Global Restructuring and Insolvency Guide - Mexico

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*This content was last reviewed around December 2021.*

# Initial Considerations

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

**Conciliation**

No attachment or execution against the rights and/or property of the debtor can take place, except for labor claims.

**Bankruptcy**

Yes. This can be requested by the debtor, creditors or trustee and approved by the bankruptcy judge.

## What is the nature of the insolvency process?

**Conciliation**

Preserve the company and its operation by means of an agreement between the company and the majority of its recognized creditors.

The process lasts 360 calendar days. Otherwise, the company is subject to being declared bankrupt.

**Bankruptcy**

Sell the working unit, productive units and assets of the company in order to pay the recognized creditors. In addition,  the company is liquidated and closed.

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

**Conciliation**

A company may be subject to an insolvency proceeding when any of the following circumstances are met:

Obligations that have been due for at least 30 days and that represent at least 35% of all obligations owed by the debtor on the date on which the claim or request for insolvency is made.

The debtor does not have assets] to pay at least 80% of its obligations due on the date of the filing of the petition. General default on the payment of obligations also exists when the debtor does not have the assets to pay at least 80% of its obligations.

There is a lack or insufficiency of assets to carry out an attachment

The debtor fails to pay its debts to two or more different creditors.

The debtor is missing or hiding, leaving no one in charge of the business so as to comply with pending obligations.

The company's business offices have been closed, leaving no one in charge of the business so as to comply with pending obligations.

The debtor carries out fraudulent or fictitious practices so as not to pay its debts.

The debtor breaches a settlement reached with its creditors under the law.

Any other analogous causes

**Bankruptcy**

The declaration of bankruptcy occurs in four circumstances:

The debtor himself requests it.

The conciliator requests it and the court agrees in light of the lack of disposition on the part of the debtor or its creditors to come to an agreement.

The term for the conciliation stage and its extension periods have expired and no agreement has been reached with the recognized creditors.

The creditors request it and the debtor expressly accepts the creditors' request.

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

**Conciliation**

Yes, the corporate domicile of the company or the place where it has its main administration. In case of branches of foreign companies, the place where it has its main establishment in Mexico. In the case of individuals, the main establishment of their business or where they have their personal domicile.

This is also relevant to establish the jurisdiction of the federal court.

**Bankruptcy**

Yes, it is considered as "domicile" — the corporate domicile of the company or the place where it has the main administration. In case of branches of foreign companies, the place where it has its main establishment in Mexico. In the case of individuals, the main establishment of their business or where they have their personal domicile.

The bankruptcy judge will be the same that acknowledged the conciliation procedure.

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

**Conciliation**

Yes. Reorganization proceedings are flexible, allowing the restructuring of both secured and unsecured claims. Restructuring of the debt under Mexican legislation can occur during the conciliation procedure or through an insolvency procedure that could commence with a restructuring agreement.

**Bankruptcy**

During the bankruptcy stage, there can be no restructuring of the debt. Creditors may appeal the resolution that establishes the final amount owed by the debtor.

## Is there a classification of creditors and shareholders?

**Conciliation**

Yes, in this stage, the conciliator prepares the provisional and definitive lists of creditors. Those in the list must recognize the amount, categorization, priority and preference. The classification is as follows: (i) uniquely privileged creditors; (ii) creditors within rem guarantees; (iii) creditors with special privilege; (iv) creditors for tax and labor claims; (v) common creditors; and (vi) subordinated creditors.

Shareholders are not part of the proceedings and are not classified.

**Bankruptcy**

Yes, the classification follows a ranking of claims and no payments will be made to creditors of one class without first settling claims of the previous class. The classification is as follows: (i) uniquely privileged creditors; (ii) creditors within rem guarantees; (iii) creditors with special privilege; (iv) creditors for tax and labor claims; (v) common creditors; and (vi) subordinated creditors.

Shareholders are not part of the proceedings and are not classified.

## Is there a requirement for voting approvals by shareholders?

**Conciliation**

Yes. In the case of legal entities that seek to be voluntarily subject to an insolvency procedure, a shareholders' meeting to decide the filing is necessary to make the corresponding filing with a commercial bankruptcy court.

**Bankruptcy**

The bankruptcy proceedings continue after the conciliation stage before the same court. The judge declares bankruptcy so there is no need for approval by shareholders.

## Is there a requirement for voting approvals by shareholders creditors

**Conciliation**

Yes. In accordance with the law,  in order to enter a Conciliation Agreement, the voting approval  must be obtained  by recognized creditors that represent more than 50% of the sum of:

The amount recognized for all common and subordinated recognized creditors

The amount recognized for those creditors with an in rem guarantee or a special privilege

In cases where there are subordinated creditors (individuals/companies that hold 50% of the capital of the debtor or of the companies controlled by the debtor) that represent at least 25% of points (i) and (ii), it is necessary that the recognized creditors that represent 50% of points (i) and (ii) enter the agreement, excluding the claims in favor of subordinated creditors, in order to respect voting rights.

**Bankruptcy**

N/A

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

**Conciliation**

Mexican legislation provides that the agreement from majority creditors can be imposed to minority dissenting creditors during the conciliation stage.

