

Global Restructuring & Insolvency Guide

Mexico

Overview and Introduction

The Mexican insolvency and bankruptcy law (*Ley de Concursos Mercantiles* or the “**LCM**”) regulates the sole insolvency procedure available under Mexican law: the *Concurso Mercantil*. The LCM came into effect on 12 May 2000, and abrogated the Mexican Bankruptcy and Suspension of Payments Law (the “**BSPL**”), which had been in effect since 20 April 1943. The LCM has undergone several reforms and adjustments to respond to the realities of more sophisticated debt structures. The latest reform came into force in May 2014.

Main Aspects of the LCM

Principles

The law is based upon certain general principles:

- All holders of debts within the same classification are treated equally, without regard to nationality, domicile or capacity;
- All creditors, whether domestic or foreign, have access to the commercial insolvency proceeding and shall collect from the assets in the same proportion as other creditors in the same class;
- The debtor’s operations should be preserved when possible, and in spite of generalised non-payment of its debts, for the benefit of the country’s economy, thereby avoiding “chain bankruptcies” of the companies with which the debtor has business relations;
- The debtor’s assets and liabilities are consolidated. Third-party owners are permitted to recover assets that are in the debtor’s possession. Through these and other means, assets not belonging to the insolvent company are identified and removed from the bankruptcy estate, which will later be sold;
- Suspicious operations can be challenged and annulled if they aggravate the financial status of the debtor; and
- The LCM recognises pre-negotiated plans of restructure.

Public Interest and the Preservation of the Company

As mentioned above, the LCM maintains the fundamental principles of the field, namely, public interest and the preservation of the company. This last aspect was almost not included in the LCM because, in the project presented for the constitutional effects by the Senate to the lower chamber of Congress, on 7 December 1999, Article 1 established only that the law would be of public interest and that its purpose would be to regulate insolvency proceedings. However, when published in the Official Gazette in May 2000, Article 1 was modified to include the fundamental principle establishing that it is in the public interest to preserve companies and avoid the damaging effects of company failures on others dealing with the relevant debtor.

Jurisdiction of the Federal District Judges

The LCM provides that the competent authority to hear insolvency and commercial bankruptcy cases is the Federal District Judge with jurisdiction in the debtor’s domicile. This means that local or state judges have no jurisdiction to handle and resolve these proceedings.

In November 1999, a Senate report justified the competence of the federal judges, arguing that the insolvency or bankruptcy of a debtor constitutes an economic phenomenon which, because of its

universal nature, interests the State predominantly. This argument is supported by international doctrine, which considers it to be in the public interest to ensure the viability and preservation of companies, given that they provide a source of employment and support the national economy.

It is worth noting that Article 21 of the LCM establishes that in a commercial procedure, where a court (local or federal) determines that a debtor is in one of the categories of general default on the payment of obligations, the court will make this situation known to tax authorities and to the district attorney, so that, if applicable, the district attorney may request the declaration of insolvency before a federal court.

Finally, it is important to point out that Article 7 of the LCM establishes that judges ought to fulfil their obligations within the time limits established in this law. The commendable purpose of this provision is to ensure the swift administration of justice, establishing that the lack of compliance with the statutory time periods are the court's responsibility. It is also important for the preservation of the company as a main principle of the LCM.

Therefore, since the LCM came into effect, federal judges have tried to fulfil their obligations within the time limits established under this law. Nevertheless, due to the workload of the courts, time limits are not always observed.

Stages of Insolvency Procedure

Under the LCM there are two stages of the insolvency procedure: conciliation and liquidation. The purpose of conciliation is to preserve the company by means of an agreement between the debtor and his recognised creditors. The conciliation has a duration of 185 calendar days, and the term can be extended if the recognised creditors request it. In no case can the term be extended for more than one year. By virtue of an amendment dated 10 January 2014, the LCM expressly prohibits the judge from extending the conciliation stage for more than one year and from extending any other term established in the law, except in those cases where the LCM expressly authorises the judge to extend a term.

Under the LCM the debtor and creditors must attempt to reach an agreement. The negotiations are directed by a professional conciliator, who initially acts as an intermediary between the company and its creditors. According to the purposes (*exposición de motivos*) of the law, the conciliator acts as an amicable intermediary between the parties. Here, the law seems to strongly return to the broad horizon of alternative commercial dispute resolution.

