is interested.

9.8. UNIMPAIRMENT CLAUSE

Article 158 of the LCM contains the unimpairment clause, and it has no antecedent in the previous law, which did not reflect US law. We may trace its origins to 11 U.S.C. Sections 1124 and 1126(f), as the next comparison table shows:

9. CLOSING OF A CASE BY PLAN APPROVAL

LCM	United States Code
Article 158.- The reorganization plan will be considered signed by those general unsecured creditors, with no objection, when the plan provides the following about their claims: I. The payment of the claim due on the date of the adjudication converted to UDIs at the exchange rate of the day of the adjudication; II. The payment of all the amounts and accessories that would have become due under the current contract, from the date of the adjudication and until approving the plan, as though there were no adjudication and assuming that the referred amount in the previous section had been paid at the date of adjudication. These amounts will be converted into UDIs at the exchange rate of the date on which each payment would have been due, and III. The payment, on the dates, for the agreed amounts and currencies, of the obligations that, according to the respective contract, become payable upon approving the plan, assuming that the amount referred to in section I had been paid at the date of adjudication and that the payments referred to in section II had been made when they were due. The payments referred to in sections I and II of this article must be made within thirty business days following the approval of the plan, considering the exchange rate of the UDIs on the date of payment. The claims that receive the treatment referred to in this article will be considered current upon the date of approval of the plan.	1124. 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. 1126. … (f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

A general unsecured or subordinated creditor claim is considered unimpaired if, in the reorganization plan, the payment of their claims is considered, within thirty days following the approval, in the full amount; and if accessories or interests were agreed-on, the payment of such that accrue from the date of the adjudication to the date of the approval of the plan; and the payment of such credits that become due after the approval of the plan. In summary, a claim is unimpaired if the creditors are placed in a position where there was no bankruptcy and left with their nonbankruptcy rights. The unimpaired creditors cannot object to the plan and are regarded as having agreed and voting in favor of it (158).

The LCM is silent on whether the debtor may propose a plan in which all the general unsecured creditors, subordinated creditors, and secured creditors are unimpaired and did not sign the plan.

9.9. THE MEXICAN CRAMDOWN

General unsecured creditors are bound by the reorganization plan signed and voted by the majority of such claims. The signing creditors within the same plan may convene different terms and conditions for their claims. However, for the general unsecured creditors that did not sign the plan, the terms and conditions imposed on them cannot differ from the terms and conditions accepted by the creditors whose claims represent at least thirty percent of the amount allowed for all the general unsecured claims (159). Article 159 of the LCM has no antecedent in the previous

law. We can trace its origins to 11 U.S.C. Section 1126(c), as the next comparison table shows:

LCM	United States Code
Article 159.- The plan may only stipulate for the general unsecured creditors that did not sign it the following: I. A forbearance, with a capitalization of ordinary interests, with a maximum duration equal to the shortest assumed by the general unsecured creditors that signed the plan and represented at least thirty percent of the allowed amount that corresponds to said class; II. A discharge of principal balance and unpaid accrued interest, equal to the lesser assumed by the general unsecured that signed the plan and that represented at least thirty percent of the allowed amount corresponding to said class, or III. A combination of discharge and forbearance provided that the terms are identical to those accepted by at least thirty percent of the amount of general unsecured creditors that signed the plan. The plan may stipulate that the claims remain in the currency, unit of value or denomination, in which they were originally agreed.	§ 1126. Acceptance of plan (c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

However, in Mexico, unlike in the U.S.C., the law does not allow the debtor to designate classes to create favorable majorities in each class or to create multiple classes of creditors where dissenters can be outvoted. The classes are designated by law, and there is only one class of general unsecured creditors, one class of subordinated creditors, one class of special privilege creditors, and one class of secured creditors, and those creditors vote individually, not in classes. Sections 1222 and 1322 (b) (1) of the 11 U.S.C. state:

9. CLOSING OF A CASE BY PLAN APPROVAL

§ 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.

§ 1322. Contents of plan

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) designate a class or classes of unsecured claims, as provided in section 1122 of this title, but may not discriminate unfairly against any class so designated; however, such plan may treat claims for a consumer debt of the debtor if an individual is liable on such consumer debt with the debtor differently than other unsecured claims;

Mexico tried to replicate the US cramdown. However, it failed to replicate the statutes that allow the debtor to classify the claims and that require a vote of classes and not individuals.

Finally, if none of the voting creditors, whose claims receive different treatment, represents at least thirty percent of the amount allowed for all the general unsecured claims, the plan will not be binding on the general unsecured creditors that did not sign it. As a result, the plan will not be approved, because it cannot leave a general unsecured creditor beyond its reach.

9.10. APPROVAL OF THE PLAN

If the court determines that the plan complies with the provisions previously analyzed and is not against public policy, it will approve the plan and close the case (164). The ruling on the approval or disapproval can be challenged by appeal.

9.11. WHICH CREDITORS ARE BOUND BY THE REORGANIZATION PLAN?

Once the reorganization plan is approved, it is binding on the debtor, all the unsecured general creditors, the subordinated creditors, the secured creditors, and creditors with special privilege that signed or voted in favor of the plan (165). Secured or specially privileged creditors that did not sign or vote in favor of the plan would

also be bound if according to the plan, they remain unimpaired in terms of article 158 or if the plan considers a payment that is equal to the value of the collateral or privilege (160). The reorganization plan does not bind labor creditors and tax creditors. However, they may agree with the debtor and include the terms and conditions of the agreement in the reorganization plan (152).

The tax authorities may partially forgive tax credits in an amount that would differ if the tax credit was less or more than sixty percent of the total liabilities allowed.[29]

The debtor's codebtors, simple or jointly, are not beneficed with the terms and conditions of the approved plan (166). The debtor's creditors can move against the codebtors despite the approval of the reorganization plan. The codebtors must pay the full amount of the debt but cannot repeat against the debtor for the full amount.

9.12. AMENDMENT OF THE REORGANIZATION PLAN

The approved reorganization plan can be amended if a change in the circumstances compromises its performance. The debtor must submit the petition for amendment, along with the majority of claims referred to in Article 157 of the LCM, before the same court that approved the plan. This takes place through an ancillary proceeding where the same reorganization officer will participate (166 Bis).

[29] Federal Tax Code, article 146-B.

10. CLOSING OF A CASE BY PAYMENT TO ALLOWED CLAIMS

10.1. SELLING THE ASSETS

10.1.1. Occupation

Upon bankruptcy adjudication in the liquidation stage, the debtor must deliver the possession and administration of the estate, save from the exempted assets, to the liquidation officer who will take possession with the assistance of the court's clerk (169 I, 180, 181). Third parties in possession of the property of the estate must also deliver it to the liquidation officer (169 III, 186). The assets that the debtor's spouse acquired during the marriage contracted by separation of property in the two years preceding the retroactivity date are presumed to belong to the debtor. Therefore, the spouse must deliver the assets to the liquidation officer unless the presumption is rebutted (187). In the case of a marriage contracted under community property, the presumption is not rebuttable, but the debtor's spouse can exclude his property on revendication grounds (188).

10.1.2. Inventory

Upon occupation, the liquidation officer must draft an inventory and a report of the condition of the estate. The liquidation officer will be regarded as a depositary of the occupied assets (190, 191).

10.1.3. Selling the assets

The assets must be sold by public auction, chaired by the court, and inchoated by either the liquidation officer or any other person interested in buying them (198, 203, 207). To maximize the value of the assets, the sale may also be conducted through private auctions under the supervision of the liquidation officer (210). Out-of-auction sales must be avoided, but if the court authorizes such sales and the debtor and certain creditors raise no objections, the liquidation officer may proceed to an out-of-auction sale (205, 206). In some cases, however, the liquidation officer, upon his own responsibility, may sell the assets out-of-auction and without the authorization of the court, if the assets might deteriorate or their price might decrease significantly (185, 208). To maximize the value of the estate, the sale of the enterprise as a going concern is preferable. During the liquidation stage, the liquidation officer continues the operation of the enterprise, and the debtor must cooperate with him (184, 197).

In respect to assets that serve as collateral, the secured creditor can commence its execution outside the bankruptcy proceeding (213). However, if the

collateral is linked to the operation of the enterprise, the liquidation officer may, within thirty days following the opening of the liquidation stage, prevent its foreclosure outside bankruptcy if he deems that a sale as a going concern maximizes the value of the estate (214). In either case, from the proceeds of the sale will be deducted the payment for the claims against the estate and the singularly privileged creditors (216, 226).

Assets that are the subject matter of pending exclusion actions cannot be sold until the proceeding concludes (209). Assets that have no value or their sale is burdensome may be abandoned upon petition of the liquidation officer and authorization of the court (234).

10.1.4. Deposit and investment of the proceeds

The proceeds of the sale will be invested by the liquidation officer in a credit institution's fixed income instruments that must preponderantly protect the real value of the resources in terms of inflation and demonstrate the characteristics of safety, profitability, liquidity, and availability (215).

10.2. PAYMENTS

A junior creditor will not be paid unless the senior creditor is paid in full (223). Upon the commencement of the liquidation stage, at least every two months, the liquidation officer shall present the judge with a report on the alienations made and on the condition of the remaining assets, and a list of the creditors that shall be paid, as well as the *pro-rata* share that corresponds to them (229).

11. CLOSING AND REOPENING A CASE FOR LACK OF ASSETS

Provided that there is no discharge, and once the case is closed by lack of assets or by payment pro-rata, the creditor retains his unpaid claim and a case may be reopened when new assets are found or if goods were restituted through fraudulent conveyance actions (236). Any allowed creditor may submit the petition for the reopening of a case within two years following the closing of the case (264).

Defaulting an approved plan does not constitute grounds for reopening a case; it only constitutes an act of bankruptcy for a new petition (11, VI) and a consideration to be taken into account in the petition for early conversion to the liquidation stage in the new case (150).

12. JUDICIAL RECOURSES AND ANCILLARY PROCEEDINGS

The aggrieved party may challenge resolutions issued by the bankruptcy court through a motion for reconsideration (*recurso de revocación*), appeal, and *Amparo* trial. If there is no express provision in the law that certain resolution is appealable, the motion for reconsideration is eligible (268). The motion for reconsideration is submitted before the same court that issued the challenged resolution. The appeal is tried by a court of appeals. Only four resolutions can be appealed in bankruptcy: the ruling on adjudication or no bankruptcy adjudication (49), the ruling on the allowance of claims (135), the ruling of conversion to the liquidation stage (175), and the ruling of closing of a case (266).

The *Amparo* trial is explained in English by the Supreme Court of the Nation as follows:

> *Amparo* trial: called *Juicio de Amparo* or *Juicio de Garantías* is a native Mexican legal institution. It is a constitutional remedy to obtain relief against violation of constitutional civil rights committed by the government or by a court of law. Its purposes are: to preserve the rights and freedoms granted by the Federal Constitution to private persons against executive, legislative and court acts and to preserve Federal, State and local sovereignty in interstate or Federal- State disputes. Relief applies only to the petitioner and the decision serves only as a reference for subsequent cases (and does not have the same force and effect as precedent does under US or British law). There are 2 types of Amparo trial proceedings: (i) *Amparo Indirecto* (Indirect Amparo trial) tried before Federal District Courts against Federal, State or municipal laws, against regulations issued by the Federal or State Executive branches, against acts of authority committed by Federal, State or municipal government agencies; and (ii) *Amparo Directo* (Direct Amparo trial), which is tried before Federal Collegiate Circuit Courts against final court decisions that violate the Constitution. In both types of Amparo, the government act contested (*acto reclamado*) may be subject to a provisional suspension, which is a temporary injunction, upon the filing of the petition, and a permanent injunction (*suspensión definitiva*) may be issued after a hearing where evidence and legal arguments are presented. The judgment is always directed to the government or court authorities in question and not to the individuals and business or corporate or civil entities which are parties to the proceedings.[30]

For example, once the lower court approves a plan, the parties can file an appeal. The appeal will be tried by a Unitary Tribunal acting as a court of appeals. Against the resolution of appeal that confirmed or revoked the approval of the plan,

[30] https://www.scjn.gob.mx/sites/default/files/pagina/documentos/2016-12/CONSTI%20INGLES%20SEPT%202010.pdf

the parties can bring an Indirect *Amparo* trial before another Unitary Tribunal acting as an *Amparo* court of the first instance. Finally, against the resolution of the Indirect *Amparo* trial, the parties can file an appeal *(recurso de revisión)* before a Collegiate Tribunal acting as an *Amparo* court of appeals. That is, once a plan is approved, there are still three more instances that can confirm, revoke, or remand the resolution. The three additional instances can take about 1.8 years or more if the *Amparo* courts remanded the process, in which case the parties can bring another *Amparo* trial.

In other examples, the parties may file an appeal against the first instance ruling on the allowance of claims. The appeal will be tried by a Unitary Tribunal acting as a court of appeals. Against the resolution of the appeal, the parties can bring a Direct *Amparo* trial before a Collegiate Tribunal acting as an *Amparo* court of "final" instance. Only in exceptional cases, which include the constitutional validity of general norms regarding topics of nationwide interest, can a party challenge the resolution of a Collegiate Tribunal by an appeal *(recurso de revisión)* before the Supreme Court of the Nation acting as an *Amparo* court of appeals.

Ancillary proceedings are mini-trials that resolve certain issues that can arise in a bankruptcy proceeding without suspending it or impeding its continuation (267). Issues that need to be resolved through an ancillary proceeding are, among others, not set forth expressly by the law:

- Lack of competence defense (18).
- Insolvency officer removal (56).
- Exclusion actions (70).
- Objections of the reorganization officer to the assumption or rejection of contracts, contracting post-petition credits, selling assets not linked to the ordinary course of business (75), and selling unworthy assets (77).
- The reorganization officer's petition for the closing of the enterprise (79).
- The reorganization officer's petition for the removal of the debtor from the possession of the enterprise (81).
- The opposition to delivery in an executory sales contract (94).
- The extension of the retroactivity date (112).
- The reorganization officer's petition for an early conversion from the reorganization stage to the liquidation stage (150).
- Modification or enforcement of a previously approved reorganization plan (146 Bis).
- The reorganization officer's petition to take possession of the debtor's assets held by the spouse (187).

- For a secured creditor to challenge the liquidation officer's appraisal of his collateral to avoid a separate execution (214).
- For the recognition of a Foreign Proceeding (292), unless the debtor has an Establishment in Mexico.
- Modification or termination of provisional relief granted upon petition or recognition of a Foreign Proceeding (301).

13. CRIMINAL ASPECTS

Crimes committed in matters of bankruptcy are not prosecuted *ex officio* by the Fiscal Attorney's own motion, but rather the aggrieved party must press charges and file a criminal complaint (275). The amount of criminal compensation is fixed by the bankruptcy court and not by the criminal court (276). The criminal court will continue the criminal proceeding irrespective of the conclusion or continuation of the bankruptcy proceeding. The rulings of the bankruptcy court are not binding to the criminal court (277).

Any act or conduct of the debtor before or after the adjudication, which deceitfully causes or worsens his general default, will be penalized with three to twelve years in prison. The law draws a rebuttable presumption that the debtor deceitfully caused or worsened his general default if he keeps the accounting in such a way that does not permit determining his financial condition or if such accounting was altered, falsified, or destroyed (271).

The managers, members of the board of directors, or agents of the debtor that knowingly record nonexistent transactions of expenses or detriment the debtor's estate for their benefit or the benefit of third parties, will be penalized with three to twelve years in prison (271 Bis).

The debtor adjudicated in bankruptcy will be sentenced to one to three years imprisonment for contempt if he fails to deliver his accounting records to the person designated by the court (272).

Finally, whoever submits a nonexistent or simulated proof of claim shall be penalized with one to nine years in prison (274).

14. SPECIAL BANKRUPTCY PROCEEDINGS

The debtor that, under a concession title, provides a federal, state, or municipal public service, may be adjudicated in bankruptcy (237). In these special proceedings, the governmental agency that granted the concession constitutes another party in the proceeding. The granting agency appoints the insolvency officers (240), decides whether the debtor will retain possession (241), and can veto the reorganization plan (242).

The financial institutions can also be adjudicated in bankruptcy (244 Bis) but only through an involuntary petition filed by the supervising governmental agency that supervises them (246). The bankruptcy proceeding will always commence in the liquidation stage (249). In these special proceedings, the supervising governmental agency constitutes another party in the proceeding. The supervising agency will request the court to order the closing or suspension of the enterprise (246) and will appoint the liquidation officer (250).

In the case of mixed-economy debtors, the functions of the visitor, reorganization officer, or liquidation officer will be assumed by the Institute of Administration of Assets (54).

BIBLIOGRAPHY

Apodaca y Osuna, Francisco, *Presupuestos de la quiebra*, Stylo, México, 1945.

Ascarelli, Tullio, *Derecho mercantil*, trad. Felipe de J. Tena, Porrúa, México, 1940.

Ascoli, Prospero, *La moratoria ed il concordato preventivo*, Editore-Librajo Della Real Casa, Italy, 1896.

Azzolina, Umberto, *Il fallimento e le altre procedure concorsuali*, UTET, Italy, 1961.

Baird, Douglas y Jackson, Thomas, *Cases, problems and materials on bankruptcy*, Little, Brown and Company, USA, 1990.

Becerra, Javier F. *Dictionary of mexican legal terminology (spanish-english),* Escuela Libre de Derecho, México, 2011.

Bédarride, Jassuda, *Traité des faillites et banqueroutes*, Durand Libraire, France, 1862.

Bolaffio, Leon, *Derecho Comercial, de la Quiebra*, trad. Jorge Rodríguez Aime y Santiago Sentís Melendo, EDIAR, Argentina, 1954.

Bonelli, Gustavo, *Del fallimento*, Dottor Francesco Vallardi, Italy, 1938.

Bonfanti, Mario Alberto y Garrone, Jose Alberto, *Concursos y quiebra*, Abeledo-Perrot, Argentina, 1990.

Borja Soriano, Manuel, *Teoría general de las obligaciones*, Porrúa, México, 1997.

Boulay-Paty, P.S., *Traité des faillites et banqueroutes*, Videcoq, fisl Ainé, France, 1849.

Bravard-Veyrieres, *Traité de droit commercial*, Chevalier-Marescq, France, 1891.

Brunetti, Antonio, *Tratado de quiebras*, trad. Joaquín Rodríguez Rodríguez, Porrúa, México, 1945.

Candian, Aurelio, *Il processo di concordato preventivo*, CEDAM, Italy, 1937.

Candian, Aurelio, *Il processo di fallimento*, CEDAM, Italy, 1939.

Casadío Martínez, Claudio Alfredo, *Créditos con garantía real en los concursos*, Astrea, Argentina, 2004.

Cuzzeri, Manuel y Cicu, Antonio, *Derecho Comercial, de la Quiebra*, trad. Jorge Rodríguez Aime y Santiago Sentís Melendo, EDIAR, Argentina, 1954.

D'Avack, Carlo, *La natura giuridica del fallimento*, CEDAM, Italy, 1940.

BIBLIOGRAPHY

De Semo, Giorgio, *Diritto fallimentare*, Casa Editrici del Dott. Carlo CYA, Italy, 1948.

De Pina Vara, Rafael, *Diccionario de Derecho*, Porrúa, México, 1996.

Estasén, Pedro, *Tratado de las suspensiones de pagos y de las quiebras*, REUS, Spain, 1899.

Fassi, Santiago C. y Gebhardt, Marcelo, *Concursos y quiebras*, Astrea, Argentina, 1997.

Garrigues, Joaquín, *Curso de derecho mercantil*, Porrúa, México, 1993.

Goode, Roy, *Principles of corporate insolvency law*, Sweet & Maxwell, UK, 2011.

Gonzalez Huebra, Pablo, *Tratado de quiebras*, La anticuaria, Argentina, 1889.

Guariglia, Alfonso, *Il concordato nel diritto italiano e straniero*, Luigi Pierro, Editore, Italy, 1892.

Jacquemont, André, *Droits des enterprises en difficulté*, Lexis Nexis, France, 2009.

Jackson, Thomas, *The logic and limits of bankruptcy law*, BeardBooks, USA, 2001.

Lopez Cuberlo, Jorge, *Concepto y naturaleza del convenio en la suspensión de pagos*, BOSCH, España, 2000.

Lyon-Caen, Ch. y Renault, L., *Traité de droit commercial*, Librairie Cotillon, France, 1892.

Maldari, Luigi, *Il concordato preventivo ed i piccoli fallimenti*, Gius. Laterza & Figli, Italy, 1903.

Marti de Eixala, Ramón y Durán y Bas, Manuel, *Instituciones de derecho mercantil de España*, Sociedad general de publicaciones, Spain, 1911.

Massé, M.G., *Le droit commercial dans ses rapports avec le droit des gens et le droit civil*, Guillaumin, France, 1844.

Messineo, Francesco, *Manual de derecho civil y comercial*, trad. Santiago Sentís Melendo, EJEA, Argentina, 1955.

Moreno, José María, *Estudios sobre las quiebras*, Imprenta del Comercio del Plata, Argentina, 1864.

Moreno Cora, Silvestre, *Tratado de derecho mercantil mexicano*, Herrero Hermanos Sucesores, México, 1905.

Mousnier, *Traité du concordat en matiére de faillite*, Chez Delhomme, France, 1855.

BIBLIOGRAPHY

Navarrini, Humberto, *La Quiebra*, trad. Francisco Hernández Borondo, Reus, Spain, 1943.

Nigro, Alessandro y Vattermoli, Daniele, *Diritto della crisi delle imprese*, Il Mulino, Italy, 2009.

Pajardi, Piero, *Derecho concursal*, Depalma, Argentina, 1991.

Pallares, Eduardo, *Tratado de las quiebras*, Porrúa, México, 1937.