**Bankruptcy**

During bankruptcy, some agreements or legal decisions from majority creditors can be imposed to minority dissenting creditors, e.g., the designation of interveners.

# Commencing the Process

## Who can commence?

(i) The debtor; (ii) any creditor; (iii) the public prosecutor; (iv) the Assets and Properties Administration Institute1 (an entity where the state is the majority stakeholder); and (v) the bankruptcy judge (indirectly, through the public prosecutor by means of a report filed with tax authorities and with the public prosecutor itself).

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1. While the Insolvency Law still references the Assets and Properties Administration Institute (Instituto de Administración de Bienes y Servicios), further to a decree published in the Federal Judicial Gazette on 22 January 2020, the current official name of the entity is Institute to Return Theft Assets to the People (Instituto para Devolver al Pueblo lo Robado).

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

**Conciliation**

Yes, but only when the debtor voluntarily requests the insolvency proceeding.

**Bankruptcy**

No

## Is there an ability to consolidate group estates?

Commercial bankruptcy proceedings of companies that are part of the same corporate group may be accumulated but handled in separate judicial dossiers.

## Is there any court involvement?

**Conciliation**

Yes, the bankruptcy judge will oversee the conciliator's performance and, if appropriate, will authorize the execution of an agreement with the recognized creditors.

**Bankruptcy**

N/A

## Who manages the debtor?

**Conciliation**

The debtor may remain administrating the company (supervised by the conciliator); nevertheless, the conciliator may substitute the debtor in the administration if requested to the court.

**Bankruptcy**

The trustee.

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

**Corruption**

Public. The conciliator files a bi-monthly report to inform creditors of the status of the company. There is no special treatment for different creditors in relation to the disclosure of the conciliation procedure.

**Bankruptcy**

Public. The trustee must deliver a bi-monthly report to inform the financial statements, advances, etc.

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

**Conciliation**

Small traders can only be declared in bankruptcy when they voluntarily accept the effects of the Insolvency Law. Also, state companies are excluded from the customary insolvency proceeding, except the state-owned companies incorporated as commercial companies and the majority state-owned companies.

Other types of debtors, such as financial entities, are subject to their specific legislations.

Also, the Mexican Institute of Social Security (IMSS) and the National Workers' Housing Fund Institute (INFONAVIT) are excluded from the insolvency proceedings.

**Bankruptcy**

Any entity bound to conciliation at an insolvency procedure can also be declared in bankruptcy.

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

**Conciliation**

The filing of the request for the publication and declaration of the insolvency may take approximately 60-75 business days.

**Bankruptcy**

The judge can declare bankruptcy immediately after concluding the conciliation stage.

# Effect of Process

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

**Conciliation**

The debtor may continue operating the company, although the conciliator may request the judge remove the debtor and take over the administration of the company.

**Bankruptcy**

No, the management of the company is undertaken by the trustee.

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

**Conciliation**

During the conciliation stage, the claims, trials and procedures against the debtor that are in progress when the declaration of insolvency is made will not be joined under the insolvency procedure. Rather, they will continue to be pursued by the debtor under the conciliator's supervision. Creditors within rem guarantees have the right to continue execution proceedings against the assets they received as a guarantee once the judge declares that those assets are not essential for the ordinary business of the debtor. Also, other claims related to the assets of the debtor might be filed by creditors with the competent authorities. Those procedures will not be joined under the insolvency procedure.

**Bankruptcy**

Suspension of the debtor's capacity to take actions over the property and rights that form the bankruptcy estate.

The order to the debtor, its administrators, managers and employees to turn over to the trustee in bankruptcy the possession and administration of the property and rights that form the bankruptcy estate.

The order to the debtors of the bankrupt debtor not to make payments without the authorization of the trustee, with the notice that they will make the payment twice in the case of noncompliance.

The order to the Federal Institute of Business Reorganization Specialists (IFECOM) to appoint the conciliator or someone else as trustee in bankruptcy for the operation of the debtor's company.

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

**Conciliation**

The law establishes superpriority claims. These ranks will be considered during the conciliation to achieve a conciliation agreement between creditors.

Mexican law allows DIP financings with the prior approval of the insolvency judge. Besides labor claims, the claims arising from debtor-in-possession (DIP) financing agreements have the highest ranking of claims.

**Bankruptcy**

The payments during the bankruptcy stage will follow the ranking established by the law. These rankings cannot change during bankruptcy

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

**Conciliation**

Yes, it is not forbidden by the law, but it is subject to approval by the judge and the recognized creditors of the debtor during the conciliation period.

The agreement is valid when it complies with the following: (i) it considers payment of expenses in the administration of the bankruptcy estate, (ii) payment to privileged creditors, (iii) payment to creditors within rem guarantees and with special privilege; and (iv) it contains enough reserves for payment of any claims that are pending for resolution and tax credits to be determined.

All creditors must agree on changing their debt for equity, and minorities cannot be forced to enter the agreement on those terms.

**Bankruptcy**

N/A

## Are third party releases available?

**Conciliation**

N/A.