One of the important functions of the conciliator is to recognise creditors based on the company's accounting records as well as the proof of claim filed by the creditors. The conciliator reviews the ordinary operation of the company, and he files a report with the court regarding such review. Nevertheless, the conciliator can request the court to remove the debtor from the management of the company to protect the interests of the creditors.

If the debtor is removed from the management of the company, it will be managed by the conciliator. The debtor is obliged to provide the conciliator with all the information he may need regarding the management of the company, assets, debts, workers, payments, etc.

If the conciliatory stage does not result in an agreement, the bankruptcy stage begins, and a trustee in bankruptcy replaces the conciliator as the authority for that stage. Note that the trustee in bankruptcy can be the same individual that performed the function of conciliator, or someone else. The trustee in bankruptcy will prepare balance sheets and determinations regarding the status of the company and find the best way to pay creditors.

The purpose of the bankruptcy stage is to sell the company's working unit, and if this is not possible, its productive units or assets that form the company, in order to pay the creditors.

The declaration of bankruptcy occurs in four circumstances:

- When the debtor himself requests it;

- When the conciliator requests it and the court agrees in light of the lack of disposition on the part of the debtor or his creditors to come to an agreement;
- When the term for the conciliation stage and its extension periods have expired and no agreement has been reached; and
- Based on an amendment dated 10 January 2014, when the creditors request it and the debtor expressly accepts the creditors' request.

The judgment declaring the bankruptcy has the following effects, among others:

- The suspension of the capacity of the debtor to take actions over the property and rights that form the bankruptcy estate;
- The order to the debtor, his 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 authorisation of the trustee, with the notice that they will make payment twice in the case of non-compliance; and
- The order to the Federal Institute of Business Reorganisation Specialists (the “**Institute**”) to appoint the conciliator or someone else as trustee in bankruptcy, for the operation of the debtor's company.

The trustee in bankruptcy delivers to the court a report on the debtor's accounting; an inventory of the company; and a balance sheet of the administration of the company. The Institute will establish the specific formats for these reports.

Every two months, both the conciliator and the trustee must prepare a report for the court detailing, respectively, the progress of the conciliation and the liquidation of the company. This report must be available to all parties. Also, they have to file a final report of their activities.

The LCM provides that any creditor or group of creditors that represents at least 10% of debtor's obligations have the right to request that the court designate an intervener to oversee the administration of the company, in particular the performance of the conciliator, the trustee in bankruptcy and the debtor.

Procedure for the Declaration of Insolvency

The declaration of insolvency procedure begins with the filing of the claim, either in writing or electronically, by the debtor itself, any creditor, the district attorney, and even tax authorities in their capacity as creditors.

The claimant has to cover visitor's fees; otherwise the case will be dismissed.

Once the claim has been filed, the judge appoints a visitor in order to verify that the debtor is in general non-payment of its debts. The visitor will verify technically and physically, based on what we consider to be objective criteria, whether the debtor can be legally considered to be in insolvency.

The court declares the insolvency (or dismisses the case) based on the report made by the visitor, and only if the debtor has generally defaulted on the payment of its obligations: under Article 10 of the LCM this consists of a default on obligations that are owed to two or more different creditors, 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. General default on payment of obligations also exists when the debtor does not have assets to pay at least 80% of its obligations due on the date of the filing of the petition. Article 10 defines which assets are taken into account (cash in register, sight deposits, term investments, etc.).

Article 11 of the LCM establishes the circumstances where there exists a presumption that a debtor has incurred a general default of his payment obligations. Those circumstances are:

- 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 closing of the company's business offices, 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; and
- Any other analogous causes.

Also, based on the amendment dated 10 January 2014, Article 20bis establishes that the debtor itself or any creditor may request a declaration of insolvency when any of the circumstances specified in Articles 10 or 11 of the LCM, related to default on the payment of obligations, will inevitably occur within 90 days following the insolvency petition.

Article 16 establishes that branches of foreign companies can be declared in insolvency.