Pallares, Eduardo, *Diccionario de derecho procesal civil*, Porrúa, México, 2008.

Pardessus, J.M., *Cours de droit comercial*, Garnery, Libraire, France, 1815.

Provinciali, Renzo, *Manuale di diritto fallimentare*, Milano Giuffre Editore, Italy, 1962.

Ramella, Agostino, *Tratatto del fallimento*, Societa Editrice Libraria, Italy, 1904.

Renouard, Augustin-Charles, *Traité des faillites et banqueroutes*, Guillaumin, France, 1857.

Ripert, George, *Tratado elemental de derecho comercial*, trad. Felipe de Solá Cañizares, Tipografica editora argentina, Argentina, 1954.

Rocco, Alfredo, *Il concordato nel fallimento e prima del fallimento*, Fratelli Bocca Editori, Italy, 1902.

Rocco, Alfredo*, Il fallimento teoria generale ed origine storica*, fratelli Bocca Editori, Italy, 1917.

Rodríguez Rodríguez, Joaquín, *Ley de quiebras y suspensión de pagos*, Porrúa, México, 1943.

Rodríguez Rodríguez, Joaquín, *La separación de bienes en la quiebra*, Imprenta Universitaria, México, 1951.

Rojina Villegas, Rafael, *Derecho civil mexicano*, Porrúa, México, 1985.

Ramirez, José A., *La quiebra*, BOSCH, Spain, 1959.

Satta, Salvatore, *Istituzioni di diritto fallimentare*, Soc. Ed. Del Foro Italiano, Italy, 1943.

Thaller, Edmond, *Traite elementaire de droit comercial*, Rousseau et Cie, France, 1931.

Vidari, Ercole, *I fallimenti, trattazione sistematica*, Ulrico Hoepli, Italy, 1886.

BIBLIOGRAPHY

Vivante, Cesar, *Derecho mercantil*, trad. Francisco Blanco Constans, La España Moderna, Spain, 1929.

Warren, Elizabeth, *The law of debtors and creditors*, Wolters Kluwer, USA, 2009.

Warren, Elizabeth, *Chapter 11: reorganizing American businesses*, Wolters Kluwer, USA, 2008.

Wahl, Albert, *Precis theorique et pratique de droite comercial*, Librairie de la Societe du Recuel Sirey, France, 1922.

BANKRUPTCY LAW

TITLE FIRST

General provisions and adjudication in bankruptcy

Chapter I

Preliminary provisions

Article 1o.- This is a public policy Law, and its purpose is to govern the bankruptcy proceeding.

It is a matter of public policy to preserve the companies and to avoid that the general default puts in risk their viability and of the others with which they maintain a business relationship. To guarantee adequate protection to creditors against the detriment of the assets of the companies in bankruptcy, the judge and the other subjects of the process regulated in this Law shall conduct, at all times, under the principles of transcendence, economy procedural, speed, publicity, and good faith.

Article 2o.- Bankruptcy consists of two successive stages, called reorganization and liquidation.

Article 3o.- The purpose of the reorganization stage is to preserve the debtor's company through the plan signed with the Allowed Creditors. The purpose of the liquidation stage is the sale of the company, its production units, or the assets that comprise it for payment to the Allowed Creditors.

Article 4o.- For this Law, these definitions apply:

I. Allowed Creditors, those who acquire such character under the judgment of allowance of claims;

II. Merchant, the natural or juridical person that has that character according to the Commercial Code. This concept includes the entrusted estates in trusts of commercial affairs. Likewise, it includes the controlling or controlled commercial companies referred to in article 15;

The term may also include companies with majority state participation when they initiate processes of disincorporation or extinction and are administered by the Institute of Administration of Assets.

In no case, the Institute of Administration of Assets shall allocate public resources to the bankruptcy proceedings, except in the cases necessary for the conservation of the Assets in terms of the applicable provisions, and as long as it has the resources for such purpose, with prior authorization of the bankruptcy judge that guarantees these resources will be classed as credits against the Estate and their recovery will be obtained with the priority that corresponds to them;

III. Domicile, the corporate office, and, in the case of unreality, the place of the main administration of the company. In the case of branches of foreign companies, the place where their main establishment is located in Mexico. In the case of a natural person, the main establishment of his company and, failing that, where he has his domicile;

III Bis. Electronic Signature, the means of entry to the electronic system of the Federal Judicial Branch that will produce the same legal effects as the autograph signature, as an option to send and receive motions, documents, communications, and official notifications, as well as to consult decrees, resolutions, and judgments related to matters of the jurisdiction of the jurisdictional bodies under this Law;

IV. Institute, to the Federal Institute of Bankruptcy Specialists;

IV Bis. Law, this Bankruptcy Law;

V. Estate, debtor's patrimony, comprised of his assets and rights, except for those expressly excluded in terms of this Law, on which the Allowed Creditors and the others who have the right, can make effective their claims, and

VI. UDIs, the Investment Units, referred to in the decree published in the Federal Official Gazette of the 1st. April 1995.

Article 5o.- Small merchants may only be adjudicated in bankruptcy when they agree to submit voluntarily to applying this Law. A small merchant shall be understood as the Merchant whose current and expired obligations, together, do not exceed the equivalent of 400 thousand UDIs at the time of the petition.

The state-owned and majority state-owned companies incorporated as mercantile companies may be adjudicated in bankruptcy.

Article 6o.- When a number of days are indicated for a hearing, the practice of some diligence or act, or exercising some right, without making any reference to the type of days, it will be understood that it is of business days. Where an express reference is made to a term, if it expires on a non-business day, it shall be deemed concluded on the first following business day.

Article 7o.- The judge is the director of the bankruptcy proceeding and will have the necessary powers to comply with what this Law establishes, without being able to modify any term established by it unless expressly empowered to do so. Failing to comply with their respective obligations within the periods provided for in this Law shall be a cause of liability attributable to the judge or the Institute, except for reasons of force majeure or fortuitous event.

The bankruptcy proceeding is public so any person can request access to information about it through the mechanisms for access to information available to the Federal Judicial Branch.

Article 8o.- The following are of supplementary application to this Law, in the enumerated order:

I. The Commercial Code;

II. Commercial law;

III. Special and general commercial uses;

IV. The Federal Code of Civil Procedures, and

V. The Federal Civil Code.

Chapter II

Requisites for the adjudication in bankruptcy

Article 9o.- The Merchant in general default will be adjudicated in bankruptcy.

A Merchant is in general default when:

I. The Merchant files a voluntary petition in bankruptcy and falls in one of the two hypotheses set forth in sections I or II of the following article;

II. Any creditor or the Fiscal Attorney files an involuntary petition in bankruptcy, and the Merchant falls within both hypotheses set forth in sections I and II of the following article, or

III. When it is so determined by the resolution of disincorporation or extinction of any parastatal entity considered in the Federal Law of Parastatal Entities.

Article 10.- The general default takes place when besides the non-compliance to two or more different creditors, these conditions are met:

I. That at least thirty-five percent of the liabilities are in default for at least thirty days at the time of filing of the petition in bankruptcy, and

II. Lack of assets set forth in the following paragraph to respond to at least eighty percent of the obligations due on the date of filing of the petition.

The assets to be considered for the provisions of section II of this article are:

a) Cash on hand and demand deposits;

b) Term deposits and investments whose maturity does not exceed ninety calendar days after the filing date of the petition;

c) Clients and accounts receivable whose due date does not exceed ninety calendar days after the filing date of the petition, and

d) The securities for which purchase and sale operations are regularly registered in the relevant markets, which could be sold within a maximum of thirty bank business days, the valuation of which on the date of filing the petition is known.

The visitor's report and the experts' opinions offered by the parties must expressly refer to the hypotheses established in the preceding sections.

Article 11.- A general default is presumed in any of the following cases:

I. Absence or insufficiency of assets to attach;

II. Failure to pay to two or more different creditors;

III. Concealment or absence, without leaving someone in charge of the administration or operation of the company;

IV. In the same circumstances as in the previous case, the closure of his company's premises;

V. To commit ruinous, fraudulent, or fictitious practices to attend to or fail to fulfill his obligations;

VI. Breach of financial obligations in a previous reorganization plan approved in terms of Title Fifth, and

VII. In any other case of an analogous nature.

Article 12.- The Merchant's succession may be adjudicated in bankruptcy when the company is in any of the following cases:

I. Continue to operate, or

II. Suspended their operations, the actions of the creditors have not prescribed.

In these cases, the obligations attributed to the Merchant will be in charge of his succession, represented by the executor. When the hereditary estate has already been disposed of, the obligations will be in charge of the heirs and legatees. The obligations attributed to the Merchant will be the responsibility of the heirs and legatees with the benefit of inventory and up to the extent of the hereditary estate.

Article 13.- The Merchant who has suspended or terminated the operation of the company may be adjudicated in bankruptcy when he is in general default in terms of article 10 about the payment of the obligations contracted under the operation of the company.

Article 14.- The adjudication in bankruptcy of a company extends to the unlimitedly liable partners, who will be considered for all purposes in bankruptcy. The circumstance that the partners individually show they can pay the obligations of the company will not exempt them from the adjudication, unless such partners, with their own means, pay the due obligations of the company.

The proceeding may be initiated jointly against the company and the partners. The proceedings related to partners will be added to that of the company but will be carried on a separate judicial record.

The adjudication in bankruptcy of one or more unlimitedly liable partners, individually, will not produce by itself that of the company.

The adjudication in bankruptcy of an irregular company will extend to the unlimitedly liable partners and that of those against whom it is proven that without the objective foundation, they were held to be limitedly liable.

Article 15.- The bankruptcy proceedings of two or more Merchants will not be accumulated, except as provided in the following paragraph.

The bankruptcy proceedings of companies that form part of a corporate group will be accumulated but will be tried on separate judicial records.

For this Law, controlling and controlled form part of a corporate group under the following:

I. Holding companies shall be deemed those that, directly or indirectly, have voting rights of over fifty percent of the shares of another company, or have decision-making power in their meetings, or can appoint the majority of the members of the administrative body, or who by any other means have the power to make the fundamental decisions of a company.

Shares with voting rights will not be considered as those that have it limited, and those that under the terms of commercial law are called participating shares.

In the case of companies not capitalized by stocks, it shall be considered the value of the social shares.

II. Controlled companies shall be deemed to be those in which over fifty percent of the shares with voting rights are owned, either directly, indirectly, or in both forms, by a holding company. The indirect holding referred to in this paragraph shall be that held by the parent through another company or companies controlled by the same parent.

The term controlled companies also comprises those companies in which a controlling company, regardless of what is stated in the preceding sections, can instruct, directly or indirectly, the administration, strategy, or main policies of a parent company, either through ownership of the shares representing its capital stock, by contract or in any other way.

Article 15 Bis.- Those Merchants who are part of the same corporate group may simultaneously file a joint petition in bankruptcy, without consolidation of Estates. For the joint adjudication in bankruptcy, it will be sufficient if one member of the group is in any of the cases of articles 10, 11, or 20 Bis, and that said status places one or more of the members of the corporate group in the same situation.

In the case of Merchants that are members of a group that is in the same case as in the preceding paragraph, their creditor may file a jointly involuntary petition in bankruptcy of one or more of these.

The joint petition in bankruptcy will be processed under the same proceeding, and the judge may appoint a single visitor, reorganization officer, or liquidation officer if this is convenient for the proceeding.

The joint proceedings may be added to other bankruptcy proceedings under the provisions of article 15.

Article 16.- Branches of foreign companies may be adjudicated in bankruptcy. The adjudication will only include the assets and rights located and enforceable within the national territory, and the creditors for operations carried out with the branches.

Chapter III

Of the procedure for the adjudication in bankruptcy

Article 17.- The District Judge with jurisdiction in the place of the debtor's domicile is the competent court for the bankruptcy proceeding, except as provided in the following paragraphs.

In the case of petitions filed by or against holding companies, having already adjudicated in bankruptcy their controlled companies or, petitions filed against controlled companies, having started the bankruptcy proceeding of the controlling company or companies, for the accumulation referred to in article 15, the judge who has heard of the first proceeding will be competent, by filing the subsequent petition before him.

The competent judge for the joint adjudication in bankruptcy referred to in article 15 Bis will be one of the places of the domicile of the company belonging to the corporate group that is located first in the cases of articles 10, 11, or 20 Bis.

Article 18.- Procedural demurrers, including lack of competence and lack of representativeness, will be tried ancillary without suspending the bankruptcy proceeding. The bankruptcy proceeding will also not be suspended by challenging the ancillary resolutions.

The judge must dismiss outrightly the notoriously unsound demurrers and may adjudicate them in one or more interlocutory sentences.

Article 19.- If the demurrer of lack of representativeness for the plaintiff or defendant is granted, the judge will grant ten days for it to be remedied, if the defects of the document presented are rectifiable. If it is not remedied, in the case of the defendant, the proceeding will be continued in default. If the petitioner's document is not rectified, the judge will immediately dismiss the petition.

Article 20.- The Merchant may file a voluntary petition in bankruptcy, which, if the requirements are met, will be opened in the reorganization stage, unless the Merchant expressly requests to be opened in the liquidation stage.

The voluntary petition in bankruptcy must be filed in the Institute's formats and must contain at least the full name, denomination or business name of the Merchant, the address for purposes of notifications, the registered office, the address of its various offices and establishments, including plants, warehouses, specifying where the main administration of the company is or, in the

case of being a natural person, the address where he lives and also, these annexes must be attached to it:

I. The financial statements for the last three years, which must be audited when required by law;

II. A description of the causes that led to the general default;

III. A list of creditors and debtors indicating their names and addresses, the maturity date, the class to which they should be allowed, indicating the particular characteristics, and the guarantees, real or personal, granted to guarantee his debts and those of third parties;

IV. An inventory of all his real and personal property, securities, commercial goods, and rights of any other kind;

V. A list of the judicial proceedings in which the Merchant is a party, indicating the other parties, the identification data, its type, state of the trial and the court before whom it is processed;

VI. The offer to grant in case of admission of the petition, the guarantee referred to in article 24;

VII. In the case of legal entities, the resolutions of the corporate bodies necessary to authorize a petition in bankruptcy under the respective bylaws or by the competent corporate bodies, which must undoubtedly show the intention of the partners or shareholders in this regard;

VIII. Proposal for a preliminary reorganization plan, unless the Merchant files a petition in the liquidation stage, and

IX. Preliminary proposal for the company's preservation.

The voluntary petition must be processed following the subsequent provisions relating to the involuntary petition.

The decree of admission of the voluntary petition will be issued in terms of article 29.

Article 20 Bis. - The Merchant may also file a voluntary petition, declaring under oath it is imminent that will be within any of the cases stated in sections I and II of article 10.

It will be understood that the Merchant will fall imminently in the cases of general default when it is presumed that any of these cases will inevitably take place within the ninety days following the petition. In this case, the Merchant must file the voluntary petition according to the provisions of the previous article.

Article 21.- Any creditor, the Institute of Administration of Assets, or the Fiscal Attorney, may file an involuntary petition in bankruptcy.

If a judge, during the processing of a commercial trial, is aware that a Merchant falls in any of the hypothesis of articles 10 or 11, he will proceed on his own motion to notify the competent tax authorities and the Fiscal Attorney so that, if deemed appropriate, the latter file an involuntary petition. The tax authorities may only file an involuntary petition as tax creditors.

Likewise, one or more creditors may file an involuntary petition, starting directly in the liquidation stage. The judge, if the Merchant acquiesces to the claim contained in the involuntary petition and after the visitor report, will issue the adjudication in bankruptcy in the liquidation stage, but if not will be opened in the reorganization stage.

Article 22.- The involuntary petition in bankruptcy must be filed in the Institute's formats and contain:

I. The name of the court before which it is filed;

II. The petitioner's full name and address;

III. The name, denomination or company name and the domicile of the defendant Merchant, including, if known, that of its various offices, manufacturing plants, or warehouses;

IV. The facts that motivate the petition, narrating them briefly with clarity and precision;

V. The legal grounds, and

VI. The petition of adjudication in bankruptcy in the reorganization stage, or where appropriate, in the liquidation stage following article 21.

Article 23.- The involuntary petition filed by a creditor must be accompanied by:

I. Documentary evidence that demonstrates that the petitioner is a creditor;

II. The offer to grant in case of admission the guarantee referred to in the following article, and

III. The original documents or certified copies that the petitioner possesses and that will serve as evidence.

The documents exhibited later will not be admitted, except in the case of those that serve as evidence against the demurrers alleged by the Merchant, those dated after the petition was filed and those that, although earlier, the petitioner declares under oath that he did not know of them when filing the petition.

If the petitioner does not have at his disposal the documents referred to in this article, he must designate the archives or places where the originals are, so that, before admitting the petition, at the petitioner's expense, the judge orders a copy of them.

The electronic filing of the petitions or deadline motions may be submitted until twenty-four hours on the day of their expiration.

Article 23 Bis.- Those who file, voluntary or involuntary, a petition in bankruptcy in terms of articles 20 and 21, respectively, may submit their petition printed or electronically. The electronic motions will be submitted through information technologies, using the Electronic Signature under regulations issued by the Federal Judicial Council.

The courts must ensure that the electronic and printed judicial record coincide entirely.

The heads of the courts will be responsible for monitoring the digitalization of all motions and documents submitted, and the decrees, resolutions or judgments and all information related to the judicial record in the system, or if these are submitted electronically, they will be printed to be incorporated into the printed judicial record. The court's clerks will attest that in both the electronic and the printed judicial record, each motion, document, decree, and resolution is incorporated, coincide in their entirety.

Article 24.- In the event of obscurity, irregularity, or deficiency in the petition or annexes, the judge will precisely indicate what they consist of, for the petitioner to clarify it within ten days and if not, the judge will dismiss the petition and return all the documents to the interested party.

If the judge does not find a reason for inadmissibility or defect in the petition, or if the deficiencies are corrected, he will admit it. The admission decree will cease to be effective if the petitioner does not submit within three days following the notification of the admission, a guarantee of the fees of the visitor for an amount equivalent to fifteen hundred days of the minimum wage in the Federal District.

The guarantee will be released for the petitioner if the judge dismisses the petition or adjudicate the debtor in bankruptcy.

If the Public Prosecutor files the involuntary petition, the guarantee will not be required.

Article 25.- The creditor who files an involuntary petition may request the judge to grant provisional measures or modify those that have been granted. The applicable provisions of the Commercial Code shall govern the granting, modification, or lifting of said measures.

Article 26.- Once the involuntary petition has been admitted the judge will order the service of process of the Merchant, or the Institute for the Administration of Assets in the case of the second paragraph, section II, of article 4, along with the petition and its annexes, to be answered it in a term of nine days and include within the answer the list of creditors mentioned in section III of article 20. The Merchant must submit evidence in the answer.

The judge, upon petition of the Merchant, or on his own motion will grant provisional measures he considers necessary to avoid jeopardizing the viability of the company due to the involuntary petition or others lawsuits that arise during the visit, or to avoid that said risk is worsened, to safeguard the public policy provided for in article 1st.

The judge, after the answer is received, will grant the petitioner three days to file a reply brief and submit evidence to contradict the demurrers of the Merchant.

If the debtor fails to file the answer on time, the judge will declare the right to answer precluded. The lack of answer in time will produce a rebuttable presumption that the facts contained in the involuntary petition that are decisive for the adjudication in bankruptcy are true. The judge must issue the adjudication in bankruptcy within the following five days.

Article 27.- Documentary evidence and opinion of experts in writing may be submitted within the answer. Whoever submits the opinion of experts must accompany it with the information and documents that prove the experience and technical knowledge of the expert. Under no circumstances will the experts be summoned for examination.

Within the answer, the Merchant may offer, besides the evidence referred to in the preceding paragraph, those that may directly contradict the hypothesis of article 10; and the judge may take additional evidence he deems appropriate in a period that may not exceed thirty days.

Article 28.- The petition, voluntary or involuntary, may be withdrawn, provided there is the express consent of all of the parties. The Merchant or the petitioner creditors shall bear the costs of the process, among others, the fees of the visitor and, where appropriate, of the reorganization officer.

Chapter IV

Verification visit

Article 29.- The day after the judge admits the petition, he must send a copy of it, but not of its annexes, to the Institute, ordering to appoint a visitor within the next five days. In the same way and within the same period, the admission must be notified to the competent tax authorities.

However, the annexes of the petition must be available in the courthouse to the Institute, the creditors, and the competent fiscal and administrative authorities.

Not later than the day after the appointment, the Institute must inform the judge and the appointed visitor. The visitor, within the next five days, shall communicate to the judge the names of his assistants in the performance of his duties, any non-designated person will not be able to act during the visit. The day after the notification about these appointments, the judge will inform the interested parties.

Article 30.- Once the reply brief is submitted and the visitor appointed, the judge will order the practice of a visit to the Merchant, whose purpose will be that the visitor:

I. Rule if the Merchant is in general default, and

II. If applicable, suggest to the judge to grant provisional measures he deems necessary to protect the Estate.

In the case of a controlling or controlled company, the visitor must establish this fact in his report.

Article 31.- The decree in which the practice of the visit is ordered must contain:

I. The name of the visitor and his assistants;

II. The place or places of the visit, and

III. The books, records, and other documents of the Merchant on which the visit will take place.

The decree will have the effect of ordering the Merchant to allow the visit, warning him that in the event of contempt, he will be adjudicated in bankruptcy.

Article 32.- The visitor must appear at the Merchant's domicile within the next five days. If, after this period, the visitor has not appeared for any reason, the judge by his own motion or the petitioner through the judge, may request the Institute to appoint a substitute visitor. Once the substitute visitor has been appointed, the Institute will inform the judge so it modifies the visit's decree.

