COUNTRY COMPARATIVE GUIDES 2021

The Legal 500 Country Comparative Guides

Mexico

RESTRUCTURING & INSOLVENCY

Contributing firm

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Mexico.

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MEXICO
RESTRUCTURING & INSOLVENCY

1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Mexican law provides two main security forms: mortgage and pledges. The most common security for immovable property is the mortgage, which is governed by state law. This security requires to be documented in a notarial instrument and shall comply with the publicity principle by its registration so that it may be opposable against third parties. Depending on the asset granted as collateral there are some cases where additional registration is required (with the Federal Telecommunication Registry, Maritime Registry, etc). However, there are some cases where the security does not require registration before public record offices and a direct notification to the debtor of the collector's rights is sufficient.

The most common securities for movable or intangible assets are the guaranty trusts and the floating lien pledges, governed by federal law. The Mexican laws provide that all rights and movable property can be pledged under a floating lien pledge – except for those rights that are strictly personal to its holder – which is the case of equity quotas (stock pledge).

The type of the applicable remedy or legal action will depend on the type of industry and security, if any, implemented over assets of the debtor or the guarantors. Moreover, summary proceedings for the enforcement of commercial claims are available when the lawsuit seeking enforcement is based on a document that allows for summary enforcement as a consequence of non-performance; for example, Mexican promissory notes allow summary enforcements.

2. What practical issues do secured creditors face in enforcing their security (e.g. timing issues, requirement for court involvement)?

Mortgages must be executed through a judicial procedure. Mexican law provides for a special procedure for the execution of mortgages. Said procedure is divided in two phases, the general phase, in which the creditor and the debtor summit their evidence and pleadings in order for the judge to order the execution of the property, and the execution phase, in which the property is assessed and then sold, in order to pay the debtors secured obligations.

Pledges can be executed via a judicial or extrajudicial procedure. The extrajudicial execution procedure is optional and is ideal in case there is no controversy over the enforceability of the credit, its amount and the deliver of the property over which the pledge was created. The judicial procedure is similar to that of the mortgage, to the extend that the creditor must file a claim against the debtor, in order for the judge to order for the delivery of the property to the creditor and to order the sale of said property in order to pay the creditor.

The timelines for the execution of securities would depend on the type of security, but usually obtaining a final order takes between 12 and 30 months.

A creditor may foreclose on the collateral through the enforcement of its creditor's rights and by following the special enforcement procedure applicable to the type of collateral granted in its favor (stock pledge; floating pledge over assets; mortgage; special mortgage over concessions, etc). However, if the *concurso* procedure has been accepted by the court, then the creditors will be prevented to foreclose on the collateral or sell collateral in a private sale while the procedure is in progress. Likewise, special measures or injunctions might be granted to the debtor in order for the latter to preserve its assets and operations, and to protect the debtor from separate or individual creditors' rights seeking the enforcement of collateral or seizure or

attachment over a debtor's assets. Upon the insolvency declaration by the competent court, a stay is automatically imposed over enforcement of the creditors' rights (including secured creditors) and remains in force throughout the conciliation stage.

3. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency procedures upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

The substantive test for a debtor to be declared insolvent is that it has generally failed to perform its obligations. For the purposes of the *Concursos* Law, an individual or entity has generally failed to perform its obligations if it has defaulted its obligations contracted with two or more different creditors and if the obligations of the debtor which have been due for at least 30 days represent, at least, 35% of all the debtor's obligations on the date on which the demand or insolvency petition is filed (or depends, or both, if it was an involuntary or voluntary petition, respectively) or the debtor does not have any of the following assets in an amount sufficient to perform at least 80% of its obligations due on the date on which the demand or insolvency petition is filed: (i) cash and demand deposits; (ii) term deposits and investments becoming exercisable or maturing in a term no longer than 90 calendar days following the date on which the demand or insolvency petition is filed before the court; (iii) customer receivables with a maturity date not exceeding 90 calendar days following the date on which the demand or insolvency petition was filed before the court; or (iv) securities or negotiable instruments available at the relevant markets which may be sold within a term of 30 business days, with a known value on the date on which the demand or insolvency petition was filed before the court.

Regarding liabilities, penalties, or other implications for failing to comply with mandatory proceedings, the most evident and immediate implication for a company when not commencing a timely insolvency proceeding is that its contracts will be terminated due to defaults and breaches and it may also fail in continuing to be a qualified bidder, if that is the case. Likewise, creditors will likely begin to exercise remedies and actions such as the enforcement of guaranties.