The court's resolution that declares the insolvency must establish that the debtor is in general default on the payment of its obligations. It also must include a provisional list of the creditors that have been identified in the debtor's accounting records, indicating the amount owed to each one. This list does not exhaust the procedure for the acknowledgement, ranking and determination of the priority of creditors' claims.

Also, according to Article 43 of the LCM, the court's resolution will include a clawback period of 270 calendar days prior to the date of declaration of insolvency (*declaración de concurso*); a declaration that the stage of conciliation has commenced; instructions to the Institute to appoint a conciliator; an order to the debtor to immediately make available to the conciliator the books, records and all other documents pertaining to the company, to allow the conciliator and the interveners to perform the activities necessary to accomplish their duties, and to suspend the payment of debts. It will also include, *inter alia*, an order to record the court resolution with the Public Registry of Commerce within the domicile of the debtor, and to publish an extract of the same in the Official Gazette and in the newspaper with the largest circulation in the domicile of the procedure; the order to the conciliator to begin the procedure of acknowledgement of creditors; and the notice to the creditors that they may request the recognition of their claims, among others.

Interim Measures

The LCM puts in place (e.g. under Article 37) the opportunity to adopt interim measures to avoid risking the viability and preservation of the company, and thus to protect the public interest as well as the interests of creditors. These measures include separating the debtor from the operation of the company and prohibiting him from paying debts and transferring or encumbering the property of the company; the attachment of certain property; the appointment of a conservator for the merchant's cash on hand; and an order to restrict the debtor's freedom of movement.

The interim measures include the possibility for the debtor to obtain judicial approval to take out loans that are essential to maintain the business and/or to have liquid funds. Any loans that are approved will enjoy a preferential payment status.

Effects of the Resolution of Insolvency

The court's resolution limits the freedom of movement of the debtor to his place of domicile¹, and in the case of a business entity, limits the freedom of the persons responsible for its administration. In

¹ Article 47 of the LCM.

this stage of conciliation, the debtor may continue operating the company, although the conciliator may request that the court remove the debtor and that the conciliator assume responsibility for managing the company. Such limitation will not be in effect in cases in which the debtor claims its insolvency.

One interesting effect of the insolvency proceeding under Article 84 of the LCM is that 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 supervision of the conciliator. 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.

Article 65 of the LCM provides that from the moment the declaration of insolvency is made, and until the conciliation stage is over, no attachment or execution against the rights and property of the debtor can take place, except for labour claims. Also, under the amendment dated 10 January 2014, creditors with *in rem* guarantees have the right to continue execution proceedings against the assets they received as guarantee, once the judge declares that those assets are not essential for the ordinary business of the debtor.

Separation of Property

Chapter II of Title III of the LCM adopts from the BSPL the principle that allows the rightful owners of property in the possession of the debtor to recover said property: "*The property in the possession of the debtor that is identifiable, and that has not been transferred to him by legal title that is definitive and irrevocable, may be separated by its rightful owners.*" Interestingly, under the LCM, property that can be separated from the bankruptcy estate includes withheld contributions, collected or transferred by the debtor on account of the tax authorities.²

Acts that Defraud Creditors

According to Article 113 of the LCM, acts that defraud creditors are not valid.

The LCM considers as acts that defraud creditors those made by the debtor before the declaration of the insolvency proceeding was issued and during the retroactive period (outlined below), with the aim of defrauding creditors, as long as the third party that participated in the transaction knew about the fraud.

It is not required that third parties were aware of the fraud in relation to gratuitous acts or liberalities.

According to Article 112 of the LCM, a retroactive period of 270 calendar days prior to the date on which the declaration of insolvency proceeding was issued is applicable when determining acts that defraud creditors. Under the amendment dated 10 January 2014, this period will be doubled when the debtor has subordinated creditors.³

The clawback period can be extended at the request of the conciliator, the interveners or any creditor, but any request must be filed prior to the issuance of the judgment recognising, ranking and determining the preference of claims. The request to extend the retroactive period shall be processed through ancillary proceedings, in which the plaintiffs explain and prove those acts that are considered fraudulent as to creditors. The extension will never exceed a three-year period in accordance with the amendment dated 10 January 2014.