Article 33.- If, when the visitor appears at the place the Merchant or his representative is not present, he shall leave a summons with the person in said place to wait for him at a specific time of the following day to be informed of the content of the visit's decree; absent a person with whom the visit is to be understood, the visitor must request the judge that, after an inspection carried out by the court's clerk, the Merchant be warned so that, insisting on his omission, he will be adjudicated in bankruptcy.

If the visitor considers that designating additional places is necessary, he must request it to the judge so he authorizes it.

Article 34.- The visitor must prove his appointment with the respective decree. Both the visitor and his assistants must identify themselves with the Merchant before proceeding with the visit.

The visitor and his assistants will have access to the merchant's accounting books, records, and financial statements, and any other document or electronic means of data storage in which the

financial and accounting situation of the company is recorded and which are related to the purpose of the visit. Likewise, they may carry out interviews with the merchant's directive, managerial and administrative personnel, including their external financial, accounting, or legal advisers.

Article 35.- The Merchant and his staff will have to collaborate with the visitor and his assistants. If they do not collaborate, obstruct the visit or do not provide the visitor or his assistants with the necessary information, at the request of the visitor the judge may impose the necessary enforcement measures, warning the Merchant that if he insists will be adjudicated in bankruptcy.

Article 36.- At the end of the visit, the visitor shall draw up a minute in which the facts or omissions known by the visitor and his assistants regarding the purpose of the visit shall be detailly recorded.

The visit's minute must be drawn up before two witnesses appointed by the Merchant, for which the visitor must notify him in writing twenty-four hours in advance, the day and time in which he will draft the minute; in the event of the Merchant's refusal to make the appointment of the witnesses, the minute will be drafted before the court's clerk. The Merchant and witnesses must sign the minute; if they refuse to do so, said circumstance must be established in the minute, without affecting its validity.

The visitor and his assistants may reproduce by any means documentation so that, after comparison, will be attached to the visit's minute. The visitor may prove the facts related to the visit through a notary public, without requiring the issuance of warrants or the provision of natural days and hours for the visit.

Article 37.- Besides the provisional measures referred to in article 25, the visitor may request the judge during the visit to adopt, modify or lift the provisional measures referred to in this article, to protect the Estate and the rights of creditors, and must in all cases justify the reasons for their request.

The judge may issue the provisional measures he deems necessary, at any stage of the bankruptcy procedure, upon request, or by his own motion.

The provisional measures may be:

I. The prohibition against paying overdue obligations before the date of admission of the petition in bankruptcy;

II. The stay of all enforcement proceedings against the Merchant's assets and rights;

III. The prohibition against carrying out operations of alienation or encumbrance of the main assets of the company;

IV. The assurance of assets;

V. The receivership;

VI. The prohibition against making transfers of resources or values for third parties;

VII. The order to put the Merchant in home confinement, for the sole effect that he cannot separate from the place of his Address without leaving, by mandate, a sufficiently instructed and paid attorney-in-fact. When the person put to home confinement shows he has complied with the preceding, the judge will lift the home confinement, and

VIII. Any others of a similar nature.

Upon filing or admission of the petition, the Merchant may request the judge his authorization for the immediate

contracting of credits essential to maintain the ordinary operation of the company and the necessary liquidity during the bankruptcy proceeding. For the processing of the credits, the judge may authorize the constitution of guarantees that may be appropriate.

Upon Merchant's request and given the urgency and need for financing, the judge, with the prior opinion of the visitor, will authorize the financing with the objective above, proceeding to dictate the guidelines in which the respective credit and its payment during the bankruptcy proceeding will be authorized.

Article 38.- The provisional measures will subsist until the judge orders their removal.

The Merchant may avoid the application of the provisional measures or request those that have been issued be lifted, by submitting a guarantee to the satisfaction of the judge.

Article 39.- The Merchant's statements regarding supporting documents that are not in his possession, must be recorded in the visit's minute.

Article 40.- The visitor, based on the information recorded in the visit's minute, must render to the judge, within the next fifteen calendar days from the visit, a reasoned and circumstantial report taking in consideration the facts raised in the petition and its answer, attaching to it, the visit's minute. The report must be submitted in the Institute's formats.

The visitor must submit his report within the period referred to in the preceding paragraph; however, for just cause, he may request an extension to the judge. The extension may not exceed fifteen calendar days.

Article 41.- The judge will put the report at the disposal of the Merchant and the petitioner so that within five days, present their conclusions in writing.

Chapter v

Of the adjudication ruling.

Article 42.- The judge will issue the ruling within the next five days, considering what was stated, proven, and alleged by the parties besides the visitor's report. The judge must reason the evidence provided by the parties, including the visitor's report.

Article 43.- The adjudication ruling must contain:

I. Name or business name and address of the Merchant and, where appropriate, the full name and addresses of the unlimitedly liable partners;

II. The date of issuance;

III. The justification of the ruling in terms of the provisions of article 10, as well as a list of creditors that the visitor had identified in the accounting;

IV. The order to the Institute to designate the reorganization officer, together with the determination that, meanwhile, the Merchant, its administrators, managers, and dependents will have the obligations that the law attributes to the depositaries;

V. The declaration of the opening of the reorganization stage, unless the opening in the liquidation stage was requested;

VI. The order to the Merchant to immediately provide to the reorganization officer the books, records and other documents of the company, as well as the necessary resources to defray the costs of registration and the publications provided for in this Law;

VII. The order to the Merchant to allow the reorganization officer and the creditor's representatives to carry out their activities;

VIII. The order to the Merchant to suspend the payment of the debts contracted before the date of the adjudication in bankruptcy; except those that are indispensable for the ordinary operation of the company, including any credit essential to maintain the ordinary operation of the company and the liquidity necessary during the bankruptcy proceeding, regarding which he must inform the judge within seventy-two following hours of carried out;

IX. The order to stay during the reorganization stage, any decree of attachment or enforcement against the Merchant's assets and rights;

X. The retroactive date;

XI. The order to the reorganization officer to publish a summary of the adjudication;

XII. The order to the reorganization officer to register the ruling in the public registry of commerce that corresponds to the Domicile of the Merchant and where it has an agency, branch or property subject to registration in some public registry;

XIII. The order to the reorganization officer to commence the proceeding of allowance of claims;

XIV. The notice to creditors to submit their proof of claims, and

XV. The order that a certified copy of the ruling will be issued at the cost of whoever requests it.

Article 44.- The day after the ruling, the judge must notify the Merchant, the Institute, and the visitor. Creditors whose domiciles are known and the competent tax authorities will be notified by certified mail or by any other means established in the applicable laws. The petitioner Fiscal Attorney, the union representative and, failing that, the Labor Defense Attorney, will be notified by official notice.

Article 45.- Within the next five days following his appointment, the reorganization officer will request the inscription of the adjudication ruling in the public registers and will publish a summary in the Federal Official Gazette and one newspaper with the largest circulation in the place of the proceeding, and may also be published by other means that the Institute deems appropriate.

The parties not notified in terms of the previous article will be understood as notified on the day of the last publication.

Article 46.- After five days counted from the expiration of the term for the publication of the summary ruling without having been published, any creditor or creditor's representative may request the judge to deliver the necessary documents to make the publications. The judge will provide the documents to whoever first requests them. The corresponding expenses will be credits against the Estate.

Article 47.- Upon adjudication, the Merchant's will be put in home confinement and, in the case of legal entities, those who are responsible for the administration, for the sole effect they cannot separate from the place of their Domicile without leaving an attorney-in-fact by a general or special mandate with powers for acts of ownership, acts of administration and lawsuits and collections, duly instructed and expensed. When the debtor shows he has complied with the preceding, the judge will lift the home confinement.

Article 48.- The non-adjudicative ruling, will order things to return to the state they had before the petition, and the lifting of the provisional measures granted or the release of the guarantees established to avoid their imposition. The ruling must be notified personally to the Merchant, to the petitioner creditors, and by official notice to the petitioner Fiscal Attorney.

In all cases, the acts of administration legally carried out must be respected, as well as the rights acquired by bona fidei third parties.

The judge will impose the petitioner creditor, or the petitioner debtor, as the case may be, the obligation to pay the legal expenses and costs, which will be calculated as if the business were of an undetermined amount following the local general rules that regulate the tariff, including the visitor's fees and expenses.

Chapter VI

Of the appeal of the adjudication ruling

Article 49.- Against the non-adjudicative ruling, the appeal will have suspensive effects, against the adjudicative ruling non-suspensive effects.

The Merchant, the visitor, the petitioner creditors, and the petitioner Fiscal Attorney may file the appeal.

Article 50.- The appeal brief must be filed within the next nine days, and in the same brief, the appellant must express the grievances, offer evidence, and, if applicable, indicate excerpt of records to integrate the appeal.

The judge will give grant nine days to the appellee to file a reply, to offer evidence, and, where appropriate, to add an excerpt of records. The judge shall forward to the court of appeals, the appeal and the original judicial record within the next three days or five for the excerpt of records.

In the brief or its reply, the parties may offer evidence, specifying the facts on which they must be related.

Article 51.- The appeals court, within the next two days of receiving the original record or its excerpts, will decide on the admission of the appeal and of evidence offered and, where appropriate, will grant fifteen days for their relief. The appeals court may grant an additional fifteen days when it could not take evidence for reasons not attributable to the offering party.

If it is not necessary to take any further evidence, ten days shall be granted to submit conclusions, first to the appellant, and then to the other parties. The appeal court within the next five days must issue the ruling.

Article 52.- The sentence that revokes the adjudicative ruling must be registered in the same public registry of commerce in which the adjudicative one was registered, and it will be communicated to the public registries so they may cancel the corresponding registrations.

Article 53.- The sentence of revocation of the adjudicative ruling will be notified and published in terms of articles 44 and 45 and will be observed article 48.

TITLE SECOND

Of the insolvency officers

Chapter I

The visitor, the reorganization officer, and the liquidation officer

Article 54.- The insolvency officers have the duties and powers conferred by this Law.

In the case referred to in the second paragraph, section II, of article 4th, the functions of the visitor, reorganization officer, and liquidation officer shall be assumed by the Institute of Administration of Assets.

Article 55.- The insolvency officers may, with the authorization of the judge, hire the assistants they consider necessary to exercise their functions, which in no case will imply the delegation of their respective responsibilities.

Article 56.- The appointment of the insolvency officers may be challenged before the judge by the Merchant, and by any of the creditors within the next three days of their appointment according to articles 31, 149 or 172. The challenge will only be admitted when grounded in any of the cases referred to in article 328. The challenge will be conducted in an ancillary proceeding.

The judge may reject the appointment made by the Institute when any of the events of article 328 occurs and must notify the Institute to appoint a new one.

Article 57.- The challenge of the appointment of the insolvency officers will not suspend their activities, nor will it suspend the continuation of the proceeding.

Article 58.- When this Law does not set forth a specific time for fulfilling the obligations of the insolvency officers, they must carry them out within thirty calendar days unless, at their request, the judge authorizes an extension, which may not exceed thirty more calendar days.

Article 59.- The liquidation officer and the reorganization officer must submit a report every two months to the judge about the work carried out in the Merchant's company and must submit a final report on their performance, following the Institute's formats, which must detail the minimum financial, accounting, tax, administrative, corporate and legal information. All reports will be put at the disposal of the Merchant, the creditors, the petitioner Fiscal Attorney, and the creditor's representatives through the judge.

Article 60.- The Merchant, the petitioner Fiscal Attorney, the creditor's representative, and the creditors individually may denounce before the judge the acts or omissions of the insolvency officers committed in contravention of this Law. The judge will issue the enforcement measures he deems appropriate and, where appropriate, he may request the Institute for the substitution to avoid damage to the Estate.

When an insolvency officer is sentenced to pay damages by a conclusive judgment, the judge must send a copy of the ruling to the Institute for section VI of article 337.

Article 61.- The insolvency officers are liable to the Merchant and the creditors, for their own acts and those of their assistants, about the damages and losses they cause in the performance of their charge, for breach of their duties, and for disclosing the confidential information they know by performing their charge.

In the case of the liquidation officer and reorganization officer, when they are in charge of the administration of the enterprise, they will be liable for the breach of the tax obligations referred to in article 69.

Chapter II

Of the creditor's representatives

Article 62.- The creditor's representatives will represent the interests of the creditors and will survey the actions of the reorganization officer and liquidation officer as well as the acts carried out by the Merchant in the administration of the company.

Article 63.- Any creditor or group of creditors that represent at least ten percent of the amount of the claims, under the provisional list of claims; at least ten percent of the claims according to the definitive list of claims, or, according to the judgment of allowance of claims, may request the judge to appoint a creditor's representative, whose fees will be at the expense of those who appoint them. To be creditor's representative, it is not necessary to be a creditor.

The creditor or group of creditors must address their requests to the judge, so the latter makes the corresponding appointment outrightly, without giving notice to the parties and within the next three days. The creditor's representatives may be substituted or removed by those who have appointed them, complying with the provisions of this paragraph.

Article 64.- The creditor's representatives will have these powers:

I. Procure the notification and publication of the summary of the adjudicative ruling;

II. Directly request from the Merchant, the reorganization officer or the liquidation officer the examination of a book, or document, as well as any other means of data storage of the Merchant, regarding matters that in their opinion may affect the interests of the creditors, being able to request a copy at their own expense of the supporting documentation and examination material, which must be treated as confidential;

III. Request directly from the Merchant, the reorganization officer or liquidation officer, information on matters related to the administration of the Estate and the company, which in their opinion may affect the interests of the creditors, as well as the reports mentioned in article 59, being able to request a copy at their expense of the supporting documentation and subject matter of the consultation, which must be treated as confidential;

IV. Serve as an interlocutor of the creditors who have appointed them and of other creditors who so request, in front of the Merchant, reorganization officer, and liquidation officer, and

V. The others established in this Law.

TITLE THIRD

Of the effects of the adjudication in bankruptcy

Chapter I

Of the stay of enforcement proceedings

Article 65.- Upon adjudication in bankruptcy and during the reorganization stage, no order of attaching or enforcement against the merchant's goods and rights may be executed.

When the seizure or enforcement order is of a labor nature, the stay shall not take effect about the provisions of section XXIII, of section A, of article 123 of the Constitution and its regulatory provisions, considering the wages of the two years before the petition; in cases of attachments for tax credits, article 69 shall be followed.

Article 66.- The decree of admission of the petition shall have, among its purposes, to ensure the rights that the Constitution, its regulatory provisions, and this Law guarantee to workers, for their payment with preference, referred to in such provisions and the section I of article 224 of this Law.

The adjudication in bankruptcy will not be a ground to suspend the payment of the merchant's ordinary labor obligations.

Article 67.- If the labor courts order the seizure of the Merchant's assets, to secure credits for the workers for wages and salaries accrued in the two immediate previous years or for a severance package, the person in charge of the administration of the company will be the depositary of the seized goods.

As soon as the person in charge of the administration of the company pays or guarantees to the satisfaction of the labor authorities said credits, the attachment must be lifted.

Article 68.- When in enforcing a labor resolution whose purpose is to protect the rights for the workers referred to in section XXIII, of section A, of article 123 of the Constitution, its regulatory provisions and this Law, the labor court orders the execution of a property that is part of the Estate, which also serves as a collateral to a secured creditor, the reorganization officer may request to the labor court the substitution of the attached asset with a surety bond that guarantees the payment to the labor claim within ninety days.

If the substitution were not possible, the reorganization officer, once the labor court has foreclosed the asset, shall record the secured claim as a claim against the Estate, up to the amount that is less than the allowed claim and the foreclosure value of the collateral. If the foreclosure value were less than the amount of the allowed claim, the resulting difference would be considered as a general unsecured claim.

Article 69.- Upon adjudication in bankruptcy, tax credits will continue to cause the corresponding inflations adjustments, fines, and accessories following the applicable provisions.

If a reorganization plan is approved in terms of Title Fifth, the fines and accessories caused during the reorganization stage will be canceled.

The adjudication ruling will not be ground to suspend the payment of the merchant's ordinary tax or social security contributions, for they are indispensable for the ordinary operation of the company.

Upon adjudication in bankruptcy and during the reorganization stage, the administrative procedures for the collection of tax credits will be suspended. The competent tax authorities may continue the acts necessary for the determination and securement of the tax credits.

Chapter II

Of excluding assets in possession of the Merchant

Article 70.- The assets in the Merchant's possession that are identifiable, whose property has not been transferred to him by definitive and irrevocable legal title, may be excluded by their legitimate holders. The bankruptcy judge will be competent to try the exclusion action.

Once filed the exclusion action, according to article 267, if the Merchant, the reorganization officer, or the creditor’s representative do not oppose, the judge

will order the exclusion for the plaintiff. In case of opposition, the exclusion action will be conducted through an ancillary proceeding.

Article 71.- Assets in these situations, or any other of a similar nature, may be excluded from the Estate:

I. Those that can be revendicated according to the law;

II. Real estate property sold but not paid yet by the debtor when the sale has not been duly registered in the public registry;

III. Personal property purchased in cash if the Merchant had not paid the full price at the time of the adjudication in bankruptcy;

IV. Personal property or real estate property acquired on credit if the resolution clause for non-compliance had been registered in the public registry;

V. The securities of any kind issued or endorsed for the Merchant, as payment for sales made on behalf of others, as long as it is proven that the obligations thus fulfilled come from them and that the item was not settled in a current account between the Merchant and its principal;

VI. Taxes withheld, collected, or transferred by the Merchant on behalf of the tax authorities, and

VII. Those held by the Merchant in any of the following cases:

a) Deposit, lease, usufruct, or received in administration or consignment, if in this case the adjudication was issued before the buyer's manifestation of making the goods their own, or if the period indicated to do so has not elapsed;

b) Mercantile commission for sales, transit, delivery, or collection;

c) To deliver to a person determined for the account and on behalf of a third party or to satisfy obligations that must be fulfilled at the Merchant's Domicile;

When the credit resulting from the remission has been affected by the payment of a bill of exchange, its legitimate holder may obtain its exclusion.

d) The money in the name of the Merchant for sales made by others. The plaintiff may also obtain the assignment of the corresponding credit right, or

e) Entrusted in trusts.

Article 72.- Regarding the existence or identity of the assets whose exclusion is requested, the following will apply:

I. The exclusion actions will only prevail if the goods are in the Merchant's possession at the moment of the adjudication in bankruptcy;

II. If the assets perish after the adjudication in bankruptcy and were insured, the plaintiff will obtain the payment of the compensation received or subrogate the rights to claim it;

III. Had the assets been alienated of before the adjudication in bankruptcy, there could be no separation of the price received by them; but if the payment has not been made, the plaintiff may subrogate the rights against the assignee, having to deliver to the Estate the surplus between what he collects and the amount of his claim.

In the second case provided for in the preceding paragraph, the plaintiff may not appear as a creditor in the bankruptcy;

IV. Assets remitted, received in payment, or exchanged for any legal title, equivalent to those that were excludable, may be excluded;

V. Proof of identity may be carried out even when the assets have been unpacked or partially alienated, and

VI. If the assets serve as collateral in pledges to third parties in good faith, the pledgee may oppose the delivery until the secured claim, and its accessories are paid.

Article 73.- The exclusion will be subordinated to prior fulfillment of the plaintiff's obligations derived from the asset.

In cases of exclusion by the seller who has received part of the price, the exclusion will be conditioned to the prior reimbursement of part of the price received. The refund of the price will be proportional to its total amount about the quantity or number of the excluded assets.

The seller and the other plaintiffs have a prior obligation to reimburse everything that has been paid or is owed for tax rights, transportation, commission, insurance, gross damage, and expenses to preserve the assets.

Chapter III

Of the administration of the company

Article 74.- During the reorganization stage, the debtor will remain in the administration of the company, except as provided in article 81.

Article 75.- The debtor will carry out the ordinary operations, including the indispensable expenses for them, and the reorganization officer will supervise the accounting and all the debtor's operations.

The reorganization officer will assume or reject the executory contracts and will approve, with the prior opinion of the creditor's representatives the contracting of new credits, the constitution or replacement of collaterals and the selling of assets when they are not linked to the ordinary operation of the company, all of which must report to the judge. An ancillary proceeding will try any objection.

In case of substitution of guarantees, the reorganization officer must previously have the written consent of the secured creditor.

For the alienation of assets not linked to the ordinary operation of the company, the reorganization officer shall follow the alienation procedures and general terms provided for in articles 197, 198, 205 and 210, to seek the best conditions of alienation and to obtain a higher recovery value, without needing the authorization of the judge.

Regarding the contracting of essential credits to maintain the ordinary operation of the company and the necessary liquidity during the process of bankruptcy, which would have been authorized in terms of this article, the reorganization officer will define the guidelines in which the respective credit will be authorized including the constitution of appropriate guarantees if so was requested by the Merchant.

The secured creditors with collateral on assets that, in consideration of the judge and the reorganization officer's opinion, are not strictly indispensable for the ordinary operation of the company, may initiate or continue the enforcement proceedings according to the applicable provisions. Article 227 shall apply to these secured creditors.

Article 76.- For the opinion referred to in the second paragraph of the previous article, the reorganization officer must send to the creditor's representative the

characteristics of the operation, in the Institute's formats.

The creditor's representatives must issue their opinion addressed to the reorganization officer, within the next five days. The lack of timely response by the creditor's representatives will be understood as their acceptance.

The resolution of the creditor's representatives will be adopted by a majority of the claims that they represent. The creditor's representatives will not need to meet to vote.

The provisions of this article will be applicable even when the reorganization officer has assumed the administration of the company.

Article 77.- The reorganization officer, under his own strict responsibility, may abstain from requesting the opinion of the creditor's representatives for the alienation of good where it is perishable, or he considers that it may be exposed to a serious decrease in its price, or its conservation is expensive in comparison with the utility it can generate for the Estate, all of which must inform the judge within three days of the operation. Any objection will be conducted through an ancillary proceeding.