Directors of a company engaging in any malicious or illegal act or conduct that causes the non-performance of the company's payment obligations, might be held liable to civil actions or even subject to criminal prosecution, in the event of fraudulent acts. However, the directors may not be liable for continuing to operate a company under financial distress.

4. What insolvency procedures are available in the jurisdiction? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

The *Concursos* Law provides for a single insolvency proceeding known as *concurso mercantil* (conciliation/restructuring or insolvency/bankruptcy procedure). The applicable laws to restructurings and insolvency proceedings are mainly the *Concursos* Law, the General Law on Business Organizations, the Law of Credit Institutions and the Law of Insurance and Bonds Institutions.

The debtor itself, any creditor, the district attorney, a judge, and tax authorities in their capacity as creditors, may file insolvency claims. With the petition filed by creditors or authority (involuntary) or the insolvency petition filed by the company (voluntary), as the case may be, a guaranty or bond must be posted to guaranty the examiner's fee payment.

The first stage of a *concurso* procedure is the conciliation stage, which is purported to encourage a binding reorganization agreement between the debtor and its creditors and, thus avoid the debtor's bankruptcy or liquidation (restructuring plan or creditors' agreement). The conciliation stage shall not last more than 185 calendar days, unless extended for up to two additional consecutive periods of 90 calendar days each; provided, however, that in no event shall the conciliation stage last more than 365 calendar days.

Once the commercial insolvency of the debtor has been declared, the conciliation stage shall commence, and attempts to find a formula to allow the debtor and creditors to come to an agreement will begin. A conciliator, who initially acts as an intermediary between the company and its creditors, must direct this attempt. The role of the examiner and of the conciliator may be performed by the same individual.

Pursuant to the purposes of the *Concursos* Law, the conciliator shall act as an amicable intermediary among the parties. One of the functions or powers of conciliator is to recognize claims based on the debtor's accounting records in order to streamline the claim recognition process. The conciliator will also collaborate in the decision regarding whether the business will continue to

be operated by debtor's restructuring the debt (debtor-in-possession), or whether it is necessary to remove existing management from the operation of the company.

The second stage of a *concurso* procedure, if applicable, consists of the bankruptcy stage. The debtor may be declared bankrupt if the conciliation stage ends without the parties reaching a creditors' agreement; the debtor fails to comply with the creditors' agreement; or the debtor requests its bankruptcy, or the conciliator requests the debtor's bankruptcy and the court agrees to grant it.

In addition to the effects attributed to the declaration of insolvency, the bankruptcy judgment: suspends the ability of the debtor to perform legal acts, which then affects its business and assets; causes the appointment of a receiver, with full authority to replace the debtor or the conciliator, as the case may be, in the management of the debtor's business; orders the debtor and any third party having possession of the debtors' assets to deliver all such assets to the receiver; requires that payments to the debtor only be made with the receiver's authorization (failure to obtain such authorization leads to double payments); invalidates any acts performed by the debtor or its representatives following the bankruptcy judgment without the receiver's authorization; and invalidates any payments executed by the debtor after the bankruptcy judgment.

The debtor may retain management during the conciliation stage and, if that is the case, the conciliator shall: supervise the accounting and all transactions performed by the debtor; decide if any existing agreements binding on the debtor must be terminated; approve, with the prior opinion of the interveners appointed by the creditors, new credits in favor of the debtor, the creation of new security interests, the substitution of any existing security interests or the sale of any assets not involved in the ordinary course of business of the debtor; and call the board to discuss and approve matters relating to the debtor's business.

In the event the debtor is removed from the management of its business, the conciliator will become the administrator and will be granted with full authority to conduct the business, on the understanding that the authorities of the debtor and its decision-making committees shall cease. The conciliator may also request the court to suspend the debtor's operations if the pool of assets or an increase in the debtor's liabilities is at risk.

5. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities)? Could the claims of any class of creditor be subordinated (e.g. equitable subordination)?

As per the *Concursos* Law, in the conciliation stage of a *concurso* proceeding, creditors are given the opportunity to prove their claims and become acknowledged or recognized creditors.

The *Concursos* Law classifies creditors into the following categories:

a. secured creditors (with mortgages or pledges), and tax secured claims;
b. general labor (other than those mentioned below) and unsecured tax claims;
c. creditors with special privilege (recognized in the law with such privilege or withholding right);
d. common creditors in commercial transactions and in other transactions (unsecured creditors); and
e. subordinated creditors (intercompany creditors or those subordinated by contract).

