Global Restructuring and Insolvency Guide - Chile

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*This content was last reviewed around October 2021.*

# Initial Considerations

## Can you take security over all types of assets, including accounts receivable?

**Liquidation proceeding**

Generally, under Chilean law, creditors can take a security interest over all assets of the debtor. The law recognizes a special preference for such secured creditors. Taking security interest requires the specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, non-possessory pledge and possessory pledge.

**Reorganization proceeding**

Generally, under Chilean law, creditors can take a security interest over all assets of the debtor. The law recognizes a special preference for such secured creditors. Taking security interest requires the specification of the asset. Each type of asset calls for a different type of security interest, e.g., mortgage, non-possessory pledge and possessory pledge.

## What is the nature of the insolvency process?

**Liquidation proceeding**

A court process leading to the sale of the debtor's assets, payment of its debts, and ultimate dissolution of the debtor.

**Reorganization proceeding**

A court process leading to the reorganization of the debtor's assets and liabilities in order to avoid its liquidation.

## What is the solvency requirement for a company to file a case in this jurisdiction?

**Liquidation proceeding**

For a creditor to start liquidation proceedings, its claim must be grounded on any of the following circumstances:

The debtor must have suspended payment of one or more obligations in favor of the creditor, and the same is evidenced in an executive title (in which case the claim can only be filed by the creditor whose debt has not been paid).

There are two or more past-due executive titles against the debtor, originating from different obligations. At least two enforcement proceedings have already been initiated, and the debtor has not presented sufficient assets to pay such obligations (in which case any creditor could file the insolvency claim).

The debtor or its managers cannot be found, their offices are closed, and they have not appointed an agent with enough authority to perform the company's obligations and answer new claims.

**Reorganization proceeding**

The debtor must provide certain background documents/information about its situation of financial distress, including a list of assets, liens and a certificate of its debts issued by an independent auditor, registered in the Registry of External Auditors of the Superintendence of Securities and Insurance. There are no strict legal grounds to request the reorganization procedure.

## Is there a requirement to demonstrate COMI ("centre of main interests") for a company to file a case in this country?

**Liquidation proceeding**

Yes, only under general rules, to define the jurisdiction of the court.

**Reorganization proceeding**

Yes, only under general rules, to define the jurisdiction of the court.

## Is restructuring of both secured and unsecured claims possible?

**Liquidation proceeding**

No. The liquidation of a company is a terminal process that does not allow for restructuring secured and unsecured claims.

**Reorganization proceeding**

Yes. Reorganization proceedings are flexible, allowing the restructuring of both secured and unsecured claims.

## Are the claims of creditors and shareholders put into separate classes for purposes of voting and treatment under the plan or scheme?

**Liquidation proceeding**

Yes. There are creditors with voting rights and creditors without voting rights; secured creditors and unsecured creditors; and creditors related to the debtor and unrelated creditors. Only creditors whose credits are recognized are entitled to vote at the meetings. In the case of creditors whose credits are not recognized, the court could determine their provisional right to vote.

Shareholders are only considered creditors if they have a credit against the debtor that is different from their equity. They are classified as related persons whose credit is considered unsecured, without preference to collect their debts.

**Reorganization proceeding**

Yes. There are creditors with voting rights and creditors without voting rights; secured and unsecured creditors; and creditors related to the debtor and unrelated creditors. In addition, the reorganization agreement may create additional categories of creditors that allow each category to be treated differently. As a result, the debtor can make different payment proposals to each category of creditors, provided that the proposal for each and all creditors of the same class or category is the same. Shareholders are considered creditors if they have a credit against the debtor (other than their shareholding equity).

## Is shareholder approval needed to commence a case? Are shareholders entitled to vote on a plan?

**Liquidation proceeding**

No shareholder vote is required to start the process. This matter is governed by general rules and the regulation of the corporate bylaws. Likewise, shareholders — is related to the debtor — have no right to vote in creditors' meetings.

**Reorganization proceeding**

No shareholder vote is required to start the process. This matter is governed by general rules and the regulation of the corporate bylaws. Likewise, shareholders — is related to the debtor — have no right to vote in creditors' meetings.

## Is there an ability to bind minority dissenting creditors (i.e., cramdown)?

**Liquidation proceeding**

Yes. Dissenting creditors are bound if the required creditor approvals are obtained (50+1, 4/7 or 2/3 depending on the case).

**Reorganization proceeding**

Yes. Dissenting creditors are bound if the required creditor approvals are obtained (50+1, 4/7 or 2/3 depending on the case).