Article 78.- When the reorganization officer is in charge of the company, he must always act as a diligent administrator in his own business, being liable for the losses or detriments that the company suffers by his fault or negligence.

Likewise, the reorganization officer must identify the assets in possession of third parties.

Article 79.- The reorganization officer and the Merchant must consider the convenience of keeping the company in operation.

Notwithstanding the above, when it is convenient to avoid the growth of the liability or the deterioration of the Estate, the reorganization officer, prior opinion of the creditor's representatives may request the judge to order the closure of the company, which may be total or partial, temporary or permanent. The preceding shall be conducted through an ancillary proceeding.

Article 80.- When the Merchant is in charge of the administration of the company, the reorganization officer will be empowered to summon the governing bodies when he considers it necessary, to submit to consideration and approval the matters he deems convenient.

Article 81.- If the reorganization officer considers that it is appropriate for protecting the Estate, he may request the judge to remove the Merchant from the administration of the company. Upon request, the judge may take the measures he deems appropriate to preserve the integrity of the Estate. The removal will be conducted through an ancillary proceeding.

Article 82.- If the Merchant is removed, the reorganization officer will assume, besides his own powers, the administrative powers and obligations this Law attributes to the liquidation officer.

Article 83.- In the case referred to in the previous article, regarding legal entities, the powers of the bodies that, according to the law or the bylaws, are competent to make determinations on the administrators, directors, or managers will be suspended.

Chapter IV

Of the effects on other proceedings

Article 84.- The actions and proceedings that have a patrimonial content, brought by or against the Merchant, that are pending prior or upon adjudication in bankruptcy will not be added to the bankruptcy judicial record, but the Merchant will follow them under the supervision of the reorganization officer, for which, the Merchant must inform the reorganization officer of the existence of the procedure, within the next day that his appointment is known to him.

However, the reorganization officer may substitute the Merchant in terms of article 81.

Article 85.- The reorganization officer will not participate nor substitute the Merchant, in the proceedings exclusively related to exempted assets in terms of article 179.

Chapter V

Of the effects concerning the obligations of the Merchant

Section I

General rule and acceleration

Article 86.- Subject to the exceptions stated in this Law, the provisions on obligations and contracts, and the stipulations of the parties, will remain applicable.

Article 87.- Notwithstanding the exceptions expressly established in this Law, any contractual stipulation that due to filing a petition or adjudication in bankruptcy, establishes modifications to the terms of contracts that worsens the Merchant, will have no legal effect.

Article 88.- To determine the claim's amount, upon adjudication in bankruptcy:

I. Outstanding obligations will be considered due;

II. Credits subject to a suspensive condition, it will be considered as if the condition has not been fulfilled;

III. Credits subject to a resolutive condition will be considered as if the condition had been fulfilled without the parties having to return the benefits received while the obligation subsisted;

IV. The amount of the credits for periodic or successive installments will be determined at their present value, considering the agreed interest rate or, failing that, the one applied in the market in similar operations, considering the currency or unit in question and, if this is not possible, interest at the legal rate;

V. The life annuity creditor shall have his credit allowed at its replacement value in the market or, failing that, at its present value calculated following commonly accepted practices;

VI. The obligations with an undetermined or uncertain amount will require their valuation in money, and

VII. Non-pecuniary obligations must be valued in money; if the above is not possible, the credit cannot be allowed.

Article 89.- At the date of adjudication:

I. The capital and the unpaid financial accessories of the unsecured claims in national currency will cease to generate interest and will be converted to UDIs using the equivalence of the units published by Banco de México. Credits originally denominated in UDIs will cease to generate interest;

II. The capital and unpaid financial accessories of the unsecured claims in foreign currency, regardless of the agreed

place of payment, will cease to generate interest and will be converted into national currency at the exchange rate determined by the Banco de Mexico to pay obligations denominated in foreign currency payable in the Mexican Republic. Said amount will then be converted to UDIs in terms of the previous section, and

III. Secured claims, regardless of the place of payment, will remain in the currency or unit in which they are denominated and will only generate ordinary interests stipulated up to the value of the collateral.

To determine the participation of secured creditors in the decisions that correspond to them, their claims' amount at the date of adjudication, will be converted to UDIs as in the case for the unsecured creditors according to sections I and II of this article. Secured creditors will participate as such for said amount, regardless of the value of their collateral, unless they exercise the right provided in the following paragraph.

If a secured creditor deems that the collateral's value is less than the claim including capital and accessories as of the date of adjudication, he may request the judge to be classified as a secured creditor for the value that the creditor himself attributes to the collateral, and as a general unsecured creditor for the remainder. The value that the creditor attributes to the collateral will be converted to UDIs at the exchange rate of the date of adjudication. In this case, the creditor must expressly waive, in favor of the Estate, any surplus between the price obtained when executing the collateral and the value attributed to it, considering the exchange rate of the UDIs at the date of the execution.

Article 90.- Upon adjudication in bankruptcy, may only set off:

I. The rights in favor and the obligations in charge of the Merchant that derive from the same operation not interrupted upon adjudication;

II. The rights in favor and the obligations in charge of the Merchant that expired before the adjudication and whose setoff is permitted by law;

III. The rights and obligations derived from the operations provided for in articles 102 to 105, and

IV. Tax credits in favor and against the Merchant.

Section II

Of executory contracts

Article 91.- The adjudication in bankruptcy will not affect the validity of contracts concluded on goods of a strictly personal nature, of a non-patrimonial nature, or relating to exempted assets in terms of article 179.

Article 92.- The Merchant must fulfill the preparatory, definitive, or pending contracts unless the reorganization officer rejects them for protecting the Estate.

The debtor's contracting counterparty may request the reorganization officer to decide on the assumption or rejection of the contract. If the reorganization officer assumes it, the Merchant must comply or secure the compliance. If the reorganization officer rejects it or fails to respond within the next twenty days, the counterparty may at any time terminate the contract by notifying the reorganization officer.

When the reorganization officer is in charge of the administration or authorizes the Merchant to fulfill the executory contracts, he may avoid the exclusion of

assets, or if applicable, demand their delivery, paying the price.

Article 93.- The seller may not be required to deliver the assets that the Merchant has acquired unless the price is paid or secured.

The seller might revendicate the assets if he made the delivery in compliance with a definitive contract not concluded in the form required by law. The revendication will not proceed if the contract is established reliably, and the Merchant, with the authorization of the reorganization officer, requests that the contract be given the legal form, or in any other way, the nullity action for lack of form be extinguished.

Article 94.- The seller of unpaid personal property, that upon adjudication are in transit for its material delivery to the Merchant, may oppose to the delivery:

I. Varying the consignment in the legally accepted terms, or

II. Stopping the material delivery of the goods, even if he does not have the necessary documents to vary the consignment.

The opposition to the delivery will be conducted through an ancillary proceeding between the seller and the Merchant, with the intervention of the reorganization officer.

Article 95.- If the debtor were the seller, the buyer might demand the delivery of the thing after paying the price, if the sale was perfected according to the applicable legal provisions.

Article 96.- The Merchant who has purchased a good from which delivery has not yet been made, may not require the delivery to the seller if the price is not paid nor secured.

If the delivery was made only under a promissory sale, the seller might revendicate the thing if the sale contract was not executed in a public deed when it is legally required.

Article 97.- If the assumption of the contract is decided and the payment of the price is subject to an unexpired term, the seller may demand that its fulfillment be secured.

Article 98.- Regarding sales by deliveries, if some of these deliveries have been made without having been paid, they must be paid, which will be a requirement for compliance provided in the previous article, and in the third paragraph of article 92.

Article 99.- Notwithstanding the adjudication in bankruptcy of the seller of a movable thing, if the thing had been determined before said adjudication, the buyer may demand compliance with the contract by paying the price.

Article 100.- The deposit, credit opening, mercantile commission, and civil mandate will not be terminated upon adjudication in bankruptcy of one of the parties unless the reorganization officer considers that they should be terminated.

Article 101.- Upon adjudication in bankruptcy, the current accounts will be terminated in advance and will be put in a state of liquidation to demand or cover their balances, unless the Merchant, with the consent of the reorganization officer, expressly declares its continuation.

Article 102.- Upon adjudication in bankruptcy, the repurchase agreements entered by the Merchant will be terminated, under these rules:

I. If the Merchant is the buyer, he must transmit to the seller within the next fifteen

calendar days from adjudication, the titles of the corresponding species against the reimbursement of the price plus the payment of the agreed premium;

II. If the Merchant is the seller, the contract will be abandoned from the date of the adjudication, and the buyer may demand the payment of the differences that, if applicable, exist in his favor precisely on the date of the adjudication, through the allowance of claims, keeping the Merchant the price of the operation and the buyer the property and available disposition of the titles of the repurchase agreement, and

III. The repurchase agreements executed between the Merchant and its counterparty on a reciprocal basis, whether documented or not in frame agreement or regulatory contracts, will be terminated in advance on the date of the adjudication, even when its expiration date is later, having to be setoff in terms of this Law.

If there is no provision in the corresponding agreements for the setoff and liquidation of the considerations due, to make the setoff, the value of the securities will be determined according to their market value on the day of the adjudication. Absent a demonstrable and available market value, the reorganization officer may hire an expert for the valuation of the securities.

The balance that, if applicable, is generated against the Merchant by the early maturity, may be demanded through the allowance of claims. If credits are generated for the Merchant, the counterparty must deliver said balance to the Estate within the next thirty calendar days from the date of the adjudication.

Article 103.- The securities loans secured with the national currency will follow the same rules as the repurchase agreements.

The securities loans secured with securities in national currency will follow the provisions of section III of the previous article.

Article 104.- Differential or futures contracts and derivative financial operations, which expire after the adjudication, will be terminated early upon the adjudication. These contracts and operations must be set off in terms of this Law.

If there is no provision in the corresponding agreements for the setoff and liquidation of the due considerations, to make the setoff, the value of the underlying assets or obligations will be determined according to their market value on the day of the adjudication. Absent available and demonstrable market value, the reorganization officer may hire an expert for the valuation of the assets or obligations.

The claim generated against the Merchant will be demandable through the allowance of claims. If the early maturity generates a balance in charge of the debtor's contracting party, the latter must deliver it to the Estate within the next thirty calendar days from the adjudication.

Derivative financial operations shall be understood as those in which the parties must pay money or fulfill other obligations to give, with a good or market value as underlying, and the agreements that, through general rules, indicate the Banco de México.

Article 105.- They must be setoff or applied to the payment, and they will be payable in the agreed terms or as

indicated in this Law, on the date of adjudication, the debts, and credits and the respective collaterals when it has been agreed these guarantees will be transferred in ownership to the creditor resulting from frame agreement regulatory or specific agreements for the execution of derivative financial operations, repurchase agreements, securities loans, futures operations or other equivalent operations, and any other contract in which a person is a debtor of another, and at the same time is his creditor, that can be reduced to money, even when the debts or credits are not liquid and payable on the date of adjudication but, under the terms of said agreements or this Law, they may become liquid and payables.

The provisions of this article shall be applicable notwithstanding the provisions of article 92, and even when the offset is made within the period referred to in article 112, unless it is proven that the agreement that produced the setoff, were concluded or modified to give priority to one or more creditors.

The counterparty may demand the debit balance against the Merchant that results from the setoff through the allowance of claims. If a creditor balance results for the Merchant, the counterparty will have to deliver it to the reorganization officer for the benefit of the Estate, within the next thirty calendar days, counted from the date of the adjudication.

Article 106.- The adjudication of the lessor does not terminate the real estate lease.

The adjudication of the lessee does not terminate the real estate lease agreement. However, the reorganization officer may terminate the contract in which case, the indemnity agreed in the contract must be paid to the lessor or, in its absence, an indemnity equivalent to three months of rent, due to early maturity.

Article 107.- Contracts of the rendering of services, of a strictly personal nature, in favor or in charge of the Merchant, will not be terminated.

Article 108.- The contract of construction at a lump sum price will be terminated by the adjudication of one party, unless the Merchant, with the authorization of the reorganization officer, agrees with the other contracting party to fulfill the contract.

Article 109.- The adjudication in bankruptcy does not terminate the insurance contract if the insured thing is immovable, but if it is movable, the insurer may terminate it.

If the reorganization officer does not inform the insurer about the adjudication in bankruptcy within the next thirty calendar days from its date, the insurance contract will be deemed terminated from the adjudication date.

Article 110.- In life or mixed insurance contracts, the Merchant, with the authorization of the reorganization officer, may assign the insurance policy and obtain the reduction of the insured capital, in proportion to the premiums already paid following the calculations that the insurance company would have considered to make the contract and to consider the risks run by it. Likewise, it may carry out any other operation that represents an economic benefit for the Estate.

Article 111.- The adjudication in bankruptcy of a partner of a general partnership or limited liability partnership, or of the limited partner in a simple limited partnership or by stocks, will entitle him to request its liquidation according to the last

corporate balance or to continue in the company, if the reorganization officer gives his consent, as long as the other partners do not exercise the right of partial liquidation of the company unless otherwise provided in the bylaws.

Chapter VI

Of fraudulent conveyances

Article 112.- The retroactive date is fixed at the two hundred and seventy calendar days immediately before the date of the adjudication in bankruptcy.

If there are subordinated creditors referred to in section II of article 222 Bis, including the persons referred to in articles 15, section I, and 117, section II, regardless of whether the claim has been secured, the date stated in the previous paragraph will be doubled, regarding the acts in which said subordinated creditors are involved.

The judge, at the request of the reorganization officer, the liquidation officer, the creditor's representatives, or any creditor, may push back the retroactive date but not for over three years, as long as the request is submitted before the judgment of the allowance of claims. The preceding shall be conducted through an ancillary proceeding.

As a requisite for granting the petition, the applicant must narrate events that could fit into the hypotheses established in articles 114 to 117, submitting documentation; but it is unnecessary to demonstrate in the respective ancillary proceeding, the existence of fraudulent conveyances.

The resolution that pushes back the retroactive date will be published by the Judicial Bulletin or, where appropriate, by the courtroom board bulletin.

Article 113.- Fraudulent conveyances will be ineffective against the Estate.

Fraudulent conveyances are those that the Merchant made before the adjudication in bankruptcy, knowingly defrauding the creditors if the third party that intervened in the act knew about this fraud.

This last requirement will not be necessary for gratuitous acts.

Article 113 Bis.- Regarding fraudulent conveyances, the liability action referred to in article 270 Bis-1, may be brought, besides the persons stated in said article, by:

I. A fifth of the Allowed Creditors;

II. The Allowed Creditors that represent, as a whole, at least twenty percent of the total allowed claims, or

III. The Creditor's representatives.

The preceding, without prejudice to other actions of civil or criminal liability that may proceed.

Article 114.- The following are fraudulent conveyances if they were carried out within the retroactive date:

I. The gratuitous acts;

II. The contracts and alienations in which the Merchant paid a consideration of notoriously higher value or received the consideration of notoriously lower value than the benefit of his counterpart;

III. The operations in which conditions or terms have been agreed that deviate significantly from the prevailing conditions in the market in which they were held, on the date of its execution, or from commercial uses or practices;

IV. Debt's acquittals;

V. Payments of unexpired obligations, and

VI. The discount that the Merchant makes of his effects.

The conveyances will not be ineffective if the Estate takes advantage of the payments made to the Merchant.

If third parties reimburse what they have received from the Merchant, they may request the allowance of their claims.

Article 115.- The following acts are presumed fraudulent conveyances if they were carried out within the retroactive date unless the interested party proves good faith:

I. The granting or increase of guarantees, when the original obligation did not contemplate said guarantee or increase, and

II. Payments of debts made in kind, when this differs from that originally agreed or when the agreed consideration was money.

Article 116.- If the Merchant is a natural person, the acts made with the following persons are presumed fraudulent conveyances, if they were carried out within the retroactive date unless the interested party proves good faith:

I. The debtor's spouse or concubine, relatives by blood relationship up to the fourth degree, or up to the second if the relationship is by affinity, as well as relatives by civil relationship, or

II. Legal entities, in which the persons referred to in the previous section or the Merchant himself are administrators or form part of the board of directors, or jointly or separately, directly or indirectly, have rights to vote regarding over fifty percent of the equity, have decision-making power in their meetings, can appoint the majority of the members of their administrative body or by any other means have the power to make the fundamental decisions of said legal entities.

Article 117.- If the Merchant is a legal entity, the acts made with the following persons are presumed fraudulent conveyances, if they were carried out within the retroactive date unless the interested party proves good faith:

I. The administrator, members of the board of directors or relevant employees of the Merchant or members of the legal entities stated in section IV below, following the provisions of article 270 Bis, or with the spouse or concubine, relatives by blood relationship up to the fourth degree, or up to the second if the relationship is by affinity, and relatives by a civil relationship of the persons mentioned above;

II. Those natural persons who jointly or separately, directly or indirectly, have rights to vote about over fifty percent of the Merchant's equity or of the legal entities stated in section IV below, have decision-making power in their meetings, they can appoint the majority of the members of their administrative body, or by any other means they have powers to make the fundamental decisions of the Merchant;

III. Those legal entities in which there is a coincidence of the administrators, members of the board of directors or relevant executives with those of the Merchant, and

IV. Those legal entities, directly or indirectly, controlled by the Merchant, who exercise control over the latter, or who are controlled by the same company that controls the Merchant.

Article 118.- Whoever that acquired in bad faith things by fraudulent conveyances will be held liable for the Estate for the damages and losses caused when the thing has been assigned to an assignee in good faith or has been lost.

The same liability falls on whoever, to avoid the effects of the ineffectiveness that would be caused by the fraudulent conveyance, destroys, or hides the assets.

Article 119.- When the reimbursement to the Estate of any object or quantity is granted, it shall be understood that its liquid products or interest corresponding to the time in which the thing or money was enjoyed must also be reimbursed. For the calculation of products or interests, the original agreement between the parties will be followed or, failing that, the interest at the legal rate will be considered.

TITLE FOURTH

Allowance of claims

Chapter I

Of the operations for the allowance of claims

Article 120.- For performing the functions attributed to him by this Title, the reorganization officer will remain in charge despite that the reorganization stage ends.

Article 121.- Within the next thirty calendar days following the publication of the adjudication ruling in the Federal Official Gazette, the reorganization officer must submit to the judge a provisional list of claims in the Institute's format. The list shall be based on the Merchant's accounting; the other documents that allow determining his liabilities; the information that the Merchant and his staff will have to provide to the reorganization officer, and the information derived from the visitor's report and the proof of claims presented.

Article 122.- Creditors may submit proof of claims:

I. Within the next twenty calendar days following the date of the publication of the adjudication ruling in the Federal Official Gazette;

II. Within the period to submit objections against the provisional list, and

III. Within the appeal against the ruling of the allowance of claims.

After the term of section III, no claim will be allowed.

In the case of collective credits, to submit the proof of claim, it will be enough for the common representative of the creditors to appear before the reorganization to submit the proof of claim, but any creditor of the collective credit can appear individually to submit the proof of the respective claim. In the latter case, the amount individually allowed to the creditor will be deducted from the collective credit.

Article 123.- The reorganization officer will include in the provisional list, those credits he may determine based on the information referred to in the previous article 121, in the amount, class, and priority that correspond to them according to this Law, notwithstanding that the creditor has not submitted a proof of claim. Likewise, he must include those claims whose ownership has been assigned up to that moment in terms of article 144.

Article 124.- The tax credits may be determined at any time following the applicable provisions.

The reorganization officer must attach to the lists of claims all tax credits notified to the Merchant by the tax authorities with the indication that said authorities might continue with the corresponding verification procedures.

The reorganization officer must also attach to the list, the labor claims.

Article 125.- The proof of claims must be submitted to the reorganization officer and contain:

I. The full name and address of the creditor;

II. The amount of the claim that the creditor considers having against or for the Merchant;

III. The guarantees, conditions, terms, and other characteristics of the claim, including the type of document that supports it;

IV. The class and priority that in consideration of the creditor and under this Law, corresponds to the claim, and

V. The data that identifies any administrative, labor, judicial, or arbitration procedure related to the claim.

The proof of claim must be drafted in the institute's formats and be accompanied by the original or certified copy of documents on which the creditor grounds his claim. If they are not in his possession, the creditor must indicate the place where they are and show he had initiated the procedures to obtain them.

The creditor must designate a domicile for notifications within the jurisdiction of the judge or, at his expense and under his responsibility, may designate an alternative means of communication such as fax or email. If the creditor fails to comply with the preceding, the corresponding notifications, even those of a personal nature, will be made in the courtroom's bulletin board. In this case, the reorganization officer will make his communications through the judge.

Article 126.- When the debtor's spouse or concubine has credits against him for onerous contracts or payments of debts of the Merchant, it will be rebuttably presumed, that the credits have been constituted and that the debts have been paid with the Merchant's assets; therefore the spouse or concubine may not be considered a creditor.

Article 127.- When an enforceable judgment, labor award, conclusive administrative resolution or arbitration award is issued in a different procedure before the retroactive date, by which the existence of a claim against the Merchant is adjudged, the creditor must submit to the judge and the reorganization officer a certified copy of the said resolution.

The judge must allow the claim in terms of such resolutions.

Article 128.- In the provisional list of claims, the reorganization officer must include, concerning each claim, the following information:

I. The full name and address of the creditor;

II. The amount of the claim;

III. The guarantees, conditions, terms, and other characteristics of the claim, including the type of document that supports it, and

IV. The class and priority.

The reorganization officer must attach to the provisional list, an explanation in which he expresses, about each claim, the reasons in which he supports his

proposal, justifying the differences that exist about what is registered in the Merchant's accounting to what was requested by the creditor. Likewise, he must include a reasoned list of those claims that proposes not to allow.

