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### Recommended Citation

Jonatan Graham-Canedo, *Comparative Analysis of Bankruptcy Legal Provisions from Mexico and the United States: Which Legal System Is More Attractive?*, 6 DePaul Bus. & Com. L.J. 19 (2007)

Available at: <https://via.library.depaul.edu/bclj/vol6/iss1/3>

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# Comparative Analysis of Bankruptcy Legal Provisions from Mexico and the United States: Which Legal System is More Attractive?

Jonatan Graham-Canedo\*

## I. INTRODUCTION

This Article identifies procedural and substantive similarities and differences between Mexico's and the United States's bankruptcy laws relevant and helpful in determining which of the two insolvency legal systems is more attractive or successful. The comparative analysis is pertinent because the United States and Mexico are commercial partners under the North America Free Trade Agreement ("NAFTA"), with a current overall economic exchange of over three hundred billion dollars per year.<sup>1</sup> Because of this strong commercial relationship, U.S. companies commonly conduct part of their business in Mexico and have assets, suppliers, and employees within Mexico.

A significant economic reality connects both countries; thus, when a transnational company of either nation becomes financially distressed, it is convenient to recognize insolvency laws of both countries mutually and to harmonize their procedural and substantive provisions. Harmonization maximizes the value of the estate for all creditors, and simplifies procedural and substantive law.<sup>2</sup> With harmonization, cross-border investments would be more secure in the event a company becomes economically distressed and has assets located in Mexico and the United States.<sup>3</sup>

In 2000, Mexican Federal Congress passed a new insolvency law, *Ley de Concursos Mercantiles* ("Concursos Law").<sup>4</sup> This law governs

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1. This number is the sum of importations and exportations between the United States and Mexico during 2005. Instituto Nacional de Estadística Geografía e Informática [National Institute of Statistics, Geography, and Information], <http://www.inegi.gob.mx/est/contenidos/espanol/rutinas/ept.asp?t=tinfl16&c=9231> (last visited Jan. 2, 2007).

2. Emilie Beavers, *Bankruptcy Law Harmonization in the NAFTA Countries: The Case of the United States and Mexico*, 2003 COLUM. BUS. L. REV. 965, 966 (2003).

3. *Id.*

4. *Ley de Concursos Mercantiles* [L.C.M.] [Law of Commercial Insolvency], *Diario Oficial de la Federación* [D.O.], 12 de Mayo de 2000 (Mex.).

cross-border insolvency cases,<sup>5</sup> and its provisions on said matter incorporate the United Nations Commission on International Trade Law's ("UNCITRAL's") Model Law on Cross-Border Insolvency ("Model Law").<sup>6</sup> Actually, Mexico was one of the many Latin American countries that amended their bankruptcy laws during late 1990s and the first years of this new millennium pursuant to the recommendations of UNCITRAL's Model Law.<sup>7</sup> "This trend of amending or reviewing the regional insolvency laws, [was] a reaction to the financial and economic condition of Latin America's economies as well as an ever-increasing number of corporations under distress" during the 1990s.<sup>8</sup> "It [was] also a response to a global impetus of trying to save troubled companies rather than see them in liquidation."<sup>9</sup>

## II. PROCEDURAL BANKRUPTCY LAW COMPARISON

In Mexico, there is a single insolvency process for merchants, both individuals and legal entities, in distress. That process is governed by the *Concurso* Law and is known as *Concurso Mercantil* ("Concurso Process").<sup>10</sup> The *Concurso* Process consists of two consecutive stages: (i) the conciliation stage, of which the main purpose is facilitating the reorganization of debtors' debt in order to preserve their businesses as going concerns; and (ii) the liquidation stage, of which the main purpose is terminating merchants' businesses, selling their assets, and, with the proceeds derived from the sales, paying as much as possible of debtor's debt and equity.<sup>11</sup>

In the United States the main types of formal procedures for companies in financial distress are Chapter Eleven of the Bankruptcy

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5. *Id.*

6. *Id.* See also UNCITRAL, Model Law on Cross-Border Insolvency, [http://www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency/1997Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html) (last visited Nov. 12, 2007).

Adopted by UNCITRAL on 30 May 1997, the Model Law is designed to assist States to equip their insolvency laws with a modern, harmonized and fair framework to address more effectively instances of cross-border insolvency. Those instances include cases where the insolvent debtor has assets in more than one State or where some of the creditors of the debtor are not from the State where the insolvency proceeding is taking place.