Preferred creditors (with security rights) are paid first with the proceeds from the sale of mortgaged or pledged items. Subsequently, the secured creditors with special privilege shall be paid. If the items have a value or a price in excess of the debt, any such excess is directed to cover subsequent debt payments to other creditors. If the price does not cover the debt, preferred or with special privilege creditor may participate, *pro-rata,* regardless of dates, as a common creditor, to collect the remaining amount. Common commercial creditors collect *pro-rata* from the balance after the initial sale of assets to satisfy all prior debts. The balance thereof will then be apportioned among non-commercial creditors.

General Labor credits and tax credits shall be paid after payment of the secured creditors, but prior to the payment of credits with special privilege, unsecured creditors and subordinated creditors.

However, it is important to note that in addition to these categories, there are other types of credits that have priority over all other categories: **(i)** severance payments to employees and accrued and unpaid salaries bearing in mind the wages for the last two working years prior to the date of declaration of insolvency (management included) ; **(ii)** expenses incurred in the administration of the estate of the Debtor as approved

by the Conciliator and/or Court, and/or "DIP" loans authorized by the Court, or by the Conciliator, to preserve the liquidity and ordinary operations of the debtor; **(iii)** claims incurred to cover the general expenses to preserve the assets of the debtor (their conservation and administration; this shall not include the Debtor´s advisors fees); and **(iv)** claims derived from judicial or out-of-court proceedings for the benefit of the estate of the Debtor.

As per the *Concursos* Law, Common Creditors are paid after the secured creditors, labor creditors and creditors with special privileges but prior to the payment of credits with subordinated credits. Common Creditors are the creditors that are not consider as secure or with special privileges creditors. Those individuals or companies that have control over the debtor are also considered as Common Creditors by the *Concursos* Law.

Subordinated Creditors are the last creditors to be paid in a *concurso* proceeding. As per the *Concusos* Law, Subordinated Creditors are those creditors whose credits have been expressly subordinated; as well as with unsecured credits granted by: (i) the administrator, main directors or any member of the board of directors of the debtor, shareholders that holds more than 50% (fifty per cent) of the equity quota of the debtor or any other person that holds control, directly or indirectly over the debtor; or (ii) any other company with the same administrator, board members or main directors.

Equity holders will receive any remaining amount after having paid all type of creditors. They are not paid prior to any other creditor.

6. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

Intentional fraudulent transactions and certain other transactions may be set aside or declared as void when it is established that the debtor received inadequate consideration.

According to the *Concursos* Law, any of the following transactions may be invalidated if entered into during the period starting on the day that is 270 calendar days prior to the declaration of insolvency by a competent court:

a. transactions executed by a debtor prior to the declaration of insolvency with the intention of defrauding creditors (knowledge of the counterparty is not required if the act was gratuitous);
b. gratuitous transactions;
c. undervalue transactions;
d. transactions not effected at an arm's-length basis;
e. waivers of debts agreed by a debtor;
f. performance of obligations prior to their maturity date; and
g. discounts made by a debtor.

In line with the foregoing, a presumption exists that the following transactions are executed in fraud of creditors, unless the debtor proves good faith:

- creation of a new security interests or the increase of any existing security interests if the original obligation did not provide for it;
- payments in kind when such form of payment was not originally agreed; and
- transactions entered into by a debtor with related individuals or entities, such as its spouse, cohabiting partner, relatives, members of the board or decision-making individuals within the business, or companies where at least 51% of their capital stock is owned or voted by any of the foregoing individuals.

Challenges may be brought by recognized creditors, by the conciliator, or the intervener (intervening administrator) appointed by the creditors. The party that challenges bears the burden of proof. Challenges filed on solid basis uphold.

Per the request of the conciliator, liquidator, intervener or any creditor, the judge may extend the 270-day term, but such term may not exceed three years. If subordinated creditors exist (intercompany claims) a 540-day term will apply with respect to the transaction in which these are involved.

7. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

In an insolvency scenario, pre-judgment attachments are

not available because one of the consequences of the insolvency declaration is the order to suspend, during the conciliation stage, any writ of attachment or execution against the property and rights of the company.

It generally takes one to two-and-a-half years to enforce an unsecured claim but depending on the circumstances and the proceeding the enforcement might take additional time to get resolved and executed.