In order for an agreement to be valid, it must be entered into by the debtor and recognized creditors that represent more than 50% of the sum of:

The amount recognized to all common and subordinated recognized creditors

The amount recognized for those creditors with an in rem guarantee or a special privilege

In cases where there are subordinated creditors (related companies of the debtor) that represent at least 25% of points (i) and (ii), it is necessary that the recognized creditors that represent 50% of points (i) and (ii) enter the agreement, excluding the claims in favor of subordinated creditors, in order to respect voting rights.

**Bankruptcy**

N/A.

The payments during the bankruptcy stage will follow the ranking established by the law. These rankings cannot change during bankruptcy.

## Are the proceedings recognised abroad?

**Conciliation**

Yes. Cooperation in international proceedings applies when: (i) a foreign court requests assistance in Mexico with regard to foreign proceedings; (ii) the assistance of another country is requested in regard to proceedings that are being conducted under the law; (iii) insolvency or bankruptcy proceedings are being conducted simultaneously and with regard to the same debtor in Mexico and in a foreign country; or (iv) creditors or other interested parties located in a foreign country have an interest in initiating or joining proceedings.

Likewise, the law determines the cases in which and manner by which a foreign procedure is recognized in Mexico, and also anticipates the possibility of having parallel procedures in Mexico and a foreign country, establishing specific actions to follow.

**Bankruptcy**

Yes

## Has the UNCITRAL Model Law been adopted?

**Conciliation**

The UNCITRAL Model Law highly influenced the Insolvency Law in Mexico. However, insolvency proceedings are expressly regulated by the Insolvency Law (*Ley de Concursos Mercantiles*).

**Bankruptcy**

N/A

## How long, complex and expensive is the process?

**Conciliation**

The conciliatory stage must be exhausted in 365 calendar days. If no agreement is reached with recognized creditors, the bankruptcy stage must be opened.

The payment of fees for the visitor is an initial payment before starting the proceedings.

The fees of the conciliator are calculated according to certain rules established by the IFECOM. The payment of the insolvency specialists will be directly related to their performance, in accordance with the criteria determined by the IFECOM rules, particularly considering the use and profits of the resources of the insolvency estate.

**Bankruptcy**

The law provides that this stage should be exhausted in a maximum term of six months to affect the sale of the bankruptcy assets; however, in practice, the time it takes to liquidate the bankruptcy assets is substantially greater than the term provided for by law.

The trustee's fees are calculated according to certain rules established by the IFECOM. The payment of the insolvency specialists will be directly related to their performance, in accordance with the criteria determined by the IFECOM rules, particularly considering the use and profits of the insolvency estate's resources.

## Is there a mandatory set-off of mutual debts on insolvency?

**Conciliation**

Yes. Compensation takes place when two persons or entities are debtors and creditors reciprocally and in their own right. The effect of the compensation is to extinguish the two debts, up to the amount of the lesser amount.

**Bankruptcy**

Yes

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

**Conciliation**

Yes

**Bankruptcy**

Yes

# Other Factors

## What is the order of priority of claims?

The creditors are classified as follows:

Uniquely privileged creditors: Funeral expenses of the debtor and expenses associated with the illness that has caused the death of the debtor

Creditors within rem guarantees: As long as the guarantees are duly formalized in accordance to the applicable law (mortgage and pledge). \*Note: Creditors within rem guarantees will receive payment of their credit with the proceeds of the sale of the mortgaged or pledged assets.

Creditors with special privilege: All those that, according to the Code of Commerce, have a special privilege or a right of withholding. \*Note: These creditors will collect on the same terms as secured creditors according to the date of their credit.

Creditors for tax and labor claims. \*Note: These credits will be paid after the uniquely privileged creditors within rem guarantees in accordance with the date of their credit.

Common creditors: Those excluded from the previous cases. Their claims will be paid pro rata regardless of the dates of their claims.

Subordinated creditors: Creditors that agreed to the subordination of their claims to the common creditors, and creditors for non-in rem guarantees mentioned in articles 15, 116 and 117 of the LCM, with the exception of the controlling companies (article 15, section I, of the LCM) and individuals that exercise 50% of the capital of the debtor or of the companies controlled by the merchant (article 117, section II, of the LCM)

No payments will be made to creditors of one class without first settling claims of the previous class.

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

Yes. Companies can create trusts to administrate their employees' pensions. Such trusts must be reported to the bankruptcy judge and the visitor as part of the bankruptcy estate. This structure has been abused to deviate companies' funds to the detriment of creditors; thus, it is important to carefully review the terms and conditions of the trust in question to assess its actual purpose and legitimacy. If appropriate, its annulment may be pursued.

## Is it possible to challenge prior transactions?

Yes. The law provides for a clawback period of 270 calendar days prior to the date on which the declaration of insolvency proceedings was issued, and it can be extended up to a three-year period by the judge if acts that defraud creditors are explained and evidenced.

## Is state support for distressed businesses available?

Yes. Federal and local governments have issued their own support programs for medium and small businesses to face the COVID-19 health emergency. Such support programs are mainly addressed to micro and small businesses.

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