² Article 71. Any property in the following situation or any other analogous events, may be set aside from the Estate:

- I. Any property that can be repossessed pursuant to law;
- II. Any real estate sold to the Merchant, but not yet paid by him, if the purchase and sale transaction was not duly recorded in the corresponding public register;
- III. Any movable property paid for in cash, if the Merchant has not fully paid the price therefor at the time of the business reorganisation declaration;
- IV. Any goods or real estate acquired on the instalment plan basis or credit basis, if the clause dealing with the resolution due to payment default was recorded on the corresponding public register.

³ Subordinated creditors are specified in Articles 222, section II, 117 and 15 of the LCM. Generally speaking, they are creditors without *in rem* guarantees who are closely related to the debtor. See "Ranking of Claims" below.

Under the LCM the following acts within the retroactive period are considered fraudulent as to creditors:

- Gratuitous acts or liberalities;
- Acts or transfers made by the debtor with a gross undervalue;
- Transactions entered into by the debtor with terms and conditions that significantly deviate from regular market conditions or from commercial practices;
- Debt forgiveness granted by the debtor;
- Payment by the debtor of obligations not yet due; and
- Discounts granted by the debtor.

The declaration of invalidity of these acts is not effective if the resources generated are used in favour of the insolvency proceeding.

Except when the interested party demonstrates good faith, it is assumed that the following are acts of fraud involving creditors:

- Granting of guarantees or the increase of the existing ones, when the original obligation did not contemplate them; and
- Payments in kind when the original obligation did not contemplate them or originally a monetary consideration was specified in the relevant contract.

For debtors that are companies, it is assumed that the following acts, if taken within the retroactive period, defraud creditors:

- Acts that were entered into with its sole manager or board of managers, or with their respective spouses or concubines, or with blood relatives to the fourth-degree, or relatives with no blood relationship to the second-degree, including kinship resulting from adoption;
- Acts that were entered into with individuals that jointly and severally represent, directly or indirectly, at least 51% of the subscribed-for and paid-in capital of the debtor under insolvency proceedings; individuals that have decision-making powers in the partners' meetings; individuals that are able to appoint the majority of the members of the board of managers, or are by any other means empowered to take key decisions regarding the debtor under insolvency proceedings;
- Acts entered into with companies that have the same administrators, members of the board of managers or principal officers as the debtor; and
- Acts entered into with companies controlled by the debtor, companies that control the debtor, or companies that are controlled by the same company that controls the debtor.

The bad faith acquirer shall be liable for damages when the acquired assets were further transferred to a good faith acquirer or were lost. Likewise, the acquirer in bad faith that destroyed or hid the goods to avoid invalidity of the transaction is liable for damages.

Ranking of Claims

Before entering into the conciliation stage, under Article 121 of the LCM, the conciliator must present to the court a provisional list of claims owed by the debtor, in a format decreed by the Institute.

Under the LCM the creditors are classified as follows:

- Creditors with claims against the Estate that will be paid before any other claims. These include liabilities: (i) for wages for the two years preceding the debtor's insolvency declaration; (ii)

incurred by the debtor to manage the Estate; (iii) incurred to attend to the regular expenses for the protection of the properties of the Estate, their repair, preservation and management; and (iv) resulting from judicial or extrajudicial proceedings in benefit of the Estate.

- Uniquely privileged creditors that only exist in the event of the insolvency of an individual debtor who has passed away (funeral expenses of the debtor and expenses associated with the illness that has caused the death of the debtor);
- Creditors with *in rem* guarantees (security interests), who would be paid first with the proceeds from the sale of the mortgaged or pledged items;
- Creditors with special privilege, i.e. all those that, according to the law, have a special privilege or a right of withholding. For example, the builder of any movable work is entitled to withhold it until it is paid, and its claim will be preferably paid with the price of such asset;
- Common creditors or unsecured creditors whose claims will be paid pro-rata regardless of the dates of their claims; and
- After the amendment dated 10 January 2014, subordinated creditors, i.e. creditors which agreed to the subordination of their claims to the common creditors, and creditors which are: (i) controlled companies; (ii) the manager of the debtor or members of its Board of Directors, or their relatives; (iii) legal entities whose managers, members of the Board of Directors or senior officers are the same as those of the debtor; or (iv) legal entities controlled by the debtor and which have the control of the debtor, or which are controlled by the same company that controls the debtor.

