Sunday, June 16, 2019

11:30 – 12:30

Asset Sales in Insolvency: A Comparative Presentation

Panel Moderator:

Steven Kargman  
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Panelists:

Fabio Weinberg Crocco  
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Thiago Braga Junqueira (Class V)  
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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
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
Common Purposes
Section 363 Sales

Scope of Sales
- Specific Assets
- Substantially All Assets

Court Approval
1. Bidding Procedures and Protections
2. Sale Transaction

Good Business Reason
Highest and Best Offer
Typical Process

- Initial Auction
- APA or LOI
- Support Talks
- Bidding Motion
- Closing
- Sale Order
- Sale Hearing
- Bidding Process
- Hearing B. Procedures
BRAZIL
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: 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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