

## Mexico: New District Courts in Bankruptcy Matters

In May 2000, the Mexican Bankruptcy Law [*Ley de Concursos Mercantiles*] was enacted. This Law created a new legal regime to deal with the insolvency of traders – *individuals and corporations* – in Mexico, and allows for restructuring in an organized, informed and more agile manner compared to the old system. The Law also provides that, in the event that the restructuring is not achieved, it is possible to close the company by means of a procedure that allows obtaining the highest value of the company or its assets.

Under Article 1 of the Bankruptcy Law, “[i]t is in the public interest to preserve companies and to prevent the generalized noncompliance with payment obligations from jeopardizing the viability of such companies and others with which they maintain a business relationship.” Thus, the Bankruptcy Law, seeks reorganization to achieve the conservation of insolvent companies and those with which they do business: it seeks to avoid a domino effect in the economy.

This recognition of the public interest in the preservation of companies was and is central to the conception of bankruptcy proceedings. It is the basis for establishing the exclusive jurisdiction of the federal courts, due to the interest of the State. Since its creation, the Bankruptcy Law excludes the concurrent jurisdiction between local and federal courts, which is recognized by Section II of Article 104 of the Mexican Constitution. This restriction did not exist under the former Bankruptcy and Suspension of Payments Law.

A transcendental aspect of the Bankruptcy Law was the creation of the Federal Institute of Bankruptcy Specialists [*Instituto Federal de Especialistas de Concursos Mercantiles*] (IFECOM), an auxiliary body of the Federal Judicial Branch, whose main function is to authorize the registration of the auxiliary specialists in the bankruptcy proceeding – *visitors, conciliators and trustees* – and also performs training tasks in the field and provides support to judges as a technical advisory body.

The creation of the IFECOM provides additional reasons for the exclusivity of federal jurisdiction. Namely: **(i)** the creation of an agency specialized in bankruptcy matters, with federal jurisdiction; and **(ii)** that among its functions is that of supporting the federal jurisdictional bodies in their non-legal work, i.e., work related to administrative, accounting and financial matters.

The federal jurisdiction established by the Mexican Bankruptcy Law was conceived to ensure the full attention of the judge in their legal functions as the head of the proceeding, for which reason the judge is assisted by IFECOM and its specialists in all other matters related to bankruptcy.<sup>1</sup>

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<sup>1</sup> Meján, Luis Manuel C. “The Mexican Bankruptcy Law” [*La Ley de Concursos Mercantiles Mexicana*]. Universidad la Salle, Mexico, February 2004, pp. 356, 367 and 377.

In the original configuration of the Bankruptcy Law, congress did not determine the need for the creation of specialized courts. On the other hand, when the Bankruptcy Law was enacted, the statistics on the number of insolvency cases that existed in Mexico did not justify the creation and existence of the specialization.<sup>2</sup>

Twenty-two years after the entry into force of the Bankruptcy Law, the situation is different. Recent practice demands judicial specialization.

Although from 2000 to November 30, 2021, only 846 insolvency proceedings were admitted and processed – *an average of 38 per year*<sup>3</sup>–; in the last two years, particularly since the beginning of the pandemic, the number of proceedings has increased.

In the period from January 1, 2021 to January 1, 2022, 43 insolvency proceedings were admitted,<sup>4</sup> which is above the annual average. However, 118 cases were dismissed.<sup>5</sup> This adds up to 161 proceedings filed in 2021.

The dismissals, the low number of cases processed in twenty-two years, and the increasing migration of cases to the United States has been the subject of criticism. Particularly because unnecessary bureaucracy and formalities are evident in practice and denote the need for judges to be more sensitive and specialized.

Furthermore, specialization is a trend in the Federal Judicial Branch, which every year creates specialized bodies in various areas, and commercial and bankruptcy matters are no exception to this trend.

This was recognized by the Federal Judicial Branch. On March 4, 2022, General Agreement 4/2022 of the Plenary of the Federal Judiciary Council was published, which establishes the creation of two District Courts in Bankruptcy Matters, with residence in Mexico City and jurisdiction throughout the country.

From now on, any insolvency petition or lawsuit, regardless of the domicile of the insolvent company, must be filed and processed in Mexico City. In addition, the Unitary Circuit Courts in Civil, Administrative and Specialized Antitrust, Broadcasting and Telecommunications Matters, with residence in Mexico City, were appointed to hear appeals and constitutional [*amparo*] proceedings related to insolvency proceedings.

At the start of operations, the two new courts and Unitary Courts were assigned cases initiated as of November 16, 2020, regardless of their stage of development.

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<sup>2</sup> *Ídem*, p. 377.

<sup>3</sup> IFECOM. Statistics on Bankruptcy Matters. Figures from June 1 to November 30, 2021. Statistics, [IFECONOMEX | Consejo de la Judicatura Federal \(cjf.gob.mx\)](https://www.ifeconomex.com/).

<sup>4</sup> *Ibidem*, Report on insolvency proceedings admitted and notified.

<sup>5</sup> *Ibidem*, Report on dismissed insolvency proceedings.

It is too early to evaluate the work of these new tribunals. The numbers continue to show more dismissals than admissions. However, the number of cases dismissed in the first half of 2022 is less than half that in 2021, a total of 36.<sup>6</sup> It remains to analyze the causes of dismissal to know if the formalities of the past have been overcome.

In addition, there are pending issues whose feasibility or problems will be determined in the following months: the specialization of second instance courts, the online trial to facilitate access to justice and the remote functions of the specialists.

However, it is undeniable that the Judicial Branch has taken an indispensable step towards the improvement of bankruptcy proceedings for the benefit of the parties that participate in them. We will build the future of these new tribunals together, constant improvement is necessary and practice provides its means.

By [Jessika Rocha](#)

Partner

Litigation, Arbitration and Bankruptcy

Von Webeser



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<sup>6</sup> *Idem.*