Mexican Business Insolvency Law

Rosa María Rojas Vértiz[1]

Abstract: This article briefly explains the Mexican business insolvency system, which is regulated exclusively by the Mexican Business Insolvency Law (*Ley de Concursos Mercantiles)*, as amended up to 2025. The article describes the main features of the proceeding and highlights the more relevant reforms that have taken place. The conclusions discuss some of the hurdles in the application of the law and the challenges ahead.

Key words: *concurso mercantil,* insolvency proceeding, conciliation, business insolvency, restructuring plan, bankruptcy, liquidation, Mexico.

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A. General Aspects

1. The Mexican Business Insolvency Law (*Ley de Concursos Mercantiles*) (hereafter the "**Law**") is a federal law in effect in Mexico since May 2000. It has been amended six times; however, the main reforms were made in December 2007 and in January 2014. It only applies to individuals and companies that ordinarily carry out

[1] Professor at ITAM University. ORCID: https://orcid.org/0000-0001-7806-7393.

business activities (*comerciantes*), including business corporations. It is the only law regulating insolvency proceedings for business corporations in Mexico.

2. The Law regulates only one proceeding, which is court-driven and requires the participation of private professionals registered with the Federal Institute of Experts in Business Insolvency (*Instituto Federal de Especialistas de Concursos Mercantiles)* (hereafter the "**IFECOM**") to assist judges in formal insolvency proceedings. The IFECOM is part of the judicial branch of government and was created to maintain a registry of professionals entrusted with specific activities in support of judges during proceedings, and to prepare statistics on the proceedings.

3. The Law prescribes a pre-stage for determining whether the debtor meets the financial test required by the Law to commence the proceeding. If the financial test is met, the court must issue a judgment commencing the proceeding. The insolvency proceeding comprises two stages: conciliation and liquidation. The conciliation stage is intended to achieve a reorganization plan. If the conciliation stage is unsuccessful in reorganizing the debtor, the court must issue a judgment declaring the debtor bankrupt and commencing the debtor's liquidation.

4. The pre-stage is compulsory unless the debtor files for a prepackaged proceeding, as explained in Section K hereof. As well, the conciliation stage must be followed unless the debtor requests the court, or consents,[2] to go directly to liquidation.

B. The Pre-Stage of the Proceeding

5. The pre-stage of the proceeding commences with the filing of an insolvency petition by the debtor or a complaint by a creditor. The debtor's insolvency petition must be attached with copies of the financial statements for the last 3 years, as well as a preliminary list of creditors, debtors, assets, and legal proceedings. The debtor must explain in the petition the reasons that led the business to insolvency and must also attach a plan proposal and the corporate documents approving the filing.

6. Alternatively, any creditor may file an insolvency complaint with the court, attaching proof of its claim. The Law presumes that the debtor has generally defaulted on its obligations if the debtor has defaulted to two or more creditors, or if there aren't sufficient assets to seize for the repayment of a claim during a trial, among other scenarios. Upon admission of the complaint, the court will serve the debtor and allow the debtor to file a response, offer evidence, and be heard in the proceeding.

[2] Articles 20 and 21. Creditors may request to skip the reorganization stage subject to debtor's consent.

7. Upon receipt of the debtor's filing—or after the debtor has been served when the filing was made by a creditor, the court requests the IFECOM to appoint an independent professional called "examiner" (*visitador*) to verify that the debtor meets the following financial test required by the Law to commence the proceeding:

(a) To have overdue obligations to 2 (two) or more different creditors, and

(b) To have had 35% (thirty-five percent) or more of its obligations overdue for at least 30 (thirty) days, or

(c) Lack of liquidity[3] to repay at least 80% (eighty percent) of its obligations due on the date the insolvency petition is filed.

8. If the debtor files the petition, the financial condition of the debtor should only meet subsections (a) and (b) or (a) and (c); but if a creditor filed a complaint, the financial condition of the debtor must meet (a), (b), and (c) for the proceeding to commence. The 2014 reform allowed a debtor to file for insolvency even if the financial test was not met on the filing date, provided the debtor stated under oath that it was *imminent* that it would meet the test within the following 90 days.