The reorganization officer must attach to the provisional list, or indicate the place where they are located, those documents that supported its elaboration, which will form part of it.

Article 129.- Once the reorganization officer submits the provisional list to the judge, the latter shall put it at the disposal of the Merchant and the creditors so that within the next five days they present to the reorganization officer, through the judge, their objections, accompanied by the documents they deem pertinent.

Article 130.- The reorganization officer within the next ten days, will draft and submit to the judge the definitive list of claims, which must prepare based on the provisional list, the objections, the further proof of claims, and the claims grounded in conclusive judgments, as well as the tax and labor credits that up to that moment, have been notified to the Merchant.

If the reorganization officer fails to submit the definitive list on time, the judge will dictate the necessary enforcement measures to that effect, and, if he does not submit it in five more days, the judge will request the Institute to substitute him.

Article 131.- The reorganization officer is not liable for the errors or omissions in the definitive list, that have as their origin the lack of credit registration or any other error in the Merchant's accounting, and that could have been avoided with the submission of a proof of claim or with the objection to the provisional list of claims.

Article 132.- After the term mentioned in article 130 has elapsed, the judge, within the following five days, will issue the ruling of the allowance of claims, considering the definitive list submitted by the reorganization officer, as well as all the documents attached to it.

Article 133.- The judge will notify the Merchant, the Allowed Creditors, the creditor’s representatives, the reorganization officer, and the petitioner Fiscal Attorney through the Judicial Bulletin or by the court’s bulletin board.

Article 134.- The statute of limitation is interrupted:

I. By the submission of a proof of claim even if it does not comply with the requirements of article 125 or is submitted out of time;

II. By the objections to the provisional list;

III. By the ruling on the allowance of claims regarding the claims included in it, or

IV. By the appeal against the ruling on the allowance of claims.

Chapter II

Of the appeal against the ruling on the allowance of claims

Article 135.- The ruling on the allowance of claims is appealable. The appeal will have non-suspensive effects.

Article 136.- The Merchant, any creditor, the creditor’s representative, the reorganization officer, or the petitioner Fiscal Attorney, may appeal the ruling on the allowance of claims.

The preceding, notwithstanding that the creditor did not submit a proof of claim or an objection to the provisional list.

Article 137.- The appeal must be filed before the judge, within the next nine days of the notification.

Article 138.- Within the appeal brief, the appellant shall express the grievances, submit evidence, and designate the excerpt of records for the appeal. Absent this last requirement, the judge will dismiss the appeal outrightly.

Article 139.- Upon admission of the appeal, the judge shall serve the appellees so they submit a reply brief within the next nine days. In the reply brief, the appellees must submit evidence.

In the reply brief, the appellee may indicate an additional excerpt of records to the appeal; if this is not done, his conformity with those indicated by the appellant will be understood.

Article 140.- The day after the deadline for filing the reply brief, the judge will send the appeal brief, its reply, and the excerpt of records designated by the parties and added by the court on its own motion.

Article 141.- Once the briefs and records are received, the court of appeals will decide about the admission of the appeal.

Article 142.- Within ten days following the admission, the appeals court shall summon the parties to an evidentiary and allegations hearing. The hearing may be adjourned once, and in all cases must be fixed a new date within thirty calendar days after the date originally established.

After the hearing takes place, the court of appeals will issue the appeal ruling within the following five days.

Article 143.- Creditors who have not been allowed in the ruling of the allowance of claims and filed an appeal, may only exercise the rights this Law confers to Allowed Creditors until the appeal resolution that grants them such quality is conclusive.

Article 144.- If a creditor assigned his claim, he and the assignee must inform the reorganization officer, in the Institute's formats, about the assignment and its characteristics. The reorganization officer must make public the notification about the assignment, following the Institute's provisions.

TITLE FIFTH

Reorganization stage

Single Chapter

Of the reorganization plan

Article 145.- The reorganization stage has a duration of one hundred and eighty-five calendar days following the last publication in the Federal Official Gazette of the ruling of adjudication in bankruptcy.

If they consider that they are about to reach a plan, the reorganization officer or the Allowed Creditors that represent over fifty percent of the total allowed claims may request the judge for an extension of up to ninety calendar days from the date on which the term stated in the previous paragraph ends.

The Merchant and the Allowed Creditors that represent at least seventy-five percent of the total allowed claims may request the judge an extension of up to ninety calendar days more than the extension referred to in the preceding paragraph.

In no case, the duration of the reorganization stage may exceed three hundred and sixty-five calendar days following the last publication in the Federal Official Gazette.

After the initial term or its extension ends, the judge will certify that fact and will issue the liquidation stage ruling.

The time for approving the plan is included within the duration of the reorganization stage, its extension, and may not be extended over the term provided for in this article.

Article 146.- Within the next five days after being notified about the adjudication in bankruptcy, the Institute shall appoint, following the random procedure, a reorganization officer unless one situation provided for in article 147 applies.

Article 147.- The reorganization officer designated in terms of the previous article may be substituted when:

I. The Merchant and the Allowed Creditors that represent at least half of the total amount allowed request the Institute through the judge, the substitution of the reorganization officer by the one they propose in a reasoned way among those registered at the Institute.

The Institute shall appoint the proposed reorganization officer if the judge certifies the existence of the required majority of the Allowed Creditors and the consent of the Merchant;

II. The Merchant and a group of Allowed Creditors that represent at least half of the total amount allowed designate by common agreement a natural or legal person not listed in the Institute's registry, in which case they must agree with him his fees. The subordinated creditors referred to in section II of article 222 Bis, including the persons referred to in articles 15, section I, and 117, section II, shall not participate in the vote referred to in this section.

In such a case, the Judge will inform the Institute the next day, and the designation made by the Institute will no longer have legal effect. The reorganization officer thus designated shall assume all the rights and obligations this Law attributes to the reorganization officers registered in the Institute.

In the case of a pre-package petition, the Merchant and the creditors referred to in section II of article 339, may designate by common agreement a natural or legal person not listed in the register of the Institute agreeing with him on his fees.

In the event of replacement of the reorganization officer, the substituted must provide the substitute all the necessary support to take possession of his charge, and will provide him a report on the status of the reorganization stage, as well as all the information about the Merchant he has obtained in exercising his charge.

Article 148.- The reorganization officer shall procure that the Merchant and the Allowed Creditors reach a reorganization plan in terms of this Law.

Article 149.- The reorganization officer within the next three days following his appointment must inform the creditors about his appointment and indicate an address, within the jurisdiction of the judge, for fulfilling his duties.

The reorganization officer may have meetings with the Merchant and the creditors and with those who so request, either jointly or separately, and communicate with them in any way.

Article 150.- The Merchant will have to collaborate with the reorganization officer and provide him with the information he considers necessary for performing his functions.

The reorganization officer may request the judge the early termination of the reorganization stage when he considers the lack of willingness of the Merchant or his creditors to sign a reorganization plan or the impossibility of doing so. The reorganization officer would consider if the Merchant breached a previously approved reorganization plan. The request of the reorganization officer will be conducted in an ancillary proceeding.

Article 151.- The reorganization officer will recommend the carrying out of the studies and appraisals he considers necessary for the achievement of a reorganization plan, providing them, through the judge, to the creditors and the Merchant, except for any information confidential in terms of the applicable provisions.

Article 152.- The Merchant may enter into compositions with the workers provided that they do not worsen the terms of the obligations in charge of the Merchant or request from the tax authorities forgiveness or authorizations under the terms of the applicable provisions.

The terms of the compositions with the workers and the administrative resolutions of authorizations or forgiveness of tax credits shall be included in the reorganization plan.

Article 153.- The reorganization plan must consider the payment of the credits referred to in article 224, of the singularly privileged credits, and of what corresponds, according to their respective collaterals and privileges, to the secured creditors and creditors with special privilege that did not sign the plan.

The reorganization plan must provide sufficient reserves for the payment of the differences that may result from the challenges that are pending and the tax credits to be determined.

In the case of tax obligations, the reorganization plan must include the payment of the obligations under the terms of the applicable provisions. Failure to comply will resume the corresponding administrative collection procedure.

Any Allowed Creditor, who signed the plan, can agree on the total or partial extinction of their claims, their subordination, or some other form of a particular treatment that is less favorable than the treatment given to the generality of creditors of the same degree, as long as his consent is expressly stated.

Article 154.- Upon adjudication in bankruptcy, any particular composition between the Merchant and any of his creditors will be null. The creditor will lose his bankruptcy rights.

Article 155.- If, in the proposed plan, an increase in the share capital is agreed, the reorganization officer must inform the judge so he may notify the partners so they can exercise their right of preference within the following fifteen calendar days. If this right is not exercised, the judge may authorize the increase in share capital under the terms of the plan.

Article 156.- Allowed Creditors may sign the reorganization plan except for tax and labor creditors about the provisions of section XXIII of section A of article 123 of the Constitution and this Law.

To sign the plan, creditors will not need to meet to vote.

Article 157.- For a plan to be effective, it must be signed by the Merchant and the Allowed Creditors that represent over fifty percent of the sum of:

I. The amount allowed to all the general unsecured and subordinated creditors, and

II. The amount allowed to those secured creditors or creditors with special privilege that signed the plan.

In the cases in which there were subordinated creditors referred to in section II of article 222 Bis, including the persons referred to in articles 15, section I, and 117, section II, that represent, individually or together, at least twenty-five percent of the total allowed amount of the credits referred to in sections I and II of this article for the plan to be effective it must be signed by the allowed creditors that represent, at least, fifty percent of the total amount of the allowed credits mentioned in sections I and II of this article, excluding the amount of the said subordinated creditors.

The provisions of the preceding paragraph should not apply if the said subordinated agree to the terms adopted by the rest of the allowed creditors, in which case the percentage referred to in the first paragraph of this article shall prevail.

Article 158.- The reorganization plan will be considered signed by those general unsecured creditors, with no objection, when the plan provides the following about their claims:

I. The payment of the claim due on the date of the adjudication converted to UDIs at the exchange rate of the day of the adjudication;

II. The payment of all the amounts and accessories that would have become due under the current contract, from the date of the adjudication and until approving the plan, as though there were no adjudication and assuming that the referred amount in the previous section had been paid at the date of adjudication. These amounts will be converted into UDIs at the exchange rate of the date on which each payment would have been due, and

III. The payment, on the dates, for the agreed amounts and currencies, of the obligations that, according to the respective contract, become payable upon approving the plan, assuming that the amount referred to in section I had been paid at the date of adjudication and that the payments referred to in section II had been made when they were due.

The payments referred to in sections I and II of this article must be made within thirty business days following the approval of the plan, considering the exchange rate of the UDIs on the date of payment.

The claims that receive the treatment referred to in this article will be considered current upon the date of approval of the plan.

Article 159.- The plan may only stipulate for the general unsecured creditors that did not sign it the following:

I. A forbearance, with a capitalization of ordinary interests, with a maximum duration equal to the shortest assumed by the general unsecured creditors that signed the plan and represented at least thirty percent of the allowed amount that corresponds to said class;

II. A discharge of principal balance and unpaid accrued interest, equal to the lesser assumed by the general unsecured that signed the plan and that represented at least thirty percent of the allowed amount corresponding to said class, or

III. A combination of discharge and forbearance provided that the terms are identical to those accepted by at least

thirty percent of the amount of general unsecured creditors that signed the plan.

The plan may stipulate that the claims remain in the currency, unit of value or denomination, in which they were originally agreed.

Article 160.- Those secured creditors who did not sign the plan, may start or continue with the execution of their collaterals unless the plan contemplates the payment of their credits under the terms of article 158 or the payment of the value of their collaterals. In the latter case, any excess of the allowed claim about the value of the collateral will be considered as a general unsecured claim and will follow the provisions of the previous article.

Article 161.- The Merchant or the reorganization office, once they consider that they have a favorable opinion of the debtor and the majority of allowed claims necessary for the approval of the proposed plan, will put the plan at the disposal of the allowed Creditors for fifteen days for they to opine or sign it.

The Merchant or the reorganization officer must attach to the proposed plan, a summary, containing its main characteristics expressed in a clear and orderly manner. Both the proposed plan and its summary must be drafted in the Institute's formats.

During the term established in the first paragraph of this article, the Merchant shall have the duty, at the request of the reorganization or of any of the Allowed Creditors, to disclose any documentation or information they may require to approve the proposed plan.

After ten days counted from the expiration of the period provided in the first paragraph of this article, the conciliator shall submit to the judge the plan duly signed by the Merchant and at least the required majority of Allowed Creditors. The submission will be made in the terms established in the second paragraph of this article.

Article 161 Bis.- In the case of collective credits whose titles or instruments have been issued through the stock market, and absent specific rules in the provisions, contracts, instruments or documents that regulate them, the holders of collective credits can agree on their own procedure to determine the mechanisms through which they will vote to sign the plan or, failing that, be subject to the following:

I. When the common representative of the holders of the instruments or securities becomes aware of the existence of the proposed plan, he must call a general meeting of holders, so that within fifteen days the assembly is held and the proposal of the plan is submitted for discussion and approval or rejection, or the veto of the plan already signed;

II. For the approval or rejection of the proposed plan or the veto of the plan already signed, it will be required that at least seventy-five percent of the issued amount be represented at the meeting and that the decisions be approved at least by the majority of the votes computable in the assembly.

The summon for the holders' meeting will be published only once in the Federal Official Gazette and in one of the most widely circulated newspapers in the Merchant's address, at least ten days before the date of the assembly;

III. The common representative of the holders will be the only one empowered to communicate to the reorganization officer, the liquidation officer, or the judge, the resolutions adopted in the general

meeting of holders and will sign the plan by executing the resolutions and binding to all holders of instruments or securities;

IV. If a meeting has not been summoned by the common representative of the holders or the quorum necessary to meet referred to in section II above of this article has not been met, any holder of instruments or securities may appear before the bankruptcy proceeding to opine about the proposed plan and to sign it;

V. In the case of collective credits issued abroad or subject to foreign laws, the agreed procedure must be followed to adopt resolutions for this purpose, as well as the provisions of this article;

VI. The individual actions of the holders will not proceed when the action of the common representative or analogous or similar figure is in progress or is promoted on the same object, or when said actions are incompatible with any resolution approved by the general meeting of holders.

Article 161 Bis 1.- In the case of collective credits other than those stated in the previous article and absent specific rules in the provisions, contracts, instruments or documents that regulate them, the holders of the credits may be subject to the procedure stated in the previous article, or agree to a procedure to determine the mechanisms through which they will vote to sign the plan.

Article 162.- The judge the day after the plan and its summary are submitted to him for approval, must put them at the disposal of the allowed creditors for five days to:

I. Submit the objections regarding the authenticity of the expression of their consent, and

II. Use the right of veto referred to in the following article.

Article 163.- The plan may be vetoed by general unsecured creditors who have not signed the plan and whose allowed claims represent over fifty percent of the total amount of claims allowed to said class.

Those general unsecured creditors may not veto if the plan provides for the payment of their claims under the terms of article 158.

Article 164.- After the term referred to in article 162 has elapsed, the judge shall verify that the proposed plan meets all the requirements set forth in this Chapter and does not contravene public policy provisions. In this case, the judge will issue the approval resolution.

Article 165.- The approved plan will bind:

I. The Merchant;

II. All general unsecured creditors;

II Bis. All subordinated Creditors;

III. The secured creditors or creditors with special privilege that signed it, and

IV. The secured creditors or creditors with special privilege for which the plan has provided for the payment of their claims under the terms of article 158.

Signing the plan by the secured creditors or creditors with special privilege does not imply the waiver of their collaterals or privileges, so they will subsist to secure the payment of their claims in terms of the plan.

In the case of collective secured claims, the collateral can only be executed when that action derives from the decision adopted by a majority required by the provisions that regulate or the documents that implement said collective claims and,

absent a provision in the corresponding general meeting of creditors, in terms of article 161 Bis 1.

Article 166.- Upon approving the plan, the bankruptcy proceeding will close and, consequently, said plan and the resolution that approves it, will constitute the only document that governs the Merchant's obligations about the allowed claims.

All forbearances, discharges, remissions and any other benefit that said plan and the resolution that approves it establish for the Merchant would only be understood concerning the latter, and not concerning the joint and several obligors, guarantors, and other co-debtors, and cooperators of the Merchant, unless an allowed creditor expressly agrees.

Likewise, with the approval resolution, the reorganization officer will cease in his functions. The judge will order the reorganization officer to cancel the registrations made in the public records due to the adjudication in bankruptcy.

Article 166 Bis.- Only in exceptional cases, when a change in circumstances seriously affects the enforcement of the plan approved in terms of Title Fifth, to satisfy the company's conservation needs, it will proceed the amendment of the plan, which must be brought before the judge who tried the bankruptcy from which the plan derived. The petition must be submitted jointly by the Merchant and those Allowed Creditors sufficient to achieve the majorities referred to in article 157.

The judge will notify the petition to the person who acted as reorganization officer so he can opine about the proposed amendment and for the due protection of the rights of all Allowed Creditors and without prejudice to the right of any of them to oppose the res judicata demurrer about any substantial fact that cannot be unknown in the resolution to amend the plan.

Within five days after the reorganization officer is notified of the petition, he will request the recordation of the respective petition in the corresponding public registers and will publish an extract in the Federal Official Gazette and one newspaper with the largest circulation in the place of the trial, and may also be published by other means determined by the Institute. In the case of notification for creditors domiciled abroad, the provisions of article 291 shall apply.

In the case of the amendment or verification of compliance of the plan approved in terms of Title Fifth, the judge who tried the bankruptcy proceeding from which the respective plan derives will be the competent court. The same judge will be competent for the new petition in bankruptcy that would derive from the breach of the approved plan.

Likewise, any Allowed Creditor may demand the enforcement of the plan through an ancillary proceeding before the same judge that approved it.

TITLE SIXTH

Of the liquidation stage

Chapter I

Of the ruling in the liquidation stage

Article 167.- The liquidation stage will be opened when:

I. The Merchant requests it;

II. The reorganization stage ends;

III. In the case of article 150, or

IV. In the case of article 21.

Article 168.- Regarding subsections I and II of the previous article, the liquidation stage will be adjudicated outright. In the case of subsection III, the procedure will be conducted through an ancillary proceeding.

Article 169.- The liquidation stage ruling must contain:

I. The suspension of the capacity of the debtor regarding the property of the Estate, unless this suspension has been previously decreed;

II. The order to the Merchant, its administrators, managers, and dependents to hand over to the liquidation officer the possession and administration of the property of the Estate, except for the inalienable, unattachable and imprescriptible assets;

III. The order to the persons who have the Merchant's assets in their possession to deliver them to the liquidation officer, except those who are subject to the execution of a conclusive sentence for fulfilling obligations before the adjudication;

IV. The prohibition to the debtors of the Merchant to pay or deliver goods to him without authorization of the liquidation officer, warning them that if disobedience occurs, a double payment will take place, and

V. The order to the Institute to confirm the reorganization officer as liquidation officer, within five days, or otherwise appoint someone else; meanwhile, whoever is in charge of the administration of the company will have the obligations of the depositaries regarding the property of the Estate.

The liquidation stage ruling must contain, besides the mentions referred to in this article, those stated in sections I, II, and XV of article 43.

Article 170.- Upon the liquidation stage ruling, the judge will order the Institute to confirm the reorganization officer as liquidation officer within five days or, otherwise, appoint someone else following the Institute's general provisions, unless one of the situations provided for in article 174 is met.

The day after the appointment of the liquidation officer, the Institute will inform the judge. The liquidation officer must inform the judge within five days of his appointment, the names of the persons who assist him; however, he must commence his work immediately.

Article 171.- The liquidation officer must record the liquidation stage ruling and publish its summary in terms of article 45.

Article 172.- The liquidation officer, within the next three days, must inform the creditors of his appointment and indicate a domicile, within the jurisdiction of the judge, for fulfilling his obligations.

Article 173.- The reorganization officer will provide the liquidation officer all the necessary support to take possession of his charge and will give him all the information he has obtained in exercising his charge and the goods that have administered.

The reorganization officer must provide the liquidation officer with a list of all the actions promoted, and the lawsuits followed by and against the Merchant.

Article 174.- The liquidation officer appointed in terms of the preceding article may be substituted when:

I. The Merchant and the Allowed Creditors that represent at least half of the total amount allowed request the Institute

through the judge, the substitution of the liquidation officer by the one they propose in a reasoned way among those registered before the Institute, or

II. The Merchant and a group of Allowed Creditors that represent at least half of the total allowed amount designate by common agreement a natural or legal person not listed in the Institute's registry, in which case they must agree with him his fees. The subordinated creditors referred to in section II of article 222 Bis, including the persons referred to in articles 15, section I, and 117, section II, shall not participate in the vote referred to in this section.

In such a case, the Judge will inform the Institute the next day, and the designation made by the Institute will have no legal effect. The liquidation officer so appointed shall assume all the rights and obligations this Law attributes to the liquidation officers.

In the case of substitution of the liquidation officer, the substituted must observe the provisions for the reorganization officer in the previous article.

Article 175.- The liquidation stage ruling is appealable by the Merchant, any Allowed Creditor, by the reorganization officer in the same terms as the adjudication in bankruptcy ruling. If the Merchant filed the appeal against the ruling issued pursuant sections I and III of article 167, the appeal would have suspensive effects; in other cases, non-suspensive effects.

If the judge admits the appeal filed by the Merchant in suspensive effects, he will indicate the amount of the guarantee that the appellant must show within six days for the suspension to take effect.

Chapter II

Of the particular effects of the liquidation stage ruling

Article 176.- Subject to the provisions of this Chapter, the provisions of the effects of the reorganization stage apply to the liquidation stage.