The law further states that all tax and labour claims are to be paid after payment of the secured creditors, but before creditors with special privilege. The law sets forth one exception, whereby the salaries owed to employees for the past two years are to be paid before any other claim, including those of secured creditors.

Creditors must object to the provisional list of claims within five days. Then, the conciliator will have 10 days within which to file the definitive list of claims owed by the debtor, in a format decided by the Institute.

All creditors must submit a proof of claim for the recognition and classification of their claims. Article 122 of the LCM sets forth the exact time at which this can be done.⁴ Once all proofs of claim have been submitted and analysed, the court issues a judgment through which it will divide the claims into three groups: recognised claims; excluded claims; and claims pending classification.

Another important contribution made by the LCM is that the conciliatory stage has a duration of 185 calendar days, starting on the day on which the last notice of the declaration of insolvency was made in the Federal Official Gazette. This term can be extended if the recognised creditors request it, but in no case can the term be extended for more than one year. During the conciliatory stage, all executions and payments are suspended, except for those expressly authorised by the LCM. This time limit was established to prevent possible abuses of the conciliatory stage whose conclusion automatically initiates the bankruptcy.

Protection of the Real Value of the Claims

In order to protect the real value of the claims during the conciliatory stage, Article 89 of the LCM provides for the conversion of claims in both national and foreign currency, into units of investment (*unidades de inversion* or “**UDIS**”) on the date on which the court resolution declaring insolvency is issued.

⁴ Article 122. The creditors may request the recognition of their credits:

- Within twenty calendar days following the date of the latest publication of the business reorganisation judgment at the Federal Official Gazette;
- Within the term granted to object to the provisional list referred to in Article 129 of this Act; and
- Within the term to file an appeal against the credit recognition, ranking and preference judgment.

After the term mentioned in Section III, no credit recognition may be requested.

The UDIS is a unit of account with value in Mexican pesos determined on the basis of the National Consumer Price Index and published by the Central Bank of Mexico in the Federal Official Gazette.

Tax Incentives

Tax incentives can also be used to establish a short-term agreement. Under the LCM, as of the declaration of insolvency, tax claims continue to accrue fines, updates and other applicable charges but, in case of an agreement, all such fines and charges are cancelled. The judgment by itself does not interrupt the payment of contributions “for they are necessary for the ordinary operations of the company” (Article 69).

Sale of Debtor’s Assets

The LCM places special emphasis on the sale of the debtor’s assets and the payment to recognised creditors, and provides that the transfer of assets will be achieved, in the first instance, through public auction, if, at the discretion of the trustee in bankruptcy, it is not beneficial to continue with the operation of the business. Aside from the auction, the trustee in bankruptcy may request court authorisation to sell assets when this will enable him to obtain a larger profit. This provision has been harshly criticised and even deemed unconstitutional because the powers given to the trustee in bankruptcy go beyond what is reasonably necessary to achieve the objectives of the bankruptcy.

One of the main improvements brought in by the LCM lies in the time periods it allows, including the six-month period that begins with the commencement of the bankruptcy stage, and during which any interested party may offer to buy any asset(s), if any are left, by making an offer to the court. Again, the Institute will prepare the appropriate formats and mechanisms.

The trustee in bankruptcy has to inform the court at least every two months of the status of the remaining assets and of the creditors that have not been paid. This enables the court to maintain control over the situation, and allows the trustee in bankruptcy more responsibility for his duties.

Insolvency with a Restructuring Agreement

The LCM does not explicitly provide for informal out-of-court restructurings prior to insolvency. However, the LCM establishes that a debtor that is in imminent default on the payment of its obligations and creditors holding defaulted and unpaid obligations representing the majority of the total obligations of the debtor may file together the petition of insolvency using a reorganisation agreement. This is subject to approval by the judge and the recognised creditors of the debtor during the conciliation period (360 days, during which creditors decide whether to approve the restructuring agreement).

The court will declare the insolvency and order the commencement of the conciliation stage (or will dismiss the case). The participation of the visitor is not necessary.