9. The audit to be performed by the examiner is conducted on the debtor's premises. The examiner has only 15 (fifteen) calendar days—which may be extended for another 15 (fifteen) calendar days—to review the debtor's financial and accounting information and to provide an opinion to the court on whether the debtor meets the financial test to commence the proceeding. The examiner may verify the existence and conditions of the debtor's assets and conduct interviews of the debtor's officers and external counsel. If the debtor meets the financial test, the court must issue a judgment declaring the debtor in *concurso mercantil* and opening the conciliation stage of the proceeding. If the debtor does not meet the financial test, the court must issue a resolution terminating the proceeding.

10. Both the debtor and any creditor may request, upon the filing, any relief that may be necessary to protect the debtor's assets and the creditors' rights, including to suspend payment of existing obligations, stop enforcement actions, and forbid the disposal or encumbrance of the debtor's assets.[4] The court's grant of relief is discretionary and will depend on each case.

[3] The Law does not use the term "liquidity". It provides a list of the assets that the debtor must have in an amount at least equal to 80% of its due obligations. Such a list refers to cash, investments, deposits and receivables that may be collected in no longer than 90 days, as well as, securities that may be sold in a period not exceeding 30 days.
[4] Articles 25, 26 and 37.

C. The Conciliation Stage of the Proceeding

11. The first stage of the proceeding begins with the judgment declaring the debtor in *concurso mercantil*. Upon the issuance of such judgment:

(a) A stay on all enforcement actions on assets of the debtor takes place, including proceedings in favor of secured creditors, but excluding enforcement proceedings to collect wages and indemnities in favor of the debtor's employees;[5]

(b) The debtor must suspend the payment of obligations acquired before the judgment, not deemed necessary for the ordinary course of business of the company;

(c) Except for secured debts up to the value of their collateral, all other debts cease to accrue interest;

(d) The amount of each debt is frozen and, if denominated in a foreign currency, is exchanged to Pesos and then to UDIS;[6]

(e) A "look back" period is set, during which fraudulent conveyances and transactions made to prefer creditors can be voided;

(f) The court requests that IFECOM appoint an insolvency professional called a "conciliator" to be in charge of the conciliation stage of the proceeding. The appointment should be made randomly.

12. During the conciliation stage, the debtor remains in the management of the company—debtor-in-possession—with the surveillance of the conciliator. Notwithstanding the foregoing, the conciliator is entitled to request the court to remove the debtor from the management of the company if the conciliator considers that it is convenient to protect the estate.[7] In such a scenario, the conciliator must assume management of the company.[8] Considering that conciliators registered with IFECOM are natural persons and that their roles in the proceeding are time-consuming, it is uncommon for conciliators to remove the debtor and assume management of the company.

13. The conciliator has 2 (two) main roles (in addition to the surveillance of the debtor's management): to conduct the proceeding for the admission and

[5] Article 68 provides that the labor court —as employees may directly enforce their claims before labor courts instead of appearing before the insolvency court— may order the sale of encumbered assets for repayment of labor claims if there are no other assets available. In such scenario, secured creditors should be paid after labor claims.
[6] UDIS is a monetary unit which value is indexed to inflation in Mexico.
[7] Article 81.
[8] Article 82.

classification of the claims, and to negotiate with the parties a plan or restructuring agreement. Additionally, the Law grants the conciliator the authority to terminate executory contracts—with the previous opinion of any existing surveyors—,[9] approve new loans, authorize security interests or other guarantees, and sell assets that are not necessary to the company's ordinary course of business. The conciliator must report to the judge the foregoing. The replacement of guarantees or security interests may occur only with the express consent of the affected creditor.[10]

14. Creditors holding collateral on assets of the debtor may enforce their collateral during the conciliation stage if, according to the judge's opinion after hearing the conciliator, those assets are not strictly necessary for the company's ordinary course of business. The Law provides the conciliator with a term that should not exceed 365 (three hundred and sixty-five) calendar days to perform the roles described in this Section C. The Law provides for an initial term of 185 (one hundred and eighty-five) days, which may be extended for 2 (two) periods of 90 (ninety) days each at the request of the parties. If by the day the term expires, no plan has been approved, the judge must end the conciliation stage and declare the debtor bankrupt and in liquidation.

15. The compulsory term for the reorganization period is the result of the experience had with the old Mexican insolvency law.[11] Under the old law, debtors would request an order from the court to suspend their payments, which the court would usually grant. However, the suspension of payments had no term, so it could take many years, and in many cases, more than a decade, for the creditors to get a judgment to declare the debtor bankrupt. As a result, to avoid the foregoing, the Law provides for a non-flexible compulsory term of one-year, which has proved to be insufficient for large cases.