Article 177.- The powers and duties of the reorganization officer, other than those necessary for reaching a plan and the allowance of claims, shall be understood as attributed to the liquidation officer from his designation. If the reorganization stage ends, the person who has initiated the allowance of claims will remain in his commission until completing this work.

If the bankruptcy proceeding begins directly in the liquidation stage, the liquidation officer will also have the powers of the reorganization officer for the allowance of claims.

Article 178.- Upon the liquidation stage ruling, the Merchant will be outrightly removed from the administration of the company and replaced by the liquidation officer.

The liquidation officer will have the broadest powers of ownership that are appropriate.

Article 179.- The Merchant will retain the disposition and administration of those goods and rights of his property legally inalienable, unattachable, and imprescriptible.

Article 180.- The liquidation officer must initiate the occupation upon his appointment, having to take possession of the goods and premises in possession of the Merchant and commence its administration. The judge must take the pertinent measures and dictate as many resolutions as are necessary for the immediate occupation of the books,

papers, documents, electronic means of storage and information process, and all the assets that the Merchant possess.

The court's clerk shall record in a minute the acts related to the occupation by the liquidation officer.

For the practice of the occupation, non-working days and hours are formally enabled.

Article 181.- The occupation of the Merchant's goods, documents, and papers will be carried out under the following:

I. Interim that the liquidation officer takes possession, the reorganization officer will continue to carry out the supervisory and surveillance functions entrusted to him;

II. As soon as the liquidation officer takes possession, the good, cash, books, securities, and other documents of the Merchant will be delivered to him through inventory, and

III. The depositaries of the assets seized, as well as those appointed by the judge upon provisional measures, shall deliver them immediately to the liquidation officer.

Article 182.- The creditor's representatives and the Merchant may attend the occupation proceedings.

Article 183.- The liquidation officer, while taking possession of the enterprise, shall immediately take the necessary measures for its safety and conservation.

Article 184.- When the liquidation officer continues the operation of the enterprise, the sales of merchandise or services will be made following the regular course of business.

The Merchant will have to assist and cooperate with the functions and tasks of the liquidation officer related to operating the company. The liquidation officer may request the help of the judge, who will dictate the enforcement measures.

The administrators, attorneys-at-law, and representatives of the Merchant will no longer represent him in the liquidation stage within the bankruptcy proceeding, except in the terms and for the effects expressly provided in this Law.

Article 185.- The assets that by their nature require to be rapidly disposed of and the securities close to maturity, or that for any other reason must be exhibited for the preservation of the rights that are inherent to them, will be related and delivered to the liquidation officer, for the timely performance of necessary acts. The money will be delivered to the liquidation officer to be deposited.

Article 186.- If the depositaries of the property of the Estate refuse to hand over their possession or hinder the liquidation officer, at the latter's request, the judge shall issue the necessary enforcement measures.

Article 187.- It is presumed that belong to the Merchant, the assets that the spouse if the marriage was contracted under the regime of separation of property, or the concubine had acquired during the marriage or concubinage in the two years before the retroactive date.

To take possession of those assets, the liquidation officer must commence an ancillary proceeding against the spouse or concubine, where it will suffice to prove the existence of the marriage or concubinage within the said period and the acquisition of the goods during it. The spouse or the concubine may oppose demonstrating that said goods were

acquired by their own and exclusive means.

Article 188.- All the assets acquired by the community property regime in the two years before the retroactive date will be included in the debtor's Estate. This provision exclusively covers the products of the goods if the community property regime were only on said products.

If the Merchant's spouse exercises the right to request the termination of the community property regime, the spouse may revendicate the goods and rights.

Article 189.- The liquidation officer in the performance of the administration of the enterprise must always act as a diligent administrator in his own business, being liable for the losses or impairments that the company suffers because of his fault or negligence.

For the contracting of new credits and the constitution or substitution of collaterals, articles 75, 76, and 77 apply.

Article 190.- Within sixty days following the date that the liquidation officer takes possession of the enterprise, he must deliver to the judge:

I. An opinion about the accounting status;

II. An inventory of the business;

III. A balance sheet, at the date in which he took the administration of the company, and

IV. A detailed report of the assistance received by the Merchant in terms of article 184.

These obligations must be fulfilled in the Institute's formats.

Once the documents stated in the previous sections are received, the judge must put them at the disposal of any interested party.

Article 191.- The inventory will be made by listing and describing all the movable or immovable property, securities of all kinds, merchandise, and rights for the Merchant.

The liquidation officer will take possession of the property of the Estate as their inventory is practiced or verified. For these purposes, his situation will be of a judicial depositary.

Article 192.- Upon the liquidation stage ruling, the acts that the Merchant and his representatives carry out, without authorization of the liquidation officer, will be null, except for those about those goods whose disposition the Merchant keeps. Said authorization must be in writing and may be general or private.

If before the commencement of the liquidation stage, the Merchant had been removed from the administration of the company or his powers had been limited concerning some of his assets, concerning third parties who were shown to know this situation, they would be null and void the acts performed in contravention.

Had the third party appeared in the bankruptcy proceeding, it would be unrebuttably presumed that he knew the situation.

The declaration of nullity will not proceed when the Estate takes advantage of the considerations obtained by the Merchant.

Article 193.- The payments made to the Merchant after the liquidation stage ruling and with knowledge of the ruling will not produce discharging effect. If the payment was made after the last publication of the summary ruling in the Federal Official

Gazette, or if the person who paid had become a party in the bankruptcy proceeding, it will be unrebuttably presumed, that the payment was made with knowledge.

Article 194.- It will be presumed that all correspondence that reaches the domicile of the Merchant's company is related to its operations, so the liquidation officer, or the reorganization officer once he is in charge of the administration, may receive and open the correspondence without requiring the presence or express authorization of the Merchant.

Article 195.- Whenever required by the liquidation officer, the Merchant must appear before him. Considering the nature of the information that the liquidation officer needs, he may require the Merchant to appear in person and not by proxy; or will indicate which one of his administrators, managers, employees, or dependents must appear.

The liquidation officer may request the help of the judge, who will dictate the enforcement measures.

Article 196.- In the case of legal entities, the provisions related to the obligations of the Merchant will be in charge of those who, under the law, the bylaws or their incorporation deed, have the legal representation of the legal entity.

TITLE SEVENTH

Alienation of assets, classification, and payment of Allowed Claims

Chapter I

Of the alienation of assets

Article 197.- Upon the liquidation stage ruling, even when the allowance of claims proceeding has not been completed, the liquidation officer will commence the alienation of the property of the Estate, trying to obtain the greatest possible product for its alienation. The best conditions and shortest terms to recover resources should be sought.

The procedures and general terms in which the sale of the goods is carried out must consider the commercial characteristics of the operations, the sound practices and prevailing commercial uses, the places where the goods to be sold are located, and the time and conditions both general and private in which the operation is carried out, considering the reduction, where appropriate, of administration costs.

When the sale of all the property of the Estate as a productive unit, allows maximizing its product, the liquidation officer must consider the advisability of keeping the company in operation. If it is not possible to keep the company in operation, the sale of the goods may be carried out by grouping them to form packages that reduce the sale time and reasonably maximize the recovery value, considering its commercial characteristics.

In all cases, it must be guaranteed the objectivity and transparency of the corresponding procedures.

When securities are included in the property of the Estate, their alienation shall be carried out following the provisions of this chapter, but the Securities Market Law would not apply concerning securities offers.

Article 198.- The sale must be carried out through the public auction procedure provided in this chapter, except for the provisions of articles 205 and 208.

The auction must be carried out within not less than ten nor greater than ninety

calendar days from the date on which the call is published for the first time.

Article 199.- The liquidation officer will publish the call following the Institute's general provisions.

The call must contain:

I. A description of each one of the goods or set of goods of the same species and quality;

II. The minimum price that will serve as a reference to determine the award, accompanied by a reasoned explanation of the price and, where appropriate, the supporting documentation;

III. The date, time, and place of the auction, and

IV. The dates, places, and times in which the interested parties may see, visit or examine the goods.

Article 200.- From the day of the publication and until the day before the auction date, anyone interested in participating may present to the judge, in a sealed envelope, the bids. Those that are submitted later will not be admitted.

Article 201.- All bids must meet these requirements:

I. Be drafted in the Institute's formats;

II. Provide cash payment. In cases where it is possible to determine precisely the amount that would correspond to an Allowed Creditor as a pro-rata payment derived from a sale, the creditor will be authorized to apply the said amount to a bid, equating it to the cash payment;

III. Have a minimum validity of forty-five calendar days after the auction is held or, where appropriate, the date the offer is submitted, and

IV. Be secured in the terms determined by the Institute through general rules.

Article 202.- When submitting bids to the judge, bidders must manifest, under oath, their family or property ties with the Merchant, his administrators, or other persons directly related to the Merchant's operations. If the Merchant is a legal entity, before proceeding to the alienation, the liquidation officer must inform the judge who are the holders of the capital stock, and in what percentage, and identify their administrators, and persons who can oblige it.

The omission or falsehood in this manifestation will cause the nullity of any award that results from the acceptance of the bid in question, without prejudice to the resulting liabilities, and the auction will be considered as not carried out.

A family bond shall be understood as the spouse or concubine, as well as the relationship by consanguinity up to the fourth degree; up to the second degree, if the relationship is by affinity, and to the civil relationship. The family bond will be understood to refer to the administrators, managers, directors, proxies, and members of the Merchant's board of directors.

If the Merchant is a legal entity, a patrimonial bond shall be understood to be that which arises between the following persons:

I. The holders of at least five percent of the share capital;

II. Those that effectively control legal entities that hold at least five percent of the share capital;

III. The legal entities in which its administrators or the persons stated in the preceding sections are jointly or

separately holders of at least five percent of the share capital;

IV. Those that can oblige it;

V. Those in which the debtor participates, directly or indirectly, in at least five percent of its share capital;

VI. The administrators and persons who can compel the persons stated in the previous section, and

VII. Any other person who, being directly related to the Merchant's operations, have access to privileged or confidential information about the company.

In the case referred to in this article may submit bids, but once submitted, they cannot improve them.

Article 203.- The judge or the court's clerk will preside over the auction on the date, time, and place authorized by the judge, observing the following:

I. Access to the auction will be public;

II. At the appointed time for the auction, whoever presides it will declare it started and immediately, will open the envelopes with the bids received in witness of those who are present, discarding those that do not meet the requirements stated in article 201 above or have a price less than the minimum stated in the call;

III. If no valid bid has been received, the auction will be declared void;

IV. Whoever presides over the auction will read aloud each of the bids admitted, making express mention of those made by persons with a family or property relationship with the Merchant;

V. After the reading, whoever presides over the auction will indicate the bid with the highest price and will ask if any of those present wishes to improve it. If anyone improves it within fifteen minutes, he will ask again if any other bidder is interested in improving it, and so on regarding the bids made, and

VI. If, after fifteen minutes from the last request for a higher bid, the last bid is not improved, it will be declared as the winning bid.

Article 204.- After the session, the judge will order, upon payment, the award of the goods for the winning bidder.

The full payment must be exhibited within ten days from the date of the auction. Otherwise, the bid will be discarded, and the auction will be considered as not carried out. In this case, the bidder will lose the deposit, or the corresponding guarantee will be effective for the benefit of the Estate.

Article 205.- The liquidation officer may request the judge authorization to dispose of any asset or set of assets of the Estate through a procedure different from that provided in the previous articles when he considers that in this manner, a greater value would be obtained.

In this case, the liquidation officer's request must contain:

I. A detailed description of each good or set of goods of the same species and quality;

II. A description of the procedure of the proposed alienation, and

III. A reasoned explanation of the advisability of carrying out the sale in the manner proposed.

Article 206.- The day after receipt of the request, the judge will put it at the disposal of the Merchant, the Allowed Creditors, and the creditor's representative for ten days.

During this period, these persons may express to the judge their disagreement with the proposal:

I. The Merchant;

II. One-fifth of the Allowed Creditors;

III. The Allowed Creditors that represent, as a whole, at least 20 percent of the total allowed credits, or

IV. The creditor's representatives that represent, as a whole, at least 20 percent of the total amount of allowed credits.

If no disagreement were expressed, the judge would order the liquidation officer to proceed with the alienation under the terms requested.

Article 207.- If, after six months from the start of the liquidation stage, all the assets of the Estate have not been alienated, any interested person may submit to the judge an offer to purchase any asset or group of assets from the remnants. The offer must be presented in the formats and according to the Institute's bases, indicating the goods it comprises, and the price offered and accompanied by the guarantee determined by the Institute through rules of general application.

The day after the offer is received, the judge will put it at the disposal of the Merchant, the Allowed Creditors, and the creditor's representatives for ten days. If at the end of this term, the persons stated in sections I to IV of article 206 have not expressed their opposition to the offer; the judge shall order the liquidation officer to call, within three days to an auction in terms of article 199, indicating as the minimum price that of the offer received.

The auction will be held within no less than ten and no more than ninety calendar days from the date of the call.

The offer received will be considered as a bid in the auction. The person who submitted it might not improve it.

Article 208.- Under his own responsibility, the liquidation officer may not attend the provisions of this Chapter, when the assets require immediate disposal because they cannot be preserved without deterioration or corruption, or that are exposed to a serious decrease in their price, or whose preservation is too expensive compared to their value, or are goods whose disposal value does not exceed the amounts established for this purpose by the Institute through general rules.

In these cases, within three business days of the sale, the liquidation officer, through the judge, will inform about the alienation to the Merchant, the creditor's representatives, and the Allowed Creditors. The report must describe the goods, their prices, and conditions of sale, justification of the urgency of the sale, and the identity of the buyer.

Article 209.- The assets that are the subject matter of an exclusion action may not be alienated while the sentence is not final. However, at the request of the liquidation officer, the plaintiff must grant a guarantee to compensate the Estate for the damages that may result if the exclusion action is not granted. The judge will determine the amount of said guarantee.

Article 210.- The liquidation officer may request the expert opinions, appraisals, and other studies that he deems necessary for fulfilling his duties.

The liquidation officer must make public the studies, which must be displayed in the Institute's formats.

The procedures for the alienation of goods may be entrusted to experts when this contributes to receive a higher recovery value or when it is more profitable, considering the cost and benefit factors. The liquidation officer must survey the performance of the specialized third parties.

The Institute, through general rules, may set payments and deposits to those who request access to the referred information; these amounts will become part of the Estate.

Article 211.- If the alienation consists in the award of the Merchant's company as an operating unit, or parts thereof consisting of operating units, the liquidation officer must notify the third parties with contracts pending of execution, related to the company or with the unit subject to alienation, letting them know that they have ten calendar days following the notification, to express to the liquidation officer their will to terminate their respective contracts. Regarding contracting parties who do not oppose, their contracts will continue with the awarded bidder.

The notification must be made in writing at the address of the contracting parties. When the domicile is not known, the notification must be made by a publication in a newspaper of greater circulation, for two consecutive days and include the name of the contracting parties to whom the notification is addressed. Notification is constructive the day after the last publication.

Article 212.- The liquidation officer is not liable for the eviction or the hidden defects of alienated the assets unless otherwise is agreed with the assignee.

The assignee of all or part of the assets of the Estate may not claim the liquidation officer or the Allowed Creditors who have received pro-rata payment, the refund of all or part of the price, the decrease thereof, or the payment of any liability.

Article 213.- Secured creditors that initiate or continue an enforcement procedure following the applicable provisions must notify the liquidation officer, informing him of the data of the enforcement proceeding.

The liquidation officer may participate in the enforcement proceeding in defense of the interests of the Estate.

Article 214.- During the first thirty calendar days of the liquidation stage, the liquidation officer may avoid the separate foreclosure of the collateral linked to the ordinary operation of the company when he considers that it is in the interest of the Estate to alienate it as part of a set of goods.

In these cases, before the alienation of the set of assets, the liquidation officer will appraise the collateral:

I. If the secured creditor did not exercise the right referred to in the second paragraph of article 89, the following should apply:

a) If the valuation of the liquidation officer is greater than the claim, including the interest accrued until the day of the alienation, the liquidation officer will fully pay the claim, with the deductions that correspond according to this Law, or

b) If less than the credit results from the appraisal, including the corresponding interest, the liquidation officer will pay the creditor the amount of the appraisal. If the valuation is less than the amount of the credit allowed on the date of the adjudication in bankruptcy, its difference

will be recorded as a general unsecured claim.

II. If the creditor exercised the right referred to in the second paragraph of article 89, the following applies:

a) If the creditor attributed to his collateral a value greater than the appraisal of the liquidation officer, the latter will pay the creditor the amount of the valuation and will record for payment as a general unsecured claim the difference between the appraisal and the amount of the allowed claim as of the date of adjudication in bankruptcy, or

b) If the creditor attributed to the collateral a value lower than the appraisal of the liquidation officer, the latter would pay the amount that the creditor has attributed to his collateral, and will record for payment as a general unsecured creditor the difference between the attributed value and the amount of the allowed claim at the date of the adjudication in bankruptcy.

For the comparisons and payments referred to in this article, the value attributed by the creditor to his collateral will be converted into national currency, using the exchange rate of the UDIs of the day before the payment to the creditor.

The payment to the creditor must always be made within three days of the sale.

The Allowed Creditor may challenge the appraisal of the liquidation officer through an ancillary proceeding, without the sale of the goods being suspended and without its result affecting the validity of the sale. While the challenge is resolved, the liquidation officer must separate, from the proceeds of the sale, the amount that corresponds to the difference between the appraisal attributed by the liquidation officer and the value claimed by the non-conforming Allowed Creditor, and invest it, in terms of Article 215.

If the judge decides that the challenge is grounded and a higher value than that assigned by the liquidation officer is attributed to the collateral, that difference, with its products, will be delivered to the Allowed Creditor. If the judge dismisses the challenge, the amount reserved will be reimbursed to the Estate.

Article 215.- Concerning the investments and reserves referred to in articles 214 and 230, the liquidation officer must make them in fixed income instruments of a credit institution whose returns predominantly protect the real value in terms of inflation and have the appropriate characteristics of security, profitability, liquidity, and availability.

The liquidation officer must submit to the judge each month a report from the status of the investments and the operations during that period, so that, the day after its receipt, the judge will put it at the disposal of the Merchant and the creditor's representatives.

Article 216.- When the collateral is foreclosed or alienated under article 214, it will be deducted the amount with which the creditor must contribute to the payment of singularly privileged creditors and claims against the Estate, under article 226.

If it is not possible to determine precisely, at the time of execution, the corresponding contribution, the minimum amount that can be expected will be deducted, and the difference between this and the maximum that may result will be reserved, according to the calculations made for this purpose by the liquidation officer. The final adjustment will be made as soon as possible to determine the

amount of the corresponding contribution accurately.

Chapter II

Of the classification of claims

Article 217.- Creditors will be classified into these classes, according to the nature of their claims:

I. Singularly privileged creditors;

II. Secured creditors;

III. Creditors with special privilege;

IV. General unsecured creditors, and

V. Subordinated creditors.

Article 218.- The following are singularly privileged creditors, whose priority is determined by order of enumeration:

I. The merchant's burial expenses, if the adjudication in bankruptcy is after death, and

II. Creditors for the expenses of the illness caused by the Merchant's death if the adjudication in bankruptcy is after death.

Article 219.- The following are secured creditors, provided that their guarantees are duly constituted under the applicable provisions:

I. Mortgages creditors, and

II. Pledges creditors.

The secured creditors will receive the payment of their credits with the product of the collaterals, with the absolute exclusion of the creditors referred to in sections III to V of article 217 and subject to the order determined under the applicable provisions regarding the date of registration.

Article 220.- Creditors with special privilege are those who, according to the Commercial Code or commercial laws, have a special privilege or a retention right.

Creditors with special privilege will collect on the same terms as secured creditors or according to the date of their claim, if it were not subject to registration, unless several concur on a certain thing, in which case it will be made the distribution pro rata without distinction of dates unless the laws provide otherwise.

Article 221.- Labor credits different from those stated in section I of article 224 and tax credits will be paid after the singularly privileged creditors and the secured creditors, but ahead of the credits with special privilege.

If the tax credits are secured, article 219 will apply up to the amount of their collateral, and any remainder will be paid in terms of the first paragraph of this article.

Article 222.- General unsecured creditors are those not considered in articles 218 to 221, 222 Bis, and 224 and will get paid pro-rata without distinction of dates.

Article 222 Bis. - The following are subordinated creditors:

I. Creditors who have agreed to subordinate their rights to general unsecured creditors; and

II. Unsecured claims held by any of the persons referred to in articles 15, 116, and 117 of this Law, except for the persons stated in articles 15, section I, and 117, section II.

Article 223.- No payments will be made to creditors of one class without paying in full the previous one, according to the priority established for them.

Article 224.- They are credits against the Estate and will be paid in the order indicated and ahead to those referred to in article 217:

I. Those referred to in section XXIII, section A, of article 123 of the Constitution and its regulatory provisions;

II. Those contracted for the administration of the Estate by the Merchant with the authorization of the reorganization officer or liquidation officer, or the credits essential to maintain the ordinary operation of the company and the liquidity necessary during the processing of the bankruptcy proceeding. In the latter case, any privilege and preference will be forfeited if the credits contravene what is resolved by the judge or authorized by the reorganization officer, and if a final judgment resolves that the credits were contracted in fraud of creditors and to the detriment of the Estate;

III. Those contracted to meet the normal expenses for the security of the assets of the Estate, its reparation, conservation, and administration, and

IV. Those that come from judicial or extrajudicial proceedings to benefit the Estate.

V. (REPEALED, DOF DECEMBER 27, 2007)

Article 225.- Vis-á-vis the secured or specially privileged creditors, the privilege referred to in the previous article can only be held by:

I. The creditors for the concepts referred to in section XXIII, section A, of article 123 of the Constitution and its regulatory provisions considering the wages of the two years before the adjudication in bankruptcy;

II. The litigation expenses promoted for the defense or recovery of the collaterals or privilege, and

III. The necessary expenses for the repair, conservation, and disposal of the collaterals or privilege.

Article 226.- If the total amount of the liabilities for the concept referred to in section I of the previous article is greater than the value of all the assets of the Estate that do not serve as collateral, the excess of the privilege will be distributed among all secured creditors.