The proceeding will be the same as the ordinary insolvency proceeding, and may include the appointment of a conciliator agreed to by the debtor and a majority of its creditors.

Corporate Restructuring

As a result of the amendment dated 10 January 2014, insolvency proceedings from companies that belong to an integrated corporate group will be joined but handled separately. An integrated corporate group comprises controlling companies and controlled companies.

For the purposes of the LCM, a controlling commercial company means a company that:

- Owns over 50% of the voting shares of one or more other controlled companies, including when such ownership is held through other companies that are, in turn, controlled by the same controlled company; and
- Has the decision-making power at stockholders’ meetings, can appoint most of the members of its Board of Directors or otherwise has the authority to make fundamental decisions of the company.

The shares owned by a controlling company that owns over 50% of a company's voting shares, directly or indirectly (or both), are considered to be controlled shares. Also, controlled companies are those in which administration, strategies and main politics are conducted by a controlled company by means of the percentage of the voting shares, agreements, etc.

Notwithstanding the foregoing, companies of the same corporate group can jointly request the declaration of insolvency. For the joint request to be admissible, it is only necessary that one of the requesting companies has generally defaulted on the payment of its obligations (Articles 10, 11, and 20bis), and that such default places one or more of the other companies of the corporate group in the same situation.

Creditors might also claim the joint declaration of insolvency of companies of the same corporate group when the previous requirements are fulfilled.

In any case, assets of each company will be handled separately.

Proceedings for controlling or controlled companies, or for a group of companies, are the same as the proceedings for any other kind of individual company requesting insolvency proceedings or bankruptcy.

Nevertheless, under the amendment dated 10 January 2014, a vote of affiliates, controlling companies, or controlled companies with respect to the approval of the creditors' agreement is restricted. When subordinated creditors represent 25% of the total amount of the recognised creditors, then the creditors' agreement will only be approved when creditors representing 50% of the total amount of recognised claims, minus the subordinated claims, voted in favour of the agreement.

Special Insolvency Proceedings

Like the BSPL, the LCM also regulates special insolvency proceedings, e.g. in the cases of debtors that provide public services under a government concession, financial institutions and credit auxiliary institutions. Following an amendment dated 10 January 2014, the LCM distinguishes among financial institutions, credit institutions and credit auxiliary institutions. As a result of this distinction, the LCM now regulates only the insolvency of financial institutions and credit auxiliary institutions. The insolvency of credit institutions is regulated by a special "judicial liquidation" proceeding under the Law of Credit Institutions.

The LCM does not regulate special insolvency proceedings regarding insurance companies or bond institutions; however, the LCM in its transitory articles establishes that they will be regulated by their own special laws.

Liability and Criminal Aspects

Under the amendment dated 10 January 2014, members of the Board of Directors, and key employees of the debtor, will be liable for economic damages caused to the debtor. Damages can be claimed by the debtor or by shareholders of the debtor representing 25% or more of the share capital. In the case of acts that defraud creditors, in addition to the above-mentioned persons, a claim can also be filed by one-fifth of the recognised creditors, recognised creditors representing 20% of the debtor's obligations and the intervener. The statute of limitations of the claim for damages is five years starting on the day the act causing damages occurs.

The LCM sanctions wilful fraudulent acts (*conductas dolosas*) of debtors or creditors in insolvency proceedings. Under Article 271 of the LCM, amended on 10 January 2014, a debtor who is declared, by *res judicata* judgment, to be in insolvency will be sanctioned with imprisonment of between 3 and 12 years for any fraudulent act or conduct that causes or worsens the default on his payment obligations.

Also, following the amendment dated 10 January 2014, Article 271bis establishes that members of the Board of Directors, the general manager, sole administrator and key employees will be sanctioned with imprisonment of between 3 and 12 years for acts causing economic damages to the debtor when executed for their own benefit. The sanction will be reduced to imprisonment of between one and three years when damages are paid to the debtor.

Likewise, a debtor who does not provide the court with the required accounting information within the term ordered by the court will be sanctioned, unless he can prove that it was impossible for him to comply with the order and that this impossibility was not caused by him. The law also provides that a creditor who by himself or through someone else requests in the insolvency procedure the recognition of a non-existent or simulated claim will be sanctioned with imprisonment of between one and nine years.