16. The law provides creditors with many opportunities to file their claims. Creditors may do so within (a) the 20 (twenty) calendar days following the publication of the judgment commencing the proceeding, (b) the term to object to the provisional list of claims and their classification prepared by the conciliator, and (c) the term to appeal the judgment approving the list of claims and their classification. Creditors must attach proof of their claim.

17. The conciliator should verify that each claim is legal and binding, and prepare a provisional list of the claims, specifying the amount of each claim and its rank in

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[9] Surveyors are natural persons or companies that may be appointed by creditors representing 10% (ten percent) or more of the debtor's total debt to surveille the activities performed by the debtor and the conciliator. *See* article 63.
[10] Article 75.
[11] *Ley de Quiebras y Suspensión de Pagos*.

accordance with the priorities set forth in the Law. This provisional list may be challenged by the debtor and the creditors. After reviewing the objections, the conciliator prepares a final list, which becomes the judgment approving the list of claims and their classification. Only creditors recognized in this judgment may vote the plan and subsequently participate in the proceeding. Creditors whose claims have not been recognized or who may have objections may appeal the judgment. Legal precedents hold that the appeal judgment may also be challenged in an *amparo* suit, which has caused many delays in the proceedings.

18. To be valid and binding, the plan or restructuring agreement must be approved by the debtor and creditors representing more than 50% (fifty percent) of the debt recognized in the proceeding to (a) all unsecured and subordinated creditors, and (b) secured creditors and creditors with special privilege that voluntarily execute the agreement, if any. It is important to note that if subordinated creditors—which are generally insiders—represent less than 25% of the total debt, they can vote on the plan and receive the same treatment as other creditors. However, if the debt recognized to subordinated creditors represents 25% or more of the total debt, their debt shall be excluded for purposes of the plan approval, and they will not vote the plan.

19. Originally, the Law treated insiders the same as any other creditor. Therefore, insiders would be treated as unsecured creditors, or, if they held a security interest, as secured creditors. This caused the anomalies that have made the Vitro case famous. It enabled the “Vitro” group of companies to obtain the voting quorum required by the Law for the approval of their plan, with the votes of insiders, thereby releasing third-party guarantees. To avoid the foregoing, the 2014 reforms introduced the concept of “subordinated creditors”, which essentially is applicable to insiders. However, instead of adopting a uniform rule, the law provides different treatment depending on the amount of subordinated debt, as explained in paragraph 18 above.

20. The Law does not separate creditors into voting classes. It only provides that the plan must be approved by unsecured and subordinated creditors representing over 50% (fifty percent) of total debt recognized in the proceeding—with the safeguard explained in paragraph 18 above. The plan may only provide for unsecured creditors that did not vote in favor of the plan: (a) the minimum term extension or discount approved by unsecured creditors that represent at least 30% of the claims recognized to unsecured creditors; or (b) a combination of the term extension and discount that is equal to the term extension and discount approved by at least 30% (thirty percent) of the unsecured creditors that approved the plan.[12] The plan can be vetoed, and therefore, not become effective if unsecured creditors that

[12] Article 159.

did not approve the agreement, holding over 50% (fifty percent) of the total debt recognized to unsecured creditors, oppose the restructuring plan, unless it is agreed that they are paid in full.

21. A validly approved plan binds the debtor and all unsecured and subordinated creditors, as well as secured creditors and creditors with special privilege that have executed it. Secured creditors and creditors with special privilege that didn't approve the plan are not bound by it. The debtor's consent is always required. Secured creditors that did not approve the plan may continue enforcing their collateral, unless the plan provides for their full payment within 30 (thirty) business days.[13]

22. The plan terminates the insolvency proceeding, and it shall be considered thereafter the only valid and binding document regarding the debtors' obligations recognized in the proceeding.