*Id.*

7. See generally Rodrigo Olivares-Caminal, *Corporate Debt Restructuring in Latin America: New Developments—New Opportunities?*, 16 INT'L CO. & COM. L. REV. 254 (2005).

8. *Id.* at 262.

9. *Id.*

10. Alejandro Sainz & Manuel Ruiz-de-Chávez, *Chapter 27: Mexico*, in THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO: CORPORATE RECOVERY AND INSOLVENCY 2007 155, 155 (Global Legal Group 2007), available at <http://www.iclg.co.uk/khadmin/Publications/pdf/1240.pdf>.

11. *Id.*

Code, which allows for regulated reorganization;<sup>12</sup> Chapter Seven, which provides for liquidation;<sup>13</sup> and Chapter Fifteen, which regulates cross-border insolvency cases involving U.S. courts.<sup>14</sup>

Mexico and the United States follow a universal approach to international bankruptcy cases.<sup>15</sup> The *Concurso* Law recognizes foreign insolvency proceedings;<sup>16</sup> as a result, a foreign court may exercise jurisdiction over the property and the business of a foreign merchant located within the Mexican territory. The *Concurso* Law also recognizes foreign representatives and foreign creditors who have the same rights and access as Mexican creditors do in bankruptcy proceedings.<sup>17</sup> Chapter Fifteen of the U.S. Bankruptcy Code recognizes foreign insolvency procedures and “balance[s] the right of U.S. courts to administer assets of a debtor with ties to the United States with the rights of foreign courts with respect to assets of the same debtor.”<sup>18</sup>

As a consequence of the above described legal rules, Mexico and the United States are open to judicial cooperation in insolvency matters involving both countries; they allow domestic courts to initiate bankruptcy procedures concurrent to foreign proceedings.<sup>19</sup> Hence, U.S. and Mexican courts have the legal capacity to cooperate in joint bankruptcy proceedings.<sup>20</sup> In fact, said cooperation capability has already been proven.<sup>21</sup> An example is the *Satélites Mexicanos* (“Satmex”) restructure proceeding, which was managed by a Mexican Federal Court and a United States Bankruptcy Court in New York.<sup>22</sup> The *concliliador* (or conciliator in English) appointed in the Mexican

12. 11 U.S.C. §§ 1101-74 (2007).

13. §§ 701-85.

14. §§ 1501-32. Chapter 15 incorporates the UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 6.

15. Frederick Tung, *Is International Bankruptcy Possible?*, 23 MICH. J. INT’L L. 31, 32 (2001) (“Under [pure] universalism, the bankruptcy regime of the debtor firm’s home country would govern worldwide . . . . That regime [would] have extraterritorial reach to treat all of the debtor’s assets and claimants . . .”).

16. Ley de Concursos Mercantiles [L.C.M.] [Law of Commercial Insolvency], arts. 278-285, 292-303, Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

17. *Id.*

18. Karen E. Wagner, *Chapter 40: USA*, in THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO: CORPORATE RECOVERY AND INSOLVENCY 2007 228, 231 (Global Legal Group 2007), available at <http://www.iclg.co.uk/khadmin/Publications/pdf/1253.pdf>.

19. Compare 11 U.S.C. §§ 1501-32 (2007) with L.C.M. arts. 278-285, 292-303.

20. *Id.*

21. See *In re Satélites Mexicanos, S.A.*, de C.V., No. 05-13862 (Bankr. S.D.N.Y. filed May 2005).

22. Thomas S. Heather, *Mexican Insolvency Put to the Test*, INTERNATIONAL FINANCIAL LAW REVIEW, May 2006, at 1, available at [http://www.whitecase.com/files/Publication/6867af60-98c9-42f3-b66f-1c6f9debbada/Presentation/PublicationAttachment/c8046cd7-23d9-4cec-8c41-1e6e060acc73/article\\_MexicanInsolvency\\_THeather.pdf](http://www.whitecase.com/files/Publication/6867af60-98c9-42f3-b66f-1c6f9debbada/Presentation/PublicationAttachment/c8046cd7-23d9-4cec-8c41-1e6e060acc73/article_MexicanInsolvency_THeather.pdf).

process, Thomas Heather,<sup>23</sup> described the case as notable because of the cross-border cooperation and stated the “two judges worked together, informally, but remarkably well.”<sup>24</sup>

### III. SUBSTANTIVE BANKRUPTCY LAW COMPARISON

As described above, procedural harmonization of insolvency laws in the United States and Mexico has been achieved satisfactorily because both countries have adopted UNCITRAL’s Model Law.<sup>25</sup> There are, however, important differences in substantive matters of their respective bankruptcy laws.<sup>26</sup> This Article analyzes three bankruptcy substantive subjects, each regulated in different ways by Mexico and the United States through their insolvency laws; this analysis serves as a basis to determine which legal system is more efficient or attractive.