Upon the declaration of insolvency by the competent court, a stay is automatically imposed over enforcement of the creditors' rights, which stay remains in full force throughout the conciliation stage.

The court, based on its own opinion or the examiner's recommendation, is entitled to issue pre-emptive measures on the debtor's business operations, including a prohibition to make any due payments of existing obligations or disposing of any property.

8. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play?

As explained, the *Concursos* Law provides for a single insolvency proceeding known as *concurso* procedure. The *concurso* procedure consists of two main stages, conciliation stage and bankruptcy stage, each of them supervised by the Federal Institute of Specialists in Mercantile Insolvency and Bankruptcy Procedures (IFECOM). The first stage of a *concurso* procedure is the conciliation stage, which is purported to encourage a binding reorganization agreement between the debtor and its creditors (restructuring plan or creditors' agreement) and therefore avoid the debtor's bankruptcy.

During the conciliation stage, the debtor shall negotiate with its creditors to reach a creditors' agreement or reorganization agreement. If a creditors' agreement is reached and approved by the court within the term provided by law, the *concurso* procedure ends.

To be effective, the reorganization agreement shall be subscribed by the debtor and the recognized or acknowledged creditors representing over 50% of the sum of:

- the amount recognized to the totality of the recognized or acknowledged unsecured and subordinated creditors; and
- the amount recognized to these recognized or acknowledged secured creditors or with special privilege subscribing the reorganization agreement.

Pursuant to the *Concursos* Law, should the subordinated (intercompany) creditors represent more than 25% of all the acknowledged loans, the majority of the remaining common creditors will vote on the restructuring agreement without considering the subordinated creditors.

The conciliator will also collaborate in the decision regarding whether the business will continue to be operated by debtor's restructuring the debt (debtor-in-possession), or whether it is necessary to remove existing management from the operation of the company.

The second stage of a *concurso* procedure, if applicable, consists of the bankruptcy stage. The debtor may be declared bankrupt if the conciliation stage ends without the parties reaching a creditors' agreement; the debtor fails to comply with the creditors' agreement; or the debtor requests its bankruptcy, or the conciliator requests the debtor's bankruptcy and the court agrees to grant it.

9. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

Financing may be granted to the debtor outside of a statutory or formal process. Likewise, liens may be granted, but the debtor has to be very cautious in his actions to make sure that such financing is granted for the purpose of preserving the ordinary course of business and shall be aware of the elements of fraudulent transfer in order to avoid the potential risks associated therewith.

Any debtor-in-possession (DIP) loan will be repaid before any other loan, pursuant to the order of preference rules provided in the *Concursos* Law. This special or urgent financing is deemed as a claim against the estate of the debtor and would have preference over common creditors, aim to preserve the ordinary course of business and is intended to provide the required liquidity during the procedure. However, DIP financing would not have preference over already secured creditors; the rules include possible loans with priority liens but

without affecting existing priority secured creditors.

10. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

The *Concursos* Law does not provide for specific actions under which the owners/shareholders can be potentially liable to creditors. However, owners/shareholders may be potentially liable to creditors pursuant to the provisions of civil and criminal regulations.

The directors of a company that has not been declared insolvent by a competent court may not be liable for continuing to operate a company under financial distress. However, the transactions related to the collection of a creditor's rights could be subject to review when the company is declared insolvent.

In the event that the company is declared insolvent, directors engaging in any malicious act or conduct that causes the non-performance of the company's payment obligations might be liable to civil actions or even criminal liability, if those acts are proven to be fraudulent.

The *Concursos* Law provides for events during which a director or managing officer will become liable to the debtor, for the benefit of the estate of the company in a *concurso* procedure, for any damages and losses of anticipated earnings caused by any unlawful decision they had made, provided they cause damage to the estate of the debtor which led to the insolvency situation of the company. This is regardless of any liability incurred by the director or managing officer under any other law.

11. Is it common for creditor committees to be formed in restructuring proceedings and what powers or responsibilities do they have? Are they permitted to retain advisers and, if so, how are they funded?

Creditors can organize freely in accordance to their interests. Committees are common and they usually agree on the terms for retaining advisors. Their expenses may be reimbursed by the debtor if such an agreement is reached.