Article 227.- For determining the amount with which each secured creditor must contribute to the obligation stated in the previous article, the value of all of the liabilities for the concept referred to in section I of article 225 will be subtracted the value of the assets of the Estate that do not serve as collateral. The resulting amount will be multiplied by the proportion that the value of the collateral of the creditor represents the sum of the values of all the assets of the Estate that serve as collateral.

Article 228.- When a company in which there are unlimitedly liable partners has been adjudicated in bankruptcy, the creditors of those partners, whose credits were before the commencement of the partner's unlimited liability, will concur with the company's creditors, placing in the degree and priority that corresponds to them.

Subsequent creditors only may collect their remaining credits after the debts of the company have been satisfied.

Chapter III

Of the payment to Allowed Creditors

Article 229.- Upon the ruling of the liquidation stage, at least every two months, the liquidation officer shall present to the judge a report of the alienations made and the status of remaining assets, and a list of the creditors that will be paid, as well as the pro-rata payment that corresponds to them.

Concerning the credits that have been contested, the liquidation officer must reserve the amount of the sums that may correspond to them. Said reserves must be invested under article 215, and when the challenge is resolved, he will pay the Allowed Creditor or refund any excess to the Estate.

Article 230.- Where the resolution of a challenge could modify the distributable amount that corresponds to the Allowed Creditors, the liquidation officer will distribute only the amount not likely to be reduced due to the appeal. The difference will be reserved and invested, under article 215. When the challenge is resolved, it will pay the creditor.

In cases in which the ruling of allowance of claims has not been issued, the proceeds of the alienations must be invested pursuant article 215.

Article 231.- The judge will put at the disposal of the Allowed Creditors and the Merchant the report, and the list referred to in articles 229 and 230 for three days. After that term, the judge will decide the manner and terms in which the available cash will be distributed.

Article 232.- The pro-rata payments will continue to be made while there are assets capable of realization.

Article 233.- If at the moment in which the bankruptcy proceeding should be closed, there were still credits pending for allowance because the ruling of allowance had been appealed, the judge will wait to declare the conclusion until the corresponding appeal is resolved.

Article 234.- It will be considered that all the assets have been alienated, even if it remains part of it, if the liquidation officer demonstrates to the judge they lack economic value, or if the value they have turns out to be less than its expenses, or to the necessary expenses for its sale.

In these cases, the judge, hearing the creditor's representatives under article 76, will decide on the destination of these assets.

Article 235.- Once the bankruptcy proceeding has concluded, the creditors who have not obtained full payment will individually retain their rights and actions for the balance.

Article 236.- Once the bankruptcy proceeding has been concluded for the cause referred to in sections III and IV of article 262, and if assets were discovered or goods that should have been understood as a property of the Estate were returned, it will proceed to its alienation and distribution.

TITLE EIGHTH

Of special bankruptcy proceedings

Chapter I

Of the bankruptcies of Merchants that provide public services under concession

Article 237.- The Merchant, who, under a concession title, provides a federal, state, or municipal public service, can be adjudicated in bankruptcy.

Article 238.- The bankruptcy proceeding is governed by the laws, regulations,

concession titles, and other provisions that regulate the concession and the public service in question, applying this Law only in what does not oppose them.

Article 239.- For this chapter, the government, agency, or other entity governed by public law that grants the concession for the provision of public service shall be understood as the granting authority.

Article 240.- The granting authority will propose to the judge everything related to the appointment, removal, and replacement of the reorganization officer and the liquidation officer, as well as to supervise their activities. When the special circumstances of the case justify it, the granting authority may establish a remuneration regime different from that provided for in article 333.

Article 241.- Upon adjudication in bankruptcy, and at any time, the granting authority may resolve the removal of the debtor from the company and appoint a person to assume it, when it considers it necessary for the continuity and security in the rendering of the public service.

The granting authority will communicate its determination to the judge, who will promptly take all necessary measures so the person designated by the granting authority takes possession of the company. The occupation will be carried out under articles 180 to 182.

Article 242.- Any plan proposed in terms of Title Fifth shall be notified to the granting authority, who may veto it within the term provided in article 162.

Article 243.- If the liquidation officer proposes, with the prior authorization of the granting authority, an alienation procedure in terms of articles 205 and 206, it can only be objected by:

I. Half of the Allowed Creditors;

II. Allowed Creditors representing, as a whole, at least fifty percent of the total amount of allowed credits, or

III. Creditor's representatives that represent, as a whole, at least fifty percent of the total amount of allowed credits.

Article 244.- If the sale of the company includes the assignment of the concession title, the alienation must have the prior approval of the granting authority, which will verify that the assignee meets the requirements to be in conditions to provide the public service.

Chapter II

Bankruptcy proceeding of the Financial Institutions

Article 244 Bis.- For this Chapter, these definitions apply:

I. Financial Institution: the entity that federal laws grant such character, excluding credit institutions, auxiliary credit organizations, and persons who carry out auxiliary credit activities.

II. Supervisory Commission: The commission responsible for the supervision and surveillance of a Financial Institution.

Article 245.- The bankruptcy proceeding of the Financial Institutions is governed by this Law, except for the provisions of the financial laws that regulate its organization and operation.

The determination of general default shall be made under the accounting registry standards that the competent financial authority issues under the financial laws that regulate its organization and operation.

The bankruptcy proceeding of banks will be governed by the provisions for judicial liquidation and other applicable regulations of the Banks Law.

Article 246.- Only the Supervisory Commission may file an involuntary petition in bankruptcy against its supervised Financial Institution.

Upon the date of filing, the Supervisory Commission may request the judge to order to said Financial Institution to keep its customer service offices closed and suspend the performance of any type of operations and services.

The judge may adopt, by his own motion, or at the request of the Supervisory Commission, the provisional measures necessary for the protection of the institution's workers, facilities, and assets, as well as the interests of creditors.

Article 247.- Upon filing the involuntary petition, the judge will summon the person entrusted with the administration of the Financial Institution, granting a term of nine days for the answer. In the answering brief, the evidence must be offered.

The day after the judge receives the answer, he will grant the petitioner three days to file a reply, where he can offer evidence.

Article 248.- Within the answer, only documentary evidence and written expert's opinion is admissible. Whoever submits the expert's opinion must accompany the information and documents that prove the experience and technical knowledge of the expert. Under no circumstances will the experts be summoned for examination.

The judge may order other evidentiary proceedings he deems appropriate, which must be carried out within a maximum of ten days.

Article 249.- When a Financial Institution is adjudicated in bankruptcy, the proceeding will begin in the liquidation stage.

Article 250.- The Supervisory Commission shall propose to the judge the appointment, removal, or replacement of the liquidation officer.

Article 251.- The National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF) may appoint up to three creditor's representatives who will represent and protect the rights and interests of the creditors.

Article 252.- The alienation proposals presented by the liquidation officer, with the approval of the Supervisory Commission, may be objected to by the Financial Institution.

Article 253.- (REPEALED, DOF JANUARY 10, 2014)

Chapter III

Bankruptcy proceeding of auxiliary credit institutions

Article 254.- The bankruptcy proceeding of the organizations and persons that carry out auxiliary credit activities shall be governed by this Law, except for the provisions of the General Law of Organizations and Auxiliary Credit Activities.

The determination of general default must be carried out under the accounting registry standards that the competent financial authority issues under the financial laws that regulate the organization and operation of the debtor.

Article 255.- The involuntary petition in bankruptcy may also be filed by the National Banking and Securities Commission (CNBV) if the debtor is supervised by it.

Upon admission of the petition, the judge will notify the CNBV and grant, either by his own motion or at the request of the petitioner or the CNBV, the provisional measures necessary for the protection of the interests of the creditors, workers, facilities, and assets of the debtor.

Article 256.- Upon admission of the petition, the judge must summon the person entrusted with the administration of the company, granting nine days to file the answer and offer evidence.

The day after the judge receives the answer will grant the petitioner three days to file a reply, where he can offer evidence.

Article 257.- Within the answer, only documentary evidence and written expert's opinion is admissible. Whoever submits the expert's opinion must accompany the information and documents that prove the experience and technical knowledge of the expert. Under no circumstances will the experts be summoned for examination.

The judge may order other evidentiary proceedings he deems appropriate, which must be carried out within a maximum of ten days.

Within the five days following the expiration of the term referred to in the second paragraph of article 256, the judge shall issue the adjudication ruling.

Article 258.- Once the bankruptcy has been adjudicated, the CNBV, in defense of the interests of the creditors, may request that the proceeding begins in the liquidation stage, or the early termination of the reorganization stage, in which case the judge will issue outrightly the liquidation stage ruling.

Article 259.- The CNBV shall propose to the judge the appointment, removal, or substitution of the reorganization officer and the liquidation officer.

Article 260.- The CONDUSEF may appoint up to three creditor's representatives, who will represent and protect the rights and interests of the creditors.

Article 261.- The alienation proposals presented by the liquidation officer, with the approval of the CNBV, may be objected to by the debtor.

TITLE NINTH

Case closure

Single Chapter

Closure of a bankruptcy proceeding

Article 262.- The judge will declare the conclusion of a case in these cases:

I. When a reorganization plan is approved;

II. If full payment has been made to the Allowed Creditors;

III. If payment had been made to the Allowed Creditors through bankruptcy pro-rata, and there were no more assets to alienate;

IV. If it is shown that the Estate is insufficient, even to cover the credits referred to in article 224;

V. In the liquidation stage, when a plan is approved by the Merchant and the Allowed Creditors that represent the majorities referred to in article 157 and the plan provides for payment for all Allowed

Creditors, including those that have not signed the plan, or

VI. At any time that the Merchant and all the Allowed Creditors unanimously request it.

Article 263.- The reorganization officer, liquidation officer, any Allowed Creditor, or any creditor's representative may request the judge to conclude the case under sections III and IV of article 262.

Article 264.- If the case concludes under sections III or IV of article 262, any Allowed Creditor who, within the following two years, proves the existence of assets enough to cover the credits referred to in article 224, may request the reopening of the case.

The bankruptcy proceeding will continue at the point where it was interrupted.

Article 265.- The closure ruling will be notified through the Judicial Gazette or by the court's board bulletin.

Article 266.- The closure ruling is appealable by the Merchant, any Allowed Creditor, the petitioner Fiscal Attorney, the visitor, the reorganization officer, or the liquidation officer in the same terms as the appeal against the adjudicative ruling.

TITLE TENTH

Of ancillary proceedings, judicial recourses, and enforcement measures

Chapter I

Ancillary proceedings and judicial recourses

Article 267.- To resolve any issue which does not have a special procedure, the interested party may bring an ancillary proceeding before the judge, under the following:

I. The defendant will have five days to answer the ancillary claim. The default defendant shall be deemed to have confessed the facts unless proven otherwise;

II. In the claim and its answer, the parties will submit evidence;

III. After the term referred to in the first section has elapsed, the judge will summon the parties to a hearing that must be held within the following ten days, for taking evidence and submission allegations;

IV. If the parties submit witness or expert witness testimony, they must exhibit a copy of the written examination, indicating the name and address of the witnesses and the expert witness of each party. The judge will give a copy to each party so they can cross-examine in writing or verbally at the hearing. No more than three witnesses will be admitted for each fact;

V. If the expert witness is submitted, the judge will designate an expert or those he deems necessary; however, each party may also appoint an expert;

VI. The officials or authorities must promptly issue to the parties the copies or documents they request, knowing that if they do not do so, they will be subject to enforcement measures, and those that have not been prepared promptly due to lack of interest will be rejected, and

VII. After the hearing, the judge will issue the ancillary ruling within three days.

Ancillary proceedings will not suspend the bankruptcy proceeding.

Article 268.- When this Law does not provide for an appeal, the motion for

reconsideration will proceed, which will be processed following the provisions of the Commercial Code.

Chapter II

Of the enforcement measures

Article 269.- To enforce his determinations, the judge may use, at his discretion, any of the following enforcement measures:

I. Fine for an amount from one hundred twenty to five hundred days of the general minimum wage in force in the Federal District at the date of commission of the offense, which may be doubled by insistence;

II. The assistance of the public force, and

III. The administrative arrest for up to thirty-six hours.

If the case requires more sanctions, it will be reported to the competent authority.

Article 270.- When the judge requests the help of the public force, the competent administrative authorities will have to provide such assistance to the full extent and throughout the time as necessary.

TITLE TENTH BIS

Administrator’s liability

Article 270 Bis. - The members of the board of directors, as well as the relevant employees, will be liable for the damages and losses caused to the Merchant for these acts:

I. Vote in the meetings of the board of directors or make determinations related to the Merchant's assets, with a conflict of interest;

II. Knowingly favoring a certain shareholder or group of shareholders, to the detriment or prejudice of the other shareholders;

III. When, without legitimate cause, by their employment, position, or commission, they obtain economic benefits for themselves or seek them for third parties, including a certain shareholder or group of shareholders;

IV. Generate, disseminate, publish, provide, or order information, knowing it is false;

V. Order or cause the omission in the registration of operations carried out by the Merchant, as well as to alter or order to alter the records to hide the true nature of the operations carried out, affecting any concept of the financial statements;

VI. Order or accept false data to be entered in the Merchant's accounts. It will be presumed unless proven otherwise, that the data included in the accounting is false when the authorities, in exercising their powers, require information related to the accounting records and the Merchant does not have it, and the information that supports accounting records;

VII. Destroy, modify or order that the accounting systems or records or the documentation be destroyed, totally or partially, before the expiration of the legal periods of conservation and to conceal their record or evidence;

VIII. Alter or order that the active or passive accounts or the conditions of the contracts be modified, make or order that non-existent operation or expenses be recorded, exaggerate the real ones or intentionally carry out any act or operation illegal or prohibited by law, generating in any of the assumptions a debt, loss or damage to the Merchant's assets, for his economic benefit, either directly or through a third party, or third parties,

including recording liabilities for the persons stated in articles 116 and 117, or

IX. In general, carry out acts of intent or in bad faith or illegal.

The liability will be joint and several among the guilty parties who have adopted the decision. Upon relief, the guilty parties will be removed from their position.

The Merchant, in no case, may agree, or provide in its bylaws, considerations, benefits or exclusions of liability, which limit, release, replace or offset the obligations for liability referred to in this article; they may only contract insurance, bonds or sureties that cover the amount of the compensation for the damages and losses, except in the case of malicious or bad faith acts, or unlawful acts.

Relevant employees are the general director of the company, as well as natural persons who are knowingly adopting, ordering, or executing the acts, occupying a job, position, or commission therein, omissions, or conduct in question.

Article 270 Bis-1.- The liability action is exclusively in favor of the Merchant and, consequently, of the Estate, despite the possible criminal action.

The liability action may be brought:

I. By the Merchant, and

II. By the shareholders who, individually or as a whole, hold shares with the right to vote, even limited or restricted, or without the right to vote, representing twenty-five percent or more of the share capital.

The plaintiff may settle the amount of the compensation for damages, provided that previously submits to the approval of the reorganization or liquidation officer the terms and conditions of the settlement. The lack of such formality will be cause for relative nullity.

The exercise of the actions referred to in this article shall not be subject to articles 161 and 163 of the General Law of Mercantile Companies. Said actions must include the total amount of the responsibilities for the Merchant and not only the amount of the personal interest of the claimants.

The actions referred to in this article will prescribe in five years from the day of the conduct.

In any case, the persons who, in the judge's consideration, have exercised the action referred to in this provision, with recklessness or bad faith, will be ordered to pay the costs following the provisions of the Commercial Code.

Article 270 Bis-2.- The members of the board of directors and the relevant employees shall not be held liable, when acting in good faith, any of the following takes place:

I. Comply with the requirements that the applicable law or the bylaws establish for the approval of the competence of the Board of Directors;

II. Make decisions or vote in the meetings of the board of directors based on information provided by relevant employees, the legal entity that provides the external audit services or independent experts, whose capacity and credibility offer no reasonable doubt;

III. They have selected the most appropriate alternative, to the best of their knowledge and belief, or the damage to the Merchant has not been foreseeable, in both cases, based on the information available at the time of the decision, or

IV. Comply with the agreements of the shareholders' meeting, if they do not violate the law.

TITLE ELEVENTH

Criminal aspects of bankruptcy

Single Chapter

Of crimes in bankruptcy

Article 271.- The Merchant adjudicated in bankruptcy by a conclusive judgment will be sanctioned with a penalty of three to twelve years in prison for any intentional act or conduct carried out before or after the adjudication in bankruptcy that causes or worsens the general default.

Unless there is evidence to the contrary, it will be presumed that the Merchant has intentionally caused or worsened the general default if he keeps his accounts so it does not allow to know the true financial situation; or alter, falsify, or destroy it.

The judge will consider, to individualize the penalty, the amount of the damage inferred to the creditors and their number.

Article 271 Bis.- When the Merchant has been adjudicated in bankruptcy, three to twelve years of prison will be imposed on the members of the board of directors, sole administrator, general director, relevant employees to which it refers Article 270 Bis, or legal representatives of the Merchant who, by modifying the active or passive accounts or the conditions of the contracts, make or order that non-existent operation or expenses are recorded with knowledge of the circumstance, or that they intentionally carry out any act or illicit operation or prohibited by law, generating damage to the Estate, for his economic benefit, either directly or through an interposer, or to benefit third parties, including registration of claims for any of the persons stated in articles 116 and 117.

The penalty referred to in this article will be one to three years in prison when it is proven to have repaired the damage and compensated the damage caused to the Merchant.

There will be no criminal proceeding for the crime provided for in this article when persons act under article 270 Bis-2, as well as in compliance with the laws that regulate the acts or conduct referred to in the first paragraph of this article.

Article 272.- The Merchant will be sanctioned with a penalty of one to three years in prison when required by the judge, does not put his accounting within the period fixed by the judge, at the disposal of the person appointed by the judge, unless the Merchant demonstrates that he could not present it due to force majeure.

Article 273.- When the Merchant is a legal entity, the criminal liability will fall on the members of the board of directors, the administrators, directors, managers or liquidators who are the authors or participants in the crime.

Article 274.- Anyone who submits proof of a non-existent or simulated claim will be punished with a penalty of one to nine years in prison.

Article 275.- These crimes will be prosecuted *ex parte* by criminal complaint. The Merchant and each one of its creditors may file a criminal complaint, the latter even if some other creditor has withdrawn his complaint or has granted forgiveness.

Article 276.- In these crimes, the bankruptcy judge, and not the criminal

judge, will rule about the criminal compensation.

Article 277.- Offenses in a bankruptcy situation, committed by the Merchant, by persons who have acted on his behalf or by third parties, may be prosecuted without waiting for the conclusion of the bankruptcy and without prejudice to its continuation.

The decisions of the bankruptcy judge do not bind the criminal jurisdiction. No qualification will be necessary to prosecute these crimes.

TITLE TWELVE

Of cooperation in international procedures

Chapter I

General Provisions

Article 278. This title applies where:

I. Assistance is sought in the Mexican Republic by a foreign court or a foreign representative in connection with a foreign proceeding;

II. Assistance is sought in a foreign State in connection with a proceeding under this Law; or

III. A foreign proceeding and a proceeding under this Law in respect of the same debtor are taking place concurrently; or

IV. Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under this Law.

Article 279.- For the purposes of this Title:

I. “Foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

II. “Foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;

III. “Foreign non-main proceeding” means a foreign proceeding, taking place in a State where the debtor has an establishment within the meaning of section VI of this article;

IV. “Foreign representative” means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;

V. “Foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;

VI. “Establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

Article 280.- The provisions of this Title shall be applied when international treaties signed by Mexico do not stipulate other provisions, unless there is no international reciprocity in place.

Article 281.- The functions referred to in this Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the Judge, the Institute or the person that the Institute appoints, pursuant to this Law.

Article 282.- The Visitator, reorganization officer or liquidation officer are authorized

to act in a foreign State on behalf of a proceeding opened in the Mexican Republic under this Law, as permitted by the applicable foreign law.

Article 283.- None of what is set forth in this Title may be interpreted in a sense that is contrary to what is set forth in Titles I to XI and XIII of this Law, or in any other way that is contrary to fundamental principles of Law that rule in the Mexican Republic. Consequently, the judge, the Insolvency Institute, the Visitator, the reorganization officer, or the liquidation officer shall refuse to adopt a measure when it is contrary to what is set forth in such Titles or when it may violate the aforementioned principles.

Article 284.- Nothing in this Title limits the power of a court or the Insolvency Institute, the Visitator, the reorganization officer or the liquidation officer to provide additional assistance to a foreign representative under other laws of Mexico.

Article 285.- In the interpretation of this Title, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Chapter II

Of the access of the foreign representatives and creditors to the Mexican courts

Article 286.- Subject to what is set forth in this Law, a foreign representative is entitled to apply directly to a court under the proceedings governed by this Law.

Article 287.- The sole fact that an application pursuant to this Title is made to a court in Mexico by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Mexican courts for any purpose other than the application.

Article 288.- A foreign representative is entitled to apply to commence a proceeding under this Law if the conditions for commencing such a proceeding are otherwise met.

Article 289.- Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under this Law.

Article 289.- Subject to the second paragraph of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Law as national creditors.

Paragraph first of this article does not affect the ranking of claims in a proceeding under this Law, except that the claims of foreign creditors shall not be ranked lower than general unsecured creditors.