#### A. Creditors’ Priority

Mexico and the United States have different priority rankings for payment to the impaired creditors in the event of a debtor’s liquidation.<sup>27</sup> This difference is very relevant to establishing which bankruptcy legal system is more attractive. Both countries “diverge substantially in their treatment of labor and, to a lesser extent, tax claims within the bankruptcy estate.”<sup>28</sup> In Mexico, wages for the last two working years prior to the date of the declaration of insolvency and employees’ claims for labor indemnifications have priority over any other category of creditors’ claims.<sup>29</sup> This rule places labor credits in a dominant position. Besides this rule, the Concursos Law follows a traditional ranking of credits: Expenses incurred in the administration of secured assets are paid first.<sup>30</sup> Then, secured creditors are paid with the proceeds from the sale of mortgaged or pledged assets.<sup>31</sup> If the value of said assets is not sufficient to cover the debt, then the secured

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23. Mr. Thomas Heather is a partner of White & Case LLP and was appointed conciliator of Satmex.

24. *Satmex Reaches Milestone*, LATIN LAWYER, Dec. 14, 2006, at 9.

25. See *supra* notes 6, 14 and accompanying text.

26. Beavers, *supra* note 3, at 968.

27. Compare 11 U.S.C. § 507 (2007) with *Ley de Concursos Mercantiles* [L.C.M.] [Law of Commercial Insolvency], art. 224 (I), Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

28. Beavers, *supra* note 3, at 988.

29. Sainz & Ruiz-de-Chávez, *supra* note 10, at 158. See also *Constitución Política de los Estados Unidos Mexicanos* [Const.], art. 123 (A) (XXIII), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.); *Ley de Concursos Mercantiles* [L.C.M.] [Law of Commercial Insolvency], art. 224 (I), Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

30. Sainz & Ruiz-de-Chávez, *supra* note 10, at 158.

31. *Id.*

creditors are considered as unsecured for the balance due.<sup>32</sup> Common unsecured creditors of commercial transactions collect pro rata from the outstanding balance.<sup>33</sup> Finally, noncommercial creditors have the right to collect from any remaining amount.<sup>34</sup>

The U.S. Bankruptcy Code also follows a traditional ranking of claims, where secured creditors have first priority with respect to their security interests.<sup>35</sup> The Code establishes an “administrative” priority in which certain claims, such as fees of professionals involved in the bankruptcy and post-petition financings, are paid before other unsecured claims.<sup>36</sup> Unsecured creditors come last, and they are priority ranked by statute.<sup>37</sup> For example, pursuant to Section 507, wages earned within 180 days prior to filing have priority over other general unsecured creditors, but such claims are capped at certain amount.<sup>38</sup> In the United States, labor claims never get priority over secured creditors.<sup>39</sup>

Tax credits also receive a different priority ranking in the United States compared to Mexico.<sup>40</sup> In Mexico, the government’s tax claims have priority over unsecured claims, but they are collected after payment to the secured creditors.<sup>41</sup> However, such claims are not managed before the same courts that carry on the bankruptcy procedures; instead, they are determined and collected by administrative courts.<sup>42</sup> The rationale for separating tax claims is taxes are considered a cost legally attached to the operation of a company. Article 69 of the Concursos Law, however, provides any proceeding initiated against the debtor to collect taxes will be suspended while the Concurso Process is pending.<sup>43</sup> Tax claims in the United States do not receive priority over secured claims.<sup>44</sup> They are unsecured credits and are even ranked lower than labor credits.<sup>45</sup>

32. *Id.*

33. *Id.*

34. *Id.*

35. 11 U.S.C. § 507 (2007).

36. § 507(A)(1)(c).

37. § 507.