12. How are existing contracts treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

The declaration of insolvency in a *concurso* proceeding (i) suspends the ability of the debtor to perform legal acts, which then affects its business and assets; (ii) orders the debtor and any third party having possession of the debtors' assets to deliver all such assets to the receiver; (iii) requires that payments to the debtor only be made with the receiver's authorization; (v) invalidates any acts performed by the debtor or its representatives following the bankruptcy judgment without the receiver's authorization; and (vi) invalidates any payments executed by the debtor after the bankruptcy judgment.

The debtor might terminate contracts if this was expressly agreed in the corresponding agreement, but subject to special rules and limitations provided in the Concursos Law (there are special rules for termination of leases, purchase of goods not delivered, deposits, repurchase and derivative agreements, security loan transactions, differential or future contracts, lump sum construction contracts and insurance contracts).

13. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

During insolvency proceedings, the sale of assets to protect the ongoing concern of the debtor shall be subject to the conciliator or intervenor's approval.

Once the liquidation stage is declared, the receiver may proceed to the sale of assets and rights of the estate with the purpose of maximizing the value of the profit to be obtained, while considering the convenience of keeping the company in operation. The sale shall be made through a public bid pursuant to the *Concursos* Law provisions

The receiver may request the judge's authorization to sell any asset through a proceeding different to the

public bid when they feel a higher value will be obtained. The judge informs the debtor, recognized creditors and intervenors of this intent and will grant them a term within which to provide any objections

The purchaser will acquire good title as long as the sale is conducted in the same terms as a public auction. The receiver shall follow the rules of publicity and operability to guaranty the transparency of a sale procedure.

A security interest cannot be released without the creditor's consent.

14. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor?

The *Concursos* Law does not provide for specific actions under which the owners/shareholders can be potentially liable to creditors. However, owners/shareholders may be potentially liable to creditors pursuant to the provisions of civil and criminal regulations.

The directors of a company that has not been declared insolvent by a competent court may not be liable for continuing to operate a company under financial distress. However, the transactions related to the collection of a creditor's rights could be subject to review when the company is declared insolvent.

In the event that the company is declared insolvent, directors engaging in any malicious act or conduct that causes the non-performance of the company's payment obligations might be liable to civil actions or even criminal liability, if those acts are proven to be fraudulent.

The *Concursos* Law provides for events during which a director or managing officer will become liable to the debtor, for the benefit of the estate of the company in a *concurso* procedure, for any damages and losses of anticipated earnings caused by any unlawful decision they had made, provided they cause damage to the estate of the debtor which led to the insolvency situation of the company. This is regardless of any liability incurred by the director or managing officer under any other law.

Unless good faith and compliance with the duties of care and loyalty can be evidenced members of the board of directors, as well as relevant employees, of the debtor shall be liable for damages and losses due to some of the following activities:

- voting in board meetings or making decisions regarding the estate of the debtor regardless of a conflict of interest;
- favoring a shareholder or group of shareholders to the detriment of other shareholders;
- obtaining, due to their position and without legitimate cause, direct or indirect economic benefits;
- producing, publishing, providing or ordering information they acknowledge is false;
- ordering or failing to register operations of the debtor or modifying the registry to conceal the real nature of the operations performed, affecting any element of the financial statements;
- ordering or accepting the registration of false information in the debtor's books;
- destroying, modifying or ordering the destruction or modification of systems or accounting registries or the documentation on which these are based; and
- in general, committing malicious or illegal acts.

15. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions?

No.

16. Will a local court recognise concurrent foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

According to the *Concursos* Law, a foreign proceeding is defined as a collective or universal proceeding, whether judicial or administrative, including provisional proceedings, followed in a foreign state pursuant to a law governing bankruptcy, liquidation, or insolvency matters of the debtor; as a result of these proceedings,

the property and businesses of the merchant may result subject to the control or supervision of a foreign court, for purposes of reorganization or liquidation.

The *Concursos* Law recognizes foreign proceedings in bankruptcy, insolvency and reorganization matters, and it recognizes foreign representatives appointed through a recognition request. In this regard, the *Concursos* Law recognizes foreign proceedings when legally held in a foreign country in accordance with bankruptcy or insolvency laws applicable to the debtor due to its activities, the location of assets or other similar causes.

Under the *Concursos* Law a 'foreign representative' is the individual or entity that: (i) has been empowered under a foreign bankruptcy procedure to administrate the reorganization or settlement of the business; or (ii) has been designated as the representative of such foreign bankruptcy procedure.

