



**Sunday, June 16, 2019**

11:30 – 12:30

## **Asset Sales in Insolvency: A Comparative Presentation**

### **Panel Moderator:**



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### **Panelists:**



**Fabio Weinberg Crocco**  
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# ASSET SALES IN INSOLVENCY: A COMPARATIVE PRESENTATION

III's 19TH ANNUAL CONFERENCE  
BARCELONA, SPAIN  
NEXTGEN PANEL, JUNE 16, 2019



MEXICO

## GENERAL OVERVIEW

- Under Mexican law: 1 proceeding with 2 stages:
  - Conciliation (DIP with the conciliator's surveillance)
  - Liquidation (Trustee)

Sales may be performed in any stage

## SALES DURING THE CONCILIATION STAGE

Sales on the ordinary course  
of business

Sales outside the ordinary  
course of business

- On assets not necessary for the ordinary course of business
- On assets that are necessary for the ordinary course of business

# SALES DURING LIQUIDATION

Sale as a  
going-concern

Public auction

Authorization  
for special  
proceeding

Assets that  
require  
immediate sale

Enforcement of  
collateral



U S A

# Overview

Frequent in Chapters 7 and 11 (and sometimes take place in Chapter 15)

## Chapter 11

**Ordinary Course of Business**

**Outside the Ordinary Course of Business**

**Reorganization Plan**

### Tension



VS



### Common Purposes





# Section 363 Sales

## Scope of Sales



**Specific Assets**



**Substantially  
All Assets**

**Good Business Reason**

**Highest and Best Offer**

## Court Approval

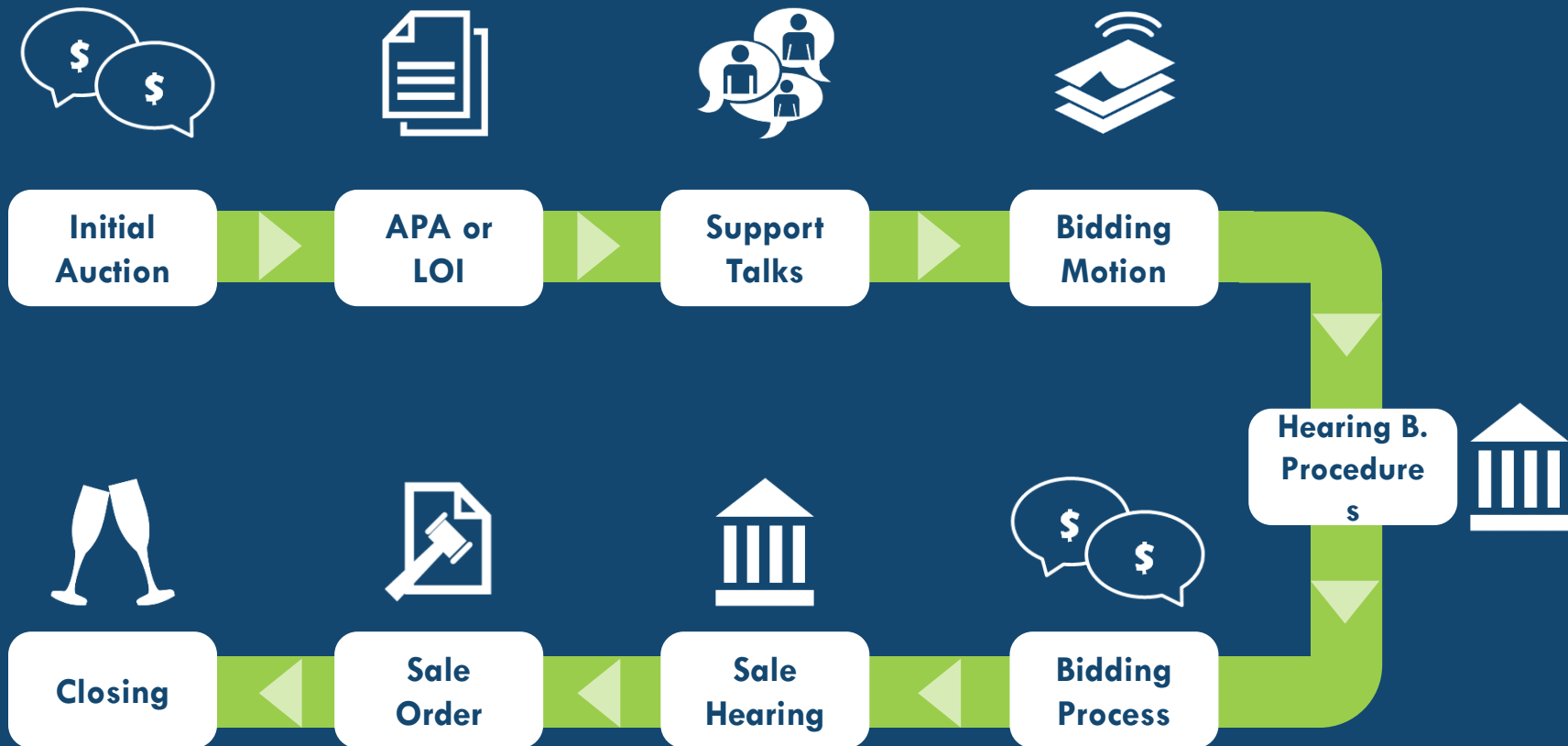
1

**Bidding Procedures  
and Protections**

2

**Sale Transaction**

# Typical Process





B R A Z I L

# Overview

- Asset sale - major role in local bankruptcy practice
- Bankruptcy liquidation
  - Court-appointed Trustee: schedule the assets, *promote the sale* and distribution according to a waterfall list of priorities
  - Sale to be promoted in a way that maximizes the value of the assets:
    - Entire business activity → individualized assets
  - Public competitive process
  - Acquisition free and clear of existing liabilities

# Overview

- Judicial Reorganization
  - DIP type of proceeding
  - No restriction on the sale under ordinary course of business (such as inventory)
  - Fixed assets may be sold only if:
    - Approved by Bankruptcy Court (as long as it acknowledges the advantage/benefit of such sale); or
    - If approved under the plan of reorganization

# Overview

- Judicial Reorganization (cont`)
  - Free and clear sale of assets
  - New concept upon enactment of the law → *isolated productive unit (IPU)*
    - Open legal concept → part of the business activities
    - To be provided in the plan of reorganization →
    - Public competitive process
    - No succession of the acquirer/investor



# SELECTED ISSUES

# Selected Issues: A Comparative Analysis

1. Free and Clear Sales
2. Assignments and Executory Contracts
3. Appeals and Finality of Sale Orders
4. Treatment of Labor Claims





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