38. *Id.*

39. *Id.*

40. Compare 11 U.S.C. § 507(a)(8) (2007) with Ley de Concursos Mercantiles [L.C.M.] [Law of Commercial Insolvency], art. 69, Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

41. Sainz & Ruiz-de-Chávez, *supra* note 10, at 158.

42. *Id.*

43. Ley de Concursos Mercantiles [L.C.M.] [Law of Commercial Insolvency], art. 69, Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

44. 11 U.S.C. § 507(a)(8) (2007).

45. § 507.

There are various consequences deriving from the dissimilar approaches the two countries take with respect to the priority of creditors. An important one is funds deriving from the liquidation of the debtor's estate will be distributed differently, depending on where the main proceeding is conducted. It is clear creditors, particularly secured creditors, will be better off if the main proceeding is managed by a U.S. Bankruptcy Court, while employees will prefer the proceeding takes place in Mexico. Therefore, when possible, creditors will seek to file a bankruptcy petition with a U.S. court and will argue that proceeding should be the main one.

UNCITRAL's Legislative Guide on Insolvency Law, drafted with the objective of proposing harmonization of substantive bankruptcy law, establishes nine "key objectives" of insolvency regimes.<sup>46</sup> Key objective number eight, "[r]eorganization of existing creditor rights and establishment of clear rules for ranking of priority claims," expresses that free market conditions should govern and be determinative of the rank of credits.<sup>47</sup> It states: "To the greatest extent possible, those priorities should be based upon commercial bargains and not reflect social and political concerns that have the potential to distort the outcome of insolvency."<sup>48</sup>

However, UNCITRAL also recognizes that insolvency laws must balance the interests of the debtors' stakeholders against the relevant social, political, and other policy considerations that have an impact on the economic and legal goals of insolvency proceedings.<sup>49</sup> Thus, UNCITRAL acknowledges the importance of making insolvency laws compatible with the legal and social values of the society of the country in which they are based.<sup>50</sup> In the case of Mexico, labor rights are deemed to be a major victory of the working social class and of Mex-

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46. U.N. COMM'N ON INT'L TRADE LAW, LEGISLATIVE GUIDE ON INSOLVENCY LAW 10-14 (2005), available at [http://www.uncitral.org/pdf/english/texts/insolven/05-80722\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf). The Commission notes the following objectives:

- [1] Provision of *certainty in the market to promote economic stability and growth*[:] . . .
- [2] *Maximization of value of assets*[:] . . . [3] Striking a balance between maximization and reorganization[:] . . . [4] Ensuring equitable treatment of similarly situated creditors[:] . . . [5] Provision for timely, efficient and impartial resolution of insolvency[:] . . .
- [6] Preservation of the insolvency estate to allow equitable distributions to creditors[:] . . . [7] Ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information[:] . . . [8] *Reorganization of existing creditor rights and establishment of clear rules for ranking priority claims*[:] . . . [and 9] *Establishment of a framework for cross-border insolvency*.

*Id.* at v (emphasis added).

47. *Id.* at 13.

48. *Id.*

49. *Id.* at 9.

50. *Id.*

ico as a whole.<sup>51</sup> Moreover, such rights have been incorporated in Article 123 of the Mexican Constitution, making them “fundamental rights” of the labor class.<sup>52</sup> That Article represents one of the bastions of the constitution.<sup>53</sup>

UNCITRAL suggests the way to avoid forum shopping is by harmonizing insolvency laws and, specifically, recommends labor claims be treated as common unsecured credits.<sup>54</sup> Although, from a pragmatic perspective, these suggestions are sound, the United States should recognize and respect Mexico’s legitimate commitment to its working social class. Both countries need to work together and find solutions to prevent forum shopping by creditors. Perhaps, one possible way to do this is by establishing differential treatment of Mexican labor credits. For example, the first payment could be given its current priority, but capped at an amount, with the outstanding balance, if any, considered as common unsecured credit.

Finally, with respect to the creditors’ priority, another impact of giving first priority to labor claims is it deters potential lenders from financing the debtor under reorganization. The United States strongly foments the access to credit by debtors subject to a bankruptcy process.<sup>55</sup> The U.S. Bankruptcy Code is designed to encourage post-petition lending by giving these lenders special protection.<sup>56</sup> Debtors can, for instance, offer to post-petition lenders security interests over the property they acquire after the bankruptcy is filed.<sup>57</sup> On the other hand, Mexico’s priority to labor claims acts as a disincentive to give credits to debtors under financial distress.