The *Concursos* Law states that any representative of a foreign bankruptcy procedure may request the presiding Mexican court for the recognition of the foreign bankruptcy procedure during a *concurso* procedure.

Pursuant to the *Concursos* Law, any foreign representative is entitled to appear directly before the presiding Mexican court in all procedures brought under the *Concursos* Law. Such a filing should be made by means of an interlocutory procedure before the civil federal court knowing of the *concurso* principal proceeding. The interlocutory recognition procedures shall follow the following stages:

a. Delivery of a copy of the recognition request to the creditors who have appeared at the procedure abroad, so that within the term of five days, they declare that which is in their best interest.
b. The foreign representative's allegations will be taken as certain in the case of the creditors who fail to deliver their reply during the term specified for such effects.
c. Evidence will be offered in the interlocutory claim and in the interlocutory reply; once the term of the five days has elapsed, the Mexican court will summon the parties to a hearing of proofs and pleas that will be held within the 10 following days.
d. When offering expert or testimonial tests, at the time of offering the test, one copy of the interrogations shall be exhibited to each one of the parties so that they can formulate verbal or written questions when verifying at the hearing. Three witnesses are allowed for each fact. The Mexican court may designate an expert or those that it considers necessary, in order to render joint or separate opinions with the parties' experts. With the purpose that the parties produce their proofs at the hearing, the authorities or civil employees have the obligation to dispatch them promptly.
e. Once the hearing is concluded and within the term of three days and without summons, the Mexican court will pronounce the interlocutory judgment relative to the recognition of a foreign procedure.

In terms of the *Concursos* Law, there are two ways under which a Mexican court can recognize a foreign bankruptcy procedure: (i) as a principal procedure, when the foreign procedure is brought to a court with jurisdiction in the place where the business has its main place of interests; and (ii) as a non-principal procedure, when the foreign procedure is brought to a court with jurisdiction in the place where the business has an establishment.

The main difference between the recognition of a foreign bankruptcy procedure as a principal procedure or as a non-principal procedure is in the direct effect of such recognition over the business's assets located in Mexico.

Pursuant to the *Concursos* Law, if a foreign bankruptcy procedure is recognized as a principal procedure; any and all foreclosure over the business's assets, and any and all rights to transfer or grant any lien over business' assets, shall be suspended.

A Mexican court shall recognize the foreign bankruptcy procedure as a non-principal procedure if the debtor has a permanent place of business outside Mexican territory, but not as a principal foreign bankruptcy procedure.

The recognition aspects of a non-principal foreign bankruptcy procedure are as follows: the granting of appropriate injunctions that concede to a Mexican court to protect the business's assets or the creditors' interests, who may request through the foreign representative, that the receiver, conciliator or examiner, as the case may be: suspends all execution injunctions against the business assets; suspends the rights exercised to transmit or to mortgage the business assets, as well as to dispose of such assets in any other way; orders the delivery of evidence or the provision of information regarding the business's assets, activities, rights or liabilities of the business; entrusts the foreign representative, the receiver, conciliator or examiner, with the administration or foreclosure of all or part of the business' assets located in Mexican territory; extends every granted injunction granted by the foreign recognition procedure request; and grants any other injunction that under Mexican law may be grantable to a

receiver, conciliator or examiner.

Once a foreign procedure is recognized, the foreign representative will be able to ask the receiver, conciliator or examiner, to entrust, through a foreign representative, the distribution of all the business' assets located in Mexican territory. The Mexican court must make sure that the creditors' interests domiciled in Mexico are sufficiently protected so that it may decree the injunctions mentioned above.

The foreign representative has the power and capacity to ask that the examiner, the conciliator or the receiver, initiates the recovery of assets actions for the recovery of assets that belong to the entirety of a property, and of nullity acts concerning the defrauding of creditors. The authorization of the foreign representative to take part in the procedures promoted against the businessman that are in the proceedings and that have a patrimonial content can take place.

The injunctions that may arise from the recognition of a foreign bankruptcy procedure under a *concurso* procedure depend on the procedural phase, namely as from the filing of the recognition request throughout the corresponding resolution, and as from the issuance of the recognition resolution.

Therefore, and provided that the above-mentioned is followed, if a company organized under the laws of Mexico entered into extraterritorial bankruptcy or insolvency proceedings those proceedings would be recognized within Mexican jurisdiction.

With respect to the insolvency matters, the international documents that served as basis for the current provisions of the *Concursos* Law are the "Model Law for Cross Border Insolvency" of the UNIDROIT and the "Effective Insolvency Systems" of the World Bank.

