

## PROBLEMS DERIVED FROM THE APPLICATION OF THE BANKRUPTCY LAW IN MEXICO.

The new Bankruptcy Law published in the Federal Official Gazette on May 12, 2000, has generated in its application several problems that were hoped avoided by its conception and consequent abrogation of the old Bankruptcy and Suspension of Payments Law.

First of all, the application of such new Law is done by Federal Courts exclusively since the Law grants them exclusive jurisdiction to know of such proceedings and this fact has exhibited such Courts with a very short knowledge of such Law, since historically these Courts have known of constitutional proceedings and their experience lays in such area and not on commercial bankruptcy proceedings which require a wider knowledge of Local Laws that are applied more regularly in Local Courts, not in Federal Courts.

This fact has produced as consequence that Federal Judges become mere expeditors in Bankruptcy proceedings avoiding full time involvement as rectors of such proceedings foreseeing the exact application of the Law.

Consequently, this has transformed the Federal Institute of Bankruptcy Experts, an auxiliary organ of the Federal Judicature Council created by the new Law, into the full time rector of bankruptcy proceedings designating all experts, conciliators, receivers, visitators, and also suggesting according to their formats which merchant is or is not in a state of business reorganization, opinion that the Judge must take into consideration before rendering judgment.

The arithmetic scheme that visitators perform in order to determine if someone is in a state of business reorganization derives from the proper Law and resides in the default of legal obligations which is wrongfully confused with the concept of insolvency which has traditionally been the fundamental concept in all types of bankruptcy proceedings.

The intention of our legislators in creating this new Law was, among other things, having a more agile and dynamic bankruptcy proceeding and in creating the Federal Institute of Bankruptcy Experts it would supposedly have an organ that would control and supervise such proceedings in lieu of the null supervision done by the various Industry and Commerce Chambers of the Receivers according to the former Law.

The purpose of having a more agile and dynamic proceeding has not been fulfilled since these bankruptcy proceedings remain very slow moving and long lasting.

Federal Judges, due to their multiple occupations in other types of proceedings, have relegated bankruptcy proceedings to second term in addition that since Bankruptcy Law is not a subject they handle ordinarily, they receive these proceedings with certain malcontent.

We are of the opinion that the application of the new Bankruptcy Law brings, without a doubt, various limitations and problems in our practice that must be eliminated as time transpires but in order to obtain a truly agile judicial administration, bankruptcy proceedings should be held before the Federal Institute of Bankruptcy Experts with a consequent recognition process before a Judicial Authority of all agreements that could have been reached between merchant and creditors or, we should expand jurisdiction to grant Local Courts of competence to handle these type of proceedings with the Federal Institute of Bankruptcy Experts remaining as an auxiliary dependency, supervising proceedings as it now does.

The prior suggestion of course would only apply in the event that an agreement were to be reached between merchant and creditors and if such agreement were not reached, then the proper Bankruptcy Stage would open before a Judicial Authority who would supervise liquidation of all merchants assets.

Additionally and in order to have bankruptcy proceedings held before the Institute, it would also be imperative to regulate the faculties and obligations that it would have as justice administration auxiliaries and their possible responsibilities that they could have. Furthermore, it would become necessary to gather a major transparency and information access as to the acts performed by the visitors,

conciliators and receivers by all the parties involved in the proceedings notifying them of all acts in a consistent manner.

The interventor's figure within the new bankruptcy proceeding continues to be a seldom used decorative figure when it should work alongside the conciliator and receiver in the business reorganization and bankruptcy proceedings respectively, notwithstanding the fact that the Law expressly provides authorization for his intervention in acts performed both by the conciliator and the receiver.

Después de seis años de vigencia de la Ley Concursal, se hace necesaria una adecuación a la misma, reformándola y adicionándola, para lograr los objetivos que motivaron su expedición y el Instituto esta trabajando en ello para mejorar la Ley de Concursos Mercantiles.

Alter six years of being in force, it is necessary to adequate the new Law, reforming and making the proper additions in order to obtain the objectives that motivated its expedition and as of now the Federal Institute is working on such regard to make the new Law a better Law.