### B. *The Option for a Cramdown*

The U.S. and Mexico bankruptcy proceedings provide different mechanisms to confirm a reorganization plan (“plan”). One of the mechanisms that differs is a “cramdown,” or the capacity of confirming a plan under adverse circumstances. Mexico does not have an option for a cramdown. The Concursos Law does not grant an option to confirm a plan once all classes of creditors have rejected the one pro-

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51. See Constitución Política de los Estados Unidos Mexicanos [Const.], art. 123 (A) (XXIII), Diario Oficial de la Federación [D.O.], 5 de Febrero de 1917 (Mex.).

52. *Id.*

53. *Id.*

54. U.N. COMM’N ON INT’L TRADE LAW, LEGISLATIVE GUIDE ON INSOLVENCY LAW (2005), available at [http://www.uncitral.org/pdf/english/texts/insolven/05-80722\\_Ebook.pdf](http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf).

55. ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE LAW OF DEBTORS AND CREDITORS 459 (Erwin Chemerinsky et al. eds., Aspen Publishers 2006).

56. *Id.*

57. 11 U.S.C § 364(c) (2007).



posed. In the United States, on the other hand, if a plan satisfies the requirements of Section 1129(b) of the Bankruptcy Code, it may be confirmed, even if the same was previously rejected by the impaired creditors' classes participating in the bankruptcy proceeding.<sup>58</sup> A debtor who wishes to cramdown a plan must count with at least the consent of one class of the impaired creditors and fulfill the requisites of Section 1129(b).<sup>59</sup> Generally, these requirements are 1) debtors must receive as much as they would in liquidation (the "best interest of creditors" test); 2) no junior creditor shall receive any distribution before a senior class is paid in full (the "absolute priority rule"); and 3) the plan must be *fair and equitable*.<sup>60</sup>

In the case of Mexico, the Concursos Law permits a debtor to reach a plan without the unanimous vote of all creditors; yet, certain mandatory percentages of votes and other legal requirements must be met.<sup>61</sup> However, it is important to note that in Mexico, creditors with secured interests can never be crammed down.<sup>62</sup> Article 160 of the Concursos Law provides that all secured creditors who do not approve a plan may foreclose their guaranties, unless the plan establishes they will be paid in full, including principal and accessories due, in terms of the contract they entered into with the debtor.<sup>63</sup>

The inability to cramdown means that the debtor is left with fewer legal options. However, cramming down a plan is a last shot for the debtor, and it usually turns negotiations between the debtor and the creditors into adversarial confrontations. Furthermore, "the process [is] time consuming and expensive."<sup>64</sup> Perhaps when the debtor knows his best alternative to a negotiated agreement is liquidation, he will make his best effort to reaching a plan that satisfies the necessary majorities in each class of impaired creditors. Thus, the fact no cramdown option exists in Mexico does not necessarily mean that the Mexican insolvency proceeding is less attractive to management of companies in distress.

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58. 11 U.S.C § 1129(b) (2005).

59. *Id.*

60. WARREN & LAWRENCE, *supra* note 55, at 655 ("Section 1129(b)(2) sets forth minimum requirements for a plan to be found *fair and equitable*, leaving to courts the imposition of any additional requirements in particular cases."); *see also* Wagner, *supra* note 18, at 231.

61. Ley de Concursos Mercantiles [L.C.M.] [Law of Commercial Insolvency], Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

62. L.C.M. art. 160.

63. *Id.*

64. Wagner, *supra* note 18, at 231.

### C. *Control of the Debtor Throughout the Insolvency Process*

The Mexican Concursos Law and Chapter Eleven of the U.S. Bankruptcy Code authorize the debtor to remain in control of the business after the bankruptcy has been filed.<sup>65</sup> In the United States, the debtor's management will continue in control of the administration as a debtor-in-possession, absent a legitimate and valid request by creditors that a trustee should be appointed to manage the estate.<sup>66</sup> When a trustee is appointed, it replaces the debtor's management and takes control of the debtor's assets and business.<sup>67</sup> Once liquidation is initiated under Chapter Seven, a trustee shall be appointed to liquidate the company's assets and make distributions to creditors.<sup>68</sup>