Some of the international treaties to which Mexico is party that are related to insolvency matters are those regarding powers of attorney, judicial requests, request letters, and notifications of judicial or extrajudicial documents in civil and commercial matters.

17. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction?

Foreign bankruptcy procedures can be recognized as a principal procedure by a Mexican court, in which case any and all foreclosure over the business's assets, and any and all rights to transfer or grant any lien over business' assets, shall be suspended.

Upon the recognition of a foreign procedure, the foreign representative will be able to ask the receiver, conciliator or examiner, to entrust, through a foreign representative, the distribution of all the business' assets located in Mexican territory. The Mexican court must make sure that the creditors interests domiciled in Mexico are sufficiently protected so that it may decree the injunctions briefed above.

The domicile of the debtor is relevant, as it is required that certain jurisdiction prerequisites are met pursuant to the federal commercial legislation. Article 17 of the *Concursos* Law provides that the jurisdiction of a bankruptcy case corresponds to the district courts of the (i) domicile of the debtor, or (ii) the principal place of its business, as the case may be.

Only Mexican entities or foreign entities with branches or agencies exercising acts of commerce within Mexican territory may file a petition for insolvency declaration when they are unable to and can no longer comply with their obligations.

18. How are groups of companies treated on the restructuring or insolvency of one of more members of that group? Is there scope for cooperation between office holders?

The commercial insolvency of a debtor that is part of a corporate group does not imply the insolvency of the holding company or its subsidiaries. An individual analysis of each entity shall evidence whether it is eligible to be declared in *concurso*.

Nevertheless, Debtors which are part of the same corporate group may simultaneously request the joint judicial *concurso* declaration, without need of estate consolidation. For the joint *concurso* procedure it is enough that one of the parties of the group is under the assumptions of insolvency under the *Concursos* Law, and that such condition places one or more of the parties forming the corporate group under the same situation.

Creditors of debtors that are part of a group that meet the assumptions described above may claim the joint judicial *concurso* procedure. The joint judicial *concurso* procedure can be cumulative with other *concurso* procedures.

19. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

N/A

20. Did your country make any changes to its restructuring or insolvency laws in response to the Covid-19 pandemic? If so, what changes were made, what is their effect and are they temporary or permanent?

Although many countries quickly responded by enacting emergency legislation and implementing measures concerning restructurings, rights of creditors and insolvency proceedings, this was not Mexico´s case. There was an initiative from the Mexican Bar Association to modify the *Concurso* Law, which was published in the Senate Gazette on April 2020. This initiative intended to include in the *Concurso* Law an "Emergency Regime" to assist debtors in having an expedite access to courts in an unforeseen circumstance, force majeure or emergency declaration, health contingency or natural disaster. Unfortunately, no further progress and/or results were obtained.

21. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

In 2014, as part of an integral financial reform (13 bills involving 34 statutes) the proposal or bill to the Mexican Congress to reform various articles of the Concursos Law was approved being effective on the Concursos Law as of 10 January 2014.

Now, due to the Covid 19 pandemic, and as explained above, an initiative from the Mexican Bar Association to modify the Concurso Law was published in the Senate Gazette on April 27, 2020. We consider that the road ahead to enforce this initiative, or any other, may be a long one as amendments of this nature will affect all areas of society and doing business.

22. Is it a debtor or creditor friendly jurisdiction?

The *Concursos* Law requires the debtor´s approval to pass a restructuring plan or creditors agreement.

23. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the state play in relation to a distressed business (e.g. availability of state support)?

The government plays an active role in special reorganizations considered as such by the *Concursos* Law, such as business reorganizations of debtors that provide public services pursuant to government concessions, business reorganization of credit institutions and business reorganization of auxiliary credit institutions.

24. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

An important barrier is that unfortunately, in Mexico there are no specialized insolvency/bankruptcy courts. Federal district courts are competent to hear these insolvency processes and usually are not familiarized with the particular and complicated nature of insolvency proceedings.

The judicial power should receive training and education on insolvency and bankruptcy matters so they are prepared to assist companies in distress and maintain their existence to avoid that a generalized default in its payment obligations, put at risk their viability and that of those with whom it makes business.

There is awareness about this issue and proposals have been made to reform this barrier, but since it requires a comprehensive approach and willingness from different authorities and sectors, we might need to wait some time to see any significant developments.

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