Under Article 276 of the LCM, when a crime is committed in an insolvency situation, the criminal court does not have jurisdiction to declare damages, as they can only be declared by the court conducting the insolvency proceeding. Note that under Article 277, the decisions taken by the court conducting the insolvency proceedings do not affect the criminal prosecution, as they are not necessary to prosecute such crimes.

International Cooperation

Pursuant to the LCM, cooperation in international proceedings applies when: (i) a foreign court requests assistance in Mexico with regard to a foreign proceeding; (ii) the assistance of another country is requested in regard to a proceeding that is being conducted under the LCM; (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 a proceeding. Likewise, the LCM determines the cases in which and manner by which a foreign procedure is recognised in Mexico, and also anticipates the possibility of having parallel procedures in Mexico and a foreign country, establishing specific actions to follow.

Despite the fact that the LCM opens the door to the possibility of cooperating with other countries in this area, there still exist international agreements signed by Mexico that make it impossible to execute these types of resolutions (e.g. the Inter-American Convention on Competence in the International Sphere for the Extraterritorial Efficacy of Foreign Judgments, celebrated in La Paz, Bolivia, and published in the Official Gazette on 28 August 1987). We believe, however, that this is a reflection of the broad view approach that is taking place in Mexican law with regard to international cooperation in the area of insolvency.

	Timeline for Insolvency Proceedings according to the LCM	Days* (business days)
A	Filing of complaint for declaration of insolvency (<i>concurso mercantil</i>)	0
B	Acceptance of complaint by the court	5
C	Service of process on debtor	5
D	Request by the judge for the Institute to appoint an official "visitor" who will verify existence of grounds for insolvency declaration	4
E	Appointment of visitor by the Institute	9
F	Notice of appointment to visitor	10
G	Court order for visitor to initiate verification process	10
H	Debtor's answer to complaint	12
I	Notice to complainant (creditor) of debtor's answer	13
J	Notice of acceptance of appointment by visitor and designation of visitor's working team	15
K	Initiation of inspection visit	15

* The days estimated in this timeline are counted cumulatively as of the date on which the complaint for the declaration of insolvency is filed (Day 0). Our estimates are generally based on statutorily mandated time periods. However, several of the time periods are uncertain and subject to interpretation. Because the statute is quite recent, there are no binding precedents that may be relied upon to clarify such uncertainties. For this reason, our time estimates are provided only for purposes of illustration.

	Timeline for Insolvency Proceedings according to the LCM	Days* (business days)
L	Court order notifying the parties of appointment of visitor	16
M	Complainant's rejoinder	16
N	If debtor does not answer complaint – declaration of insolvency	17
O	Evidence stage	46
P	Presentation of visitors who should report to court	46
Q	Submission of pleadings by parties	51
R	Court's ruling on declaration of insolvency	56
S	Notice of declaration of insolvency to parties, Institute, tax and other authorities and other creditors	57
T	Appointment of conciliator by the Institute	62
U	Publications and recording of declaration of insolvency	67
V	Conciliation period – time during which creditors approve the restructuring agreement proposed by debtor or not	Up to one calendar year as of the declaration of insolvency
W	Filing of preliminary list of creditors by conciliator	97
X	Appearance and filing of arguments regarding list of creditors by the creditors and the debtor	102
Y	Filing of definitive creditors list by conciliator	103
Z	Ruling by court recognising the valid claims and their order of preference	108
AA	First period to request recognition and order of preference by any creditor	67–87
BB	Second period to request recognition and order of preference by any creditor	97–102
CC	Appeal of ruling by court recognising valid claims and order of preference	112
DD	Third and final period to request recognition and order of preference by any creditor	108–112
EE	If conciliation (i.e. agreement on restructuring plan proposed by debtor among recognised creditors and debtor) is not reached, the bankruptcy stage will be initiated by the appointment of a trustee in bankruptcy (former conciliator) who will evaluate how to liquidate the assets (as ongoing business or by units) and pay the recognised claims by their order of preference	From the conclusion of the conciliation period and until all assets of the debtor are liquidated to satisfy recognised claims

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