Under the Concursos Law, debtors may continue in possession of the estate; however, a conciliator (or *concliliador* in Spanish) will always be appointed, and he will have the responsibility of reviewing the debtor's management and accounting.<sup>69</sup> The appointed conciliator may, at any time, request the court remove the debtor from the administration of the business in order to protect the estate.<sup>70</sup> In the event that the liquidation (or *quiebra* in Spanish) stage initiates, the debtor (and thus, if applicable, the board of directors) will be removed from the administration and a receiver (or *síndico* in Spanish) will be designated by the bankruptcy court.<sup>71</sup> The receiver will have the broadest legal authority to carry on the liquidation of the debtor.<sup>72</sup>

Thus, in both countries the general rule is debtors maintain possession of the estate during the reorganization proceeding.<sup>73</sup> In the United States, the impaired creditors may request the removal of the debtor from the administration;<sup>74</sup> whereas, in Mexico, only the conciliator has that prerogative.<sup>75</sup> This means, in the United States, the impaired creditors will have an incentive to directly monitor the debtor's

65. Compare 11 U.S.C §§ 1101-74 (2007) with Sainz & Ruiz-de-Chávez, *supra* note 10, at 157.

66. § 1104. Disputes among creditors are common in cases where some of them believe that the debtor-in-possession operations will only favor one particular creditor (normally the largest and most powerful) to the exclusion of all other creditors. See WARREN & LAWRENCE, *supra* note 55, at 437. An example of these disputes can be found at *In re Marvel Entm't Group, Inc.*, 140 F.3d 463 (3d Cir. 1998) (in which a trustee was appointed after a creditor obtained control of the debtor's board of directors and the appointment was upheld).

67. § 1104.

68. Wagner, *supra* note 18, at 230.

69. Sainz & Ruiz-de-Chávez, *supra* note 10, at 157.

70. *Id.*

71. *Id.*

72. *Id.*

73. Compare *id.* with *In re Sharon Steel Corp.*, 871 F.2d 1217, 1225 (3d Cir. 1989) ("It is settled that the appointment of a trustee should be the exception, rather than the rule.").

74. 11 U.S.C § 1104 (a) (2007).

75. Sainz & Ruiz-de-Chávez, *supra* note 10, at 157.

administration; while in Mexico, the conciliator has a legal obligation to perform that function.<sup>76</sup> Also, in both countries, the debtor will be removed from the administration once the liquidation proceeding begins.<sup>77</sup> Finally, both countries give broad discretionary faculty to judges in deciding whether the debtor should be removed from the administration of the estate.<sup>78</sup>

#### IV. CONCLUSION

Mexico and the United States have modern bankruptcy laws incorporating most recommendations contained in the UNCITRAL Model Law on Cross-Board Insolvency.<sup>79</sup> Procedurally, their laws have already been harmonized, and there are no substantial differences that would make one jurisdiction more efficient or attractive to either debtors or creditors. Both countries follow a universal approach and, therefore, promote judicial cooperation in insolvency proceedings.

The U.S. and Mexican substantive bankruptcy law differences deter creditors from filing bankruptcy petitions in Mexico and are an incentive for them to persuade courts to declare the principal proceeding is to be managed by U.S. courts. On the other hand, employees of debtors in distress will find it more attractive when the main insolvency processes take place in Mexico.

The most significant difference between the two countries' substantive bankruptcy laws is the different ranking they give to creditors. The fact that labor and tax claims have a dominant priority in Mexico has adverse consequences to both the United States and Mexico. It foments forum shopping and it also discourages post-petition financing to debtors subject to an insolvency proceeding in Mexico. For this reason, the two countries need to work together to harmonize their laws, but such harmonization must acknowledge their different economic and political ideologies.

Finally, debtors subject to reorganization proceedings in Mexico do not have the option to cramdown impaired creditors to accept a plan. However, the absence of a cramdown alternative might actually promote amicable negotiations between debtors and creditors.

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76. *Id.*

77. 11 U.S.C. § 702 (2007); WARREN & LAWRENCE, *supra* note 55, at 149; Ley de Concursos Mercantiles [L.C.M.] [Law of Commercial Insolvency], art. 178, Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

78. NANCY C. DREHER & JOAN N. FEENEY, BANKRUPTCY LAW MANUAL 954 (Thomson West, 5th ed. 2007); Ley de Concursos Mercantiles [L.C.M.] [Law of Commercial Insolvency], Diario Oficial de la Federación [D.O.], 12 de Mayo de 2000 (Mex.).

79. See UNCITRAL Model Law on Cross-Border Insolvency, [http://www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency/1997Model.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html) (last visited Nov. 12, 2007).