# Commencing the Process

## Who can commence?

**Liquidation proceeding**

Voluntary liquidation: The debtor. The law allows the debtor to file for its own liquidation procedure if it complies with certain legal requirements on this matter.

Forced liquidation: Any creditor. The law permits any creditor to file a liquidation petition based on one of the following circumstances:

The debtor has ceased to comply with an obligation that is evidenced in an executive document (a type of document indicated in the law that evidences a debt, with respect to which a judicial trial is not required for its recognition).

The debtor has defaulted two or more payment obligations in executive documents; two or more enforcing processes have already been initiated with respect to such documents; and the debtor has not presented sufficient assets to cover its debts.

The debtor or its representatives have fled the country or gone into hiding, leaving their offices or place of business closed with no one either appointed to manage the business so that the debtor can meet its obligations or invested with sufficient power to answer new lawsuits.

**Reorganization proceeding**

Only the debtor. The proceedings are initiated by submitting an application for the reorganization of the debtor company to the competent court based on its financial distress.

## Is shareholder's consent required to commence proceeding?

**Liquidation proceeding**

No.

**Reorganization proceeding**

No.

## Is there an ability to consolidate group estates?

**Liquidation proceeding**

No.

**Reorganization proceeding**

No.

## Is there any court involvement?

**Liquidation proceeding**

Yes. The competent court, which corresponds to the debtor's domicile, intervenes. If there are multiple competent courts in the same jurisdiction, the court of appeals shall assign the case to the one that specializes in insolvency matters.

**Reorganization proceeding**

Yes. The competent court, which corresponds to the debtor's domicile, intervenes. If there are multiple competent courts in the same jurisdiction, the court of appeals shall assign the case to the one that specializes in insolvency matters. The court's main involvement is related to the determination of credits in case of challenges from the debtor, the overseer, or any other creditor.

## Who manages the debtor?

**Liquidation proceeding**

The settlement administrator (liquidator). They represent the debtor and are in charge of administering and liquidating their assets to make payments to creditors in the established order.

**Reorganization proceeding**

The overseer (intervenor) shall monitor the process and the state of the debtor's business and promote settlements between the debtor and its creditors.

## What is level of disclosure of process to voting creditors?

**Liquidation proceeding**

The liquidation proceeding is open to the public, and any interested party can access it through the digital file on the judiciary web page. In addition, when the court so orders, the resolutions shall be published in the Insolvency Gazette, which is also open to the public.

**Reorganization proceeding**

The reorganization proceeding is open to the public, and any interested party can access it through the digital file on the judiciary web page. In addition, when the court so orders, the resolutions shall be published in the Insolvency Gazette, which is also open to the public.

## What entities are excluded from customary insolvency or reorganisation proceedings, and what legislation applies to them?

**Liquidation proceeding**

The Insolvency Law applies to all types of debtors. In any case, there are certain types of debtors, such as financial entities, insurance companies or investment services companies, that will also be subject to their specific legislation.

**Reorganization proceeding**

The Insolvency Law applies to all types of debtors. In any case, certain types of debtors, such as financial entities, insurance companies or investment services companies, will also be subject to their specific legislation. There is an exception and limitation to the exercise of the right to vote of the persons related to the debtor; they will not enjoy the right to vote, nor will they be considered in the calculation of the respective quorum.

## How long does it generally take for a creditor to commence the procedure?

**Liquidation proceeding**

A creditor can apply for the opening of a liquidation proceeding. The insolvency court has to hear the debtor first before initiating the liquidation proceeding. Between the application of the creditor and the initiation of the insolvency proceedings by the court, there is generally a minimum period of two to four weeks.

**Reorganization proceeding**

N/A

# Effect of Process

## Does debtor remain in possession with continuation of incumbent management control?

**Liquidation proceeding**

No. The debtor is prevented from managing his own assets, except those of a non-attachable nature. The management of the attachable assets passes directly to the Liquidation Administrator, who has the authority vested by law to immediately take the protective actions deemed necessary to prevent the deterioration or destruction of any of the assets.

However, the declaration of bankruptcy/liquidation does not transfer the title of the bankruptcy party´s property to the creditors; the debtor is only prohibited from disposing of the property until the creditors' claims have been settled.

**Reorganization proceeding**

Commonly, the debtor remains in possession with a continuation of incumbent management unless agreed otherwise in the Reorganization Agreement.

## What is the stay/moratorium regime (if any)? Is the stay or moratorium worldwide?

**Liquidation proceeding**

After the commencement of insolvency proceedings, no enforcement proceedings can be started against the debtor and those previously started shall be stayed. But this rule does not apply to secured creditors in respect of the enforcement of their pledges or mortgages. Such secured creditors may initiate or continue to foreclose actions independent from the liquidation proceeding. The moratorium regime is effective only within Chilean territory; to make it effective in other jurisdictions, the Chilean insolvency process should be recognized abroad.