Article 291.- Whenever under this Law notification is to be given to creditors in Mexico, such notification shall also be given to the foreign creditors whose domiciles are known and that do not have addresses in the national territory. The court must order that appropriate legal steps be taken with a view to notifying any creditor whose domicile is not yet known.

Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.

When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall, in addition:

I. Indicate a forty-five natural days period for filing claims and specify the place for their filing;

II. Indicate whether secured creditors need to file their secured claims; and

III. Contain any other information required to be included in such a notification to creditors pursuant to the Mexican laws and the orders of the court.

Chapter III

Of the recognition of a foreign procedure and available relief

Article 292.- A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

An application for recognition shall be accompanied by:

I. A certified copy by the foreign court of the decision commencing the foreign proceeding and appointing the foreign representative;

II. A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

III. In the absence of evidence referred to in sections I and II, any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

The court must require a Spanish translation of documents supplied in support of the application for recognition.

Likewise, the petitioner must designate the debtor's domicile for purposes of service of process. The procedure shall be conducted as an ancillary proceeding between the Foreign Representative and the debtor, with the intervention, as applicable, of the Visitator, the reorganization officer, or the liquidation officer.

Article 293.- When the recognition of a foreign procedure is requested in respect of a debtor that has an Establishment in Mexico, the provisions of Chapter IV of Title One of this Law must be observed, including those relative to the imposition of injunctive reliefs and precautionary measures.

The judgment that article 43 of this statute refers to shall also include the declaration that the Procedure or Foreign Procedure in question is recognized.

The bankruptcy proceeding shall be governed by the provisions of this Law.

Article 294.- If the debtor does not have an Establishment in the Mexican Republic, the procedure shall be processed between the Foreign Representative and the Merchant.

The procedure shall be conducted pursuant to the provisions that are included in Title Ten of this Law for the ancillary proceedings. The petitioner that files for the recognition must indicate the domicile of the debtor for purposes of the service of process.

Article 295.- If the decision or certificate referred to in the second paragraph of article 292 indicates that the foreign proceeding is a proceeding within the

meaning of section I of article 279 and that the foreign representative is a person or body within the meaning of section IV of article 279, the court is entitled to so presume.

The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.

In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Article 296.- Subject to article 281, a foreign proceeding shall be recognized if:

I. The foreign proceeding is a proceeding within the meaning of section I of article 279;

II. The foreign representative applying for recognition is a person or body within the meaning of section IV of article 279;

III. The application meets the requirements of articles 292, 293 and 294; and

IV. The application has been submitted to the competent court.

The foreign proceeding shall be recognized:

I. As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or

II. As a foreign non-main proceeding if the debtor has an establishment within the meaning of section VI of article 279 in the foreign State.

Article 297.- From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

I. Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and

II. Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

Article 298.- From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the Visitator, the reorganization officer or the liquidation officer, who shall act upon request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:

I. Staying execution against the debtor's assets;

II. For the person appointed by the Institute to be able to appoint the administrator or executor of all or part of the debtor's assets located in national territory, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; said appointment may be upon the Foreign Representative

III. Any relief mentioned in sections III, IV and VI of the first paragraph of article 300 of this Law.

In granting provisional measures that this article refers to, the provisions of this statute relative to the precautionary measures must be observed, as applicable.

Unless extended under section V of the first paragraph of article 300, the relief granted under this article terminates when

the application for recognition is decided upon.

The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.

If the debtor has an establishment within the Mexican Republic, to request the provisional measures that this article refers to, it shall be necessary to submit a recognition of a Foreign Proceeding.

Article 299.- Upon recognition of a foreign proceeding that is a foreign main proceeding:

I. Execution against the debtor's assets is stayed; and

II. The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

The scope, and the modification or termination, of the stay and suspension referred to in paragraph first of this article are subject to what is set forth in Chapter I Tittle Third of this law, regarding the stay of the enforcement procedures during the reorganization stage.

Article 300.- Upon recognition of a foreign proceeding, where necessary to protect the assets of the debtor or the interests of the creditors, the Foreign Representative may request the Visitator, the reorganization officer or the liquidation officer to request the court to grant any appropriate relief, including:

I. Staying execution against the debtor's assets to the extent it has not been stayed under section I of article 298 of this Law;

II. Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under article 299;

III. Providing the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

IV. Entrusting the administration or realization of all or part of the debtor's assets located in national territory to the foreign representative, the Visitator, the reorganization officer of the liquidation officer;

V. Extending relief granted under paragraph first of article 298;

VI. Granting any additional relief that may be available to the Visitator, the reorganization officer or liquidation officer under the Mexican Law.

Upon recognition of a foreign proceeding, the foreign representative may request to the Visitator, the reorganization officer or liquidation officer, to entrust to the Foreign Representative or another person appointed by the Institute, the distribution of all or part of the debtor's assets located in national territory, provided that the court is satisfied that the interests of creditors domiciled in Mexico are adequately protected.

In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the Mexican Law, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 301.- In granting or denying relief under article 298 or 300 of this law, or in modifying or terminating relief under paragraph this of this article, the court must be satisfied that the interests of the

creditors and other interested persons, including the debtor, are adequately protected.

The court may subject relief granted under article 298 or 300 to conditions it considers appropriate.

The court may, at the request of the foreign representative or a person affected by relief granted under article 298 or 300, or at its own motion, modify or terminate such relief. This proceeding shall be conducted through ancillary proceeding with participation of the visitator, reorganization officer or liquidation officer if applicable.

Article 302.- Upon recognition of a foreign proceeding, the foreign representative has standing to request the visitator, the reorganization officer or the liquidation officer to begin the recovery of goods that belong to the Estate and to bring fraudulent conveyances actions that Chapter VI of Title Three and articles 192 and 193 of this Law refer to.

Article 303.- Upon recognition of a foreign proceeding, the foreign representative may be authorized to intervene in any proceedings referred in article 83 and 84 of this Law.

Chapter IV

Of cooperation with courts and foreign representatives

Article 304.- In matters referred to in article 278 of this Law, the court, the Visitator, the reorganization officer or the liquidation officer shall cooperate, in the exercise of their duties, to the maximum extent possible with foreign courts or foreign representatives.

The court, the Visitator, the reorganization officer or the liquidation officer are entitled, in the exercise of their duties, to communicate directly without the need for letters rogatory or other formalities, with the foreign courts or representatives.

Article 305.- Cooperation referred to in article 304 may be implemented by any appropriate means, including:

I. Appointment of a person or body to act at the direction of the court, the reorganization officer, the Visitator or the liquidation officer.

II. Communication of information by any means considered appropriate by the court, the Visitator, the reorganization officer or the liquidation officer;

III. Coordination of the administration and supervision of the debtor's assets and affairs;

IV. Approval or implementation by courts of agreements concerning the coordination of proceedings; and

V. Coordination of concurrent proceedings regarding the same debtor.

Chapter V

Of parallel procedures

Article 306.- The effects of the recognition of a Principal Foreign Procedure and the adjudication in bankruptcy of a foreign debtor, in respect of the establishment that he has in the Mexican Republic, and the effects of the recognition of a Principal Foreign Procedure, in respect of a debtor that only has goods within the Mexican Republic, shall be restricted to the assets of the debtor that are located in the Republic and, to the extent necessary to implement cooperation and coordination under articles 304 and 305 of this Law, to other assets of the debtor that, under the Mexican law, should be administered in that proceeding.

Article 307.- Where a foreign proceeding and a proceeding under this Law are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under articles 304 and 305, and the following shall apply:

I. When the proceeding in Mexico is taking place at the time the application for recognition of the foreign proceeding is filed,

a) Any relief granted under article 298 or 300 must be consistent with the proceeding in Mexico; and

b) If the foreign proceeding is recognized in this State as a foreign main proceeding, article 306 does not apply;

II. When the proceeding in Mexico commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,

a) Any relief in effect under article 298 or 300 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in Mexico; and

b) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph first of article 298 shall be modified or terminated pursuant to paragraph second of article 298 if inconsistent with the proceeding in Mexico;

III. In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the Mexican Law, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

Article 308.- In matters referred to in article 298, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under articles 304 and 305, and the following shall apply:

I. Any relief granted under article 298 or 300 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

II. If a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 298 or 300 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;

III. If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Article 309.- In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Law, proof that the debtor is in general default.

Article 310.- Without prejudice to special privileged creditors, secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under this Law regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

TITLE THIRTEENTH

From the Federal Institute of Bankruptcy Specialists

Chapter I

Of Nature and Attributions

Article 311.- The Federal Institute of Bankruptcy Specialists is created, as an auxiliary body of the Federal Judicial Council, with technical and operational autonomy, with these powers:

I. Authorize the inscription in the corresponding registry to the persons who prove to cover the requirements for performing the functions of the insolvency officers;

II. Constitute and maintain the registry of the insolvency officers;

III. Revoke the authorization for the insolvency officers;

IV. Appoint the insolvency officers in each bankruptcy proceeding, from among those registered;

V. Establish through provisions of general application, the random procedures to appoint the insolvency officers;

VI. Prepare and apply the public selection and updating procedures for the insolvency officers, which must be previously published in the Federal Official Gazette;

VII. Establish the regime applicable to the compensation of the insolvency officers, for the services they provide in bankruptcy proceedings;

VIII. Supervise the rendering of services performed by the insolvency officers, in the bankruptcy proceedings;

IX. Serve as an advisory body for the insolvency officers, in its capacity as the body for bankruptcy and, where appropriate, the jurisdictional bodies responsible for applying this Law, regarding the criteria for interpretation and application of its provisions, always to achieve the goals established in the second paragraph of Article 1st. The opinions issued by the Institute in exercising this authority shall not be binding;

X. Promote the training and updating of the insolvency officers, registered in the corresponding registers;

XI. Carry out and support analysis, studies, and research related to its functions;

XII. Disseminate its functions, objectives, and procedures, as well as the provisions it issues under this Law;

XIII. Prepare and disclose statistics regarding bankruptcies;

XIV. Issue the general rules necessary for the exercise of the powers stated in sections IV, V, VII, and XII of this article;

XV. Report semi-annually to the Congress of the Union on the performance of its functions, and

XVI. The others conferred by this Law.

Article 312.- The Merchant who faces economic or financial problems may appear before the Institute to choose a reorganization officer, from among those who are registered in the registry of the Institute, to serve as a friendly composer between himself and his creditors. Any creditor with an expired and unpaid credit in their favor may also appear before to the Institute to inform them of this situation and request the list of reorganization officers.

The Institute must notify the applicant in writing, within the next fifteen calendar days, of the list referred to in the preceding paragraph. The applicant will pay the reorganization officer's fees.

In no case, the Institute will be liable for the acts carried out by the reorganization officer that the Merchant or any creditor has chosen.

Chapter II

Of the organization

Article 313.- The Institute will be entrusted to a Board of Directors, which will be supported by the administrative structure it determines according to the authorized budget.

Article 314.- The Board of Directors will comprise the General Director of the Institute and four members, appointed by the Federal Judicial Council, on the proposal of its President; appointments must seek a multidisciplinary integration of the members of the Board, covering administrative, accounting, economic, financial and legal matters.

Article 315.- The General Director of the Institute will be in charge for six years and the members eight years, who will be replaced and may be appointed for more than one period.

Article 316.- The members of the Board of Directors must meet these requirements:

I. Be a Mexican citizen in full exercise of their rights;

II. Be of recognized honesty;

III. Having held, in administrative, accounting, economic, financial or legal matters related to the object of this Law, positions of high responsibility, advice, teaching or research activities, for at least seven years;

IV. Not have been convicted by conclusive sentence for an intentional crime that deserves corporal punishment; nor incapacitated to carry out employment, position or commission in the public service, in the financial system, or to exercise commerce;

V. Not to be a spouse or concubine, nor to be related within the fourth degree by consanguinity or second by affinity, or civil relationship with any other member of the Board of Directors, and

VI. Not have pending litigation against the Institute.

Article 317.- The vacancy of any member of the Board of Directors will be filled through a new designation under article 314. If the vacancy occurs before the end of the respective period, the person designated to fill will last in charge for the remaining time.

Article 318.- The members of the Board of Directors may only be removed when the following circumstances occur:

I. For breach of its functions or negligence in the performance of the same;

II. Mental or physical disability that prevents the proper exercise of their functions for more than six months;

III. Performing any job, position or commission, other than those provided for in article 320;

IV. Cease to be a Mexican citizen or meet any of the requirements stated in section IV of article 316;

V. Failure to comply with the agreements of the Board of Directors or deliberately acting in excess or defect of its powers;

VI. Use, for their benefit or that of third parties, the confidential information available to them because of their position, or disclose the information above without the authorization of the Board of Directors;

VII. Submit to the Board of Directors for consideration, false information knowing it, and

VIII. Absent from their work for over five days without authorization from the Board of Directors or without force majeure or justified reason. The Board of Directors may not authorize absences for over three consecutive months or accumulated in a calendar year.

Article 319.- The Federal Judicial Council is competent to rule on the causes of removal stated in the immediately preceding article and may do so at the request of at least two of the members of the Board of Directors of the Institute.

Article 320.- The members of the Board of Directors may not, during the time of their assignment, accept or exercise any other job, position, or commission, except for unpaid teachers or in public or private social assistance institutions.

Article 321.- The Board of Directors has the following non-delegable powers:

I. Issue the general rules referred to in this Law;

II. Approve the basic administrative structure of the Institute as well as, where appropriate, the headquarters of the regional delegations;

III. Approve the organization and procedure manuals, and in general the internal regulations of the Institute;

IV. Periodically evaluate the activities of the Institute;

V. Request the necessary information from the General Director to carry out its evaluation activities;

VI. Appoint the Secretary of the Board of Directors, from among the public servants of the highest-ranking Institute under its internal regulations, and

VII. Resolve the other matters that the General Director or any member of the Board of Directors itself considers should be approved by it.

Article 322.- The ordinary sessions of the Board of Directors shall be verified at least every three months, notwithstanding that they may be called by the General Director or by request made to it by at least two of the members of the Board of Directors when considering there are important reasons for it.

Article 323.- The Board of Directors will validly meet with the attendance of at least three of its members. Resolutions will be taken by a majority vote of the members present, and the General Director will have a casting vote if a tie occurs.

Article 324.- The General Director will have these powers:

I. Administer the Institute;

II. Represent the Institute;

III. Comply and enforce the resolutions made by the Board of Directors and publish them when appropriate;

IV. Appoint the Institute staff;

V. Submit to the approval of the Board of Directors, the proposal for the basic administrative structure of the Institute, as well as the establishment and headquarters of the regional delegations;

VI. Submit to the consideration of the Board of Directors, the programs, as well

as the rules of organization and operation of the Institute, and

VII. The others conferred by this Law and other regulations.

Chapter III

Of the insolvency officers

Article 325.- Persons interested in performing the functions of insolvency officers in bankruptcy procedures must request the Institute to be registered in the respective registry, under the provisions set forth in this Chapter.

Article 326.- The interested persons must submit their request in writing to the Institute, with the documents that prove compliance with the requirements established in these sections:

I. Have relevant experience of at least five years in business administration, financial, legal, or accounting advice;

II. Not to carry out employment, position, or commission in the Public Administration, nor to be part of the Legislative or Judicial Branch, in any of the three spheres of government;

III. Be of recognized honesty;

IV. Comply with the selection procedures applied by the Institute, as well as the update procedures determined by it, and

V. Not to have been condemned through a conclusive sentence, for an intentional crime that deserves corporal punishment, nor disqualified for employment, position or commission in the public service, the financial system, or to exercise commerce.

Article 327.- The insolvency officers must guarantee their correct performance in each bankruptcy proceeding for which they are appointed, through the guarantee determined by the Institute, through general provisions.

Article 328.- Persons in any of the following cases may not be appointed in the bankruptcy proceeding in question:

I. Be a spouse, concubine or concubinary or relative within the fourth degree by consanguinity or second by affinity, of the Merchant, of any of the creditors or the judge;

II. Be in the same situation referred to in the previous section regarding the members of the administrative bodies, when the Merchant is a legal entity and of the unlimitedly liable partners;

III. Be a lawyer, attorney, or an authorized person, of the Merchant or any of the creditors, in any pending lawsuit;

IV. Maintain or have maintained during the six months immediately before their appointment, employment relationship with the Merchant or any of the creditors, or provide or have provided, during the same period, independent professional services provided that they imply subordination;

V. Be a partner, lessor, or tenant of the Merchant or one of its creditors, or

VI. Have a direct or indirect interest in bankruptcy or be a close friend or manifest enemy of the Merchant or one of its creditors.

The incompatibility referred to in section VI, will be freely judged.

Article 329.- Persons in any of the cases provided for in the previous article must excuse themselves; otherwise, they will be subject to the administrative sanctions that are applicable under this Law and those that the Institute determines. However, the judge by his own motion, or

the Merchant or any creditor or creditor's representative through the judge, may request the Institute the substitution, from the moment they become aware of the fact, regardless of criminal liability that may be incurred.

Article 330.- If once the procedure had begun, a supervening impediment occurs, the insolvency officers must immediately inform the Institute; otherwise, the legal sanctions referred to in the previous article will apply.

The insolvency officer must remain in charge until the substitute is appointed and must deliver the information and documents to which he has had access and of the goods of the Merchant he has had in his possession due to his duties.

Article 331.- The insolvency officers may only excuse themselves when there is a legal impediment, or there is sufficient cause in the opinion of the Institute, which must immediately resolve to avoid damage to the bankruptcy proceeding.

Article 332.- The insolvency officers are obliged:

I. To exercise with probity and diligence the functions that the present Law entrusts to them, within the terms established by it;

II. To supervise and watch the correct performance of the persons who help them in performing their functions;

III. To carry out the procedural actions imposed by this Law, in a clear and orderly manner, providing to any interested creditor and the Merchant the relevant information for its formulation, at the expense of the creditor who has made the corresponding written request;

IV. To render before the judge reports of their management with the periodicity established in this Law;

V. To keep the duty of confidentiality for industrial secrets, procedures, patents, and trademarks that, due to their performance, they come to know, in terms of the provisions of the legislation applicable to industrial and intellectual property, as well as the meaning of the procedural actions that in terms of this Law is obliged to carry out;

VI. To abstain from disclosing or using for their own benefit or that of third parties, the information obtained in exercising their functions;

VII. To provide the Institute with all kinds of facilities for the inspection and supervision of the exercise of its functions;

VIII. To comply with the general provisions issued by the Institute, and

IX. To comply with the others this or other laws establish.

Article 333.- The insolvency officers, and their assistants, may be compensated for performing the functions this Law entrusts to them. The regime applicable to fees will be determined by the Institute through general rules, under the following:

I. The fees are considered as ordinary expenses of the Merchant, under article 75, and their payment should not be interrupted, regardless of the stage in the bankruptcy procedure;

II. They will be paid in the terms determined by the Institute, which will consider as to the timing in which they must be covered, as provided in the last paragraph of this article, and

III. They will be under the conditions of the labor market and aimed at registering suitable and duly qualified persons for performing their functions in the registry referred to in the following Chapter.

The remuneration of the reorganization officer and liquidation officer will be linked to their performance.

Chapter IV

Of the register of the insolvency officers

Article 334.- The Institute will maintain an updated register of the insolvency officers, differentiated according to the categories determined for this purpose through general provisions.

Only persons registered in the corresponding registry may be appointed in a bankruptcy proceeding, except as provided in articles 147 and 174.

Article 335.- The appointment will be carried out through random procedures determined by the Institute through general provisions.

Article 336.- The Institute may impose, as an administrative sanction, depending on the seriousness of the infraction committed under this Law, warning, temporary suspension, or cancellation of their registration.

Article 337.- The Institute may determine the cancellation of the registration when:

I. They do not adequately perform their functions;

II. They do not comply with the updating procedures applied by the Institute;

III. They are convicted through a conclusive sentence, for an intentional crime that deserves corporal punishment, or they are disqualified from employment, office or commission in the public service, the financial system, or to exercise commerce;

IV. They carry out employment, position or commission in the Public Administration, or are part of the Legislative or Judicial Powers in the three spheres of government;

V. Refuse the performance of the functions assigned to them in terms of this Law in any commercial bankruptcy to which they have been assigned without sufficient cause in the opinion of the Institute, or

VI. They have been sentenced by final judgment to pay damages derived from any commercial bankruptcy to which they have been assigned.

Article 338.- The Board of Directors of the Institute will resolve the warning, the temporary suspension, or the cancellation of the registration, giving due process to the interested party. There will be no appeal against the resolution issued by the Board of Directors.

TITLE FOURTEENTH

Pre-package petition

Article 339.- A pre-package petition will be admitted when:

I. The petition complies with article 20;

II. The petition is signed by the Merchant and the creditors that represent at least the simple majority of the total liabilities.

For the admission of the petition, it is sufficient for the Merchant to declare under oath that the persons who sign the petition represent at least the simple majority of the total liabilities;

III. The Merchant declares under oath that:

a) It is within one of the cases of articles 10 and 11, or

b) It is imminent that will be within one of the cases of articles 10 and 11.

By imminence should be understood an inevitable period of ninety days, and

IV. The petition is attached by a proposed reorganization plan, signed by the creditors referred to in section II.

Article 340.- The Merchant and the creditors who signed the pre-package petition may request the judge the provisional measures.

Article 341.- If the petition meets the above requirements, the judge will issue the adjudication in bankruptcy without the need to appoint a visitor for a visit.

Article 342.- The adjudication must meet the requirements this Law requires, and from that moment, the proceeding will be processed as an ordinary bankruptcy, with the only exception that the Merchant or the reorganization officer must submit for the vote and subsequent judicial approval the reorganization plan attached to the petition.