**Reorganization proceeding**

There is a "financial protection period" that lasts 30 days from the court's reorganization resolution. During that period, no enforcement proceedings can be started against the debtor on the grounds of the initiation of the reorganization proceeding, and those previously started shall be stayed. This prevents creditors from collecting the credits, accelerating debts, filing collection claims in court, etc. If the creditors meeting so agrees, this period can be extended to 60 and 90 days. This relief is effective only within Chilean territory; to make it effective in other jurisdictions, the Chilean insolvency process should be recognized abroad.

## Is there a provision for debtor in possession or rescuer financing or superpriority or priming financing?

**Liquidation proceeding**

No.

**Reorganization proceeding**

Yes, in accordance with the terms and conditions of an approved reorganization plan. Also, creditors that provide financing to debtors during the reorganization proceeding may be entitled to a superpriority.

## Can procedure be used to implement a debt-to-equity swap?

**Liquidation proceeding**

No.

**Reorganization proceeding**

Yes, in accordance with the terms and conditions of an approved reorganization plan.

## Are third party releases available?

**Liquidation proceeding**

No

**Reorganization proceeding**

Yes, in accordance with the terms and conditions of an approved reorganization plan.

## Are the proceedings recognised abroad?

**Liquidation proceeding**

Yes.

**Reorganization proceeding**

Yes.

## Has the UNCITRAL Model Law been adopted?

**Liquidation proceeding**

Yes.

**Reorganization proceeding**

Yes.

## Can a debtor continue to carry on business during insolvency proceedings?

**Liquidation proceeding**

Yes, but only in a specific case. The debtor's assets can be sold individually or all together as an ongoing concern or economic unit. In this last case, the operations of the business will continue until its sale but under the administration of the liquidator.

**Reorganization proceeding**

The debtor can continue with its business and even take out loans and carry out foreign trade operations. During this period, all agreements signed by the debtor remain in force and maintain their payment conditions. The debtor may not encumber or dispose of its assets, except for those whose disposal is proper to its business or those that are strictly necessary for the normal development of their activity.

# Other Factors

## Are there any wrongful or insolvent trading restrictions and what is the directors' liability?

**Liquidation proceeding**

There is no obligation binding on the debtor, its partners, directors or representatives to file for insolvency. Nevertheless, Chilean insolvency law affords creditors certain civil and criminal actions in case of: (i) inducement or aggravation of insolvency; (ii) hiding of assets; or (iii) misleading accounting information.

As a general rule, the debtor's representatives are not personally liable for actions challenged through an insolvency revocation action. However, to the extent that such actions involve one of the criminal offenses referred to above, the representative would be personally liable for such criminal offenses.

Additionally, according to Chilean general corporate law, the representative could be personally liable for mismanagement vis-à-vis the insolvent company's shareholders or partners if his/her negligence or fraud caused the mismanaged business situation.

**Reorganization proceeding**

N/A

## What is the order of priority of claims?

**Liquidation proceeding**

Preferred creditors established by law on account of the nature of the credit (e.g., labor or tax claims) or the holding of a perfected security interest (e.g., a mortgage or pledge)

Unsecured creditors

**Reorganization proceeding**

Privileged creditors with a superior right to payment established by law on account of the nature of the credit (e.g., labor or tax claims) or the holding of a perfected security interest (e.g., a mortgage or pledge)

Unsecured creditors

## Do pension liabilities have any priority over other unsecured claims?

**Liquidation proceeding**

Yes. Pension claims are "preferred credits" and rank ahead of unsecured claims in any distribution.

**Reorganization proceeding**

N/A. Pension liabilities are not subject to reorganization proceedings.

## Is it possible to challenge prior transactions?

**Liquidation proceeding**

Yes.

Any payment or disposal of assets made on terms different from those originally agreed, made within one year from the commencement of the insolvency procedure

Any gratuitous agreement (e.g., a gift) or any onerous agreement where the debtor's counterparty was aware of the bad economic situation of the debtor and the agreement caused a detriment to other creditors, made within two years from the commencement of the insolvency procedure

**Reorganization proceeding**

Yes.

Any payment or disposal of assets made on terms different from those originally agreed, made within one year from the commencement of the insolvency procedure

Any gratuitous agreement (e.g., a gift) or any onerous agreement where the debtor's counterparty was aware of the bad economic situation of the debtor and the agreement caused a detriment to other creditors, made within two years from the commencement of the insolvency procedure

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