D. Debtor-in-Possession (DIP) Financing

23. The 2014 reform allows the debtor to request the judge's authorization to obtain immediate financing from the filing of the insolvency petition, or immediately after its admission by the court, on the grounds that it is necessary to continue the ordinary course of business and to obtain the liquidity required for the insolvency proceeding. The judge may authorize collateral to secure the financing. After hearing the examiner's opinion, the judge must decide on the requested authorization and state the financing guidelines, including repayment terms during the insolvency proceeding.[14] During the conciliation stage, the Law states that the conciliator is responsible for approving the financing and determining its guidelines, which must be reported to the judge.[15]

24. Additionally, the 2014 reform included repayment of DIP Financing immediately after repayment of employees' claims, which have first priority under the Law; on the understanding that such priority would be lost if hired in terms other than those approved by the judge or authorized by the conciliator, or upon a judgment stating that the financing was hired in fraud of creditors and damaged the pool of assets.[16] Clearly, the DIP financing will be obtained only if there are no employee claims and no risk of such claims arising. Moreover, the DIP financing would need to be secured on unencumbered assets, as it would not supersede the existing priorities in favor of secured creditors without their consent.

[13] Articles 158 and 160.
[14] Article 37.
[15] Article 75.
[16] Article 224.

E. The Look-Back Period

25. A "look back" period is set, starting on the date of the judgment that commences the proceedings and going back 270 (two hundred and seventy) calendar days, during which fraudulent conveyances or transactions in fraud of creditors can be void. If insiders or other subordinated creditors are involved (secured or unsecured), the "look back" period is extended to 540 (five hundred and forty) days. The judge, upon request, may set the "look back" period further back, up to 3 years.[17]

26. During the "look back" period, any transaction made by the debtor before the commencement of the insolvency proceeding with the intention to avoid repaying existing debt is deemed an act in fraud of creditors if *the counterparty was aware of such intention*. This last requirement, expressed in italics, is not applicable if the debtor received no consideration.[18] Acts in fraud of creditors include:

(a) Gratuitous transactions;

(b) Transactions at an undervalue;

(c) Transactions not made in arms' length basis;

(d) Waivers of debts made by the debtor;

(e) Payments of obligations before their maturity date;

(f) Discounts made by the debtor.

27. Additionally, there is a **presumption** that the following transactions are made in fraud of creditors, unless the debtor proves good faith:[19]

(a) To create new security interests or to increase any existing security interests if the original obligation did not contemplate it;

(b) Payments made with assets other than money if such a form of payment was not originally agreed (*dación en pago*);

(c) Transactions with insiders.

28. For purposes of the "look back" period, the following are considered insiders:[20]

[17] Article 112.
[18] Article 113.
[19] Article 114.
[20] Articles 116 and 117.

(a) All companies belonging to the debtor's group, including the holding company;[21]

(b) Individuals that, directly or indirectly (i) hold voting shares representing more than 50% of the capital stock of the debtor declared in *concurso mercantil* or of the companies belonging to the same group; (ii) can make decisions in the shareholders' meetings of those companies; (iii) can appoint the majority of the members of the boards of directors of those companies; (iv) or by any other means have authority to make the important decisions in those companies.

(c) The manager, members of the board or relevant employees of the debtor declared in *concurso mercantile,* of the companies belonging to the same group, or relatives of the foregoing persons;

(d) Companies that have the same individuals as the debtor as managers, members of the board, or relevant employees; and

(e) Where the debtor is a natural person, the debtor's spouse or relatives up to the fourth degree, or companies in which the debtor, the debtor's spouse or relatives perform any of the roles referred in subsection (b) above.

29. Avoidance actions may be enforced by:[22]

(a) The debtor;

(b) Shareholders holding at least 25% of the debtor's capital stock;

(c) One-fifth of the creditors whose claims have been recognized in the proceeding;

(d) Creditors representing at least 20% (twenty percent) of the claims recognized in the proceeding;

(e) Surveyors appointed by creditors in the proceeding.[23]

F. The Liquidation Stage of the Proceeding

30. If the plan is not approved, the judge must issue a judgment declaring the debtor bankrupt, which terminates the conciliation stage and commences the liquidation

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[21] Pursuant to article 15, companies belonging to the same group are, directly or indirectly, controlled by a holding company that (a) either holds 50% (fifty percent) or more of their capital stock, or (b) regardless of the shareholding, decides the administration, strategy or the principle policies of the controlled company.

[22] Articles 113 Bis and 270 Bis-1. *See* note 9 for the concept of Surveyor.

[23] Article 63.

stage.[24] For purposes of the liquidation, the court requests that IFECOM replace the conciliator with a liquidating trustee. If the conciliator is also registered with the IFECOM to perform as a liquidating trustee, the conciliator will usually be confirmed as a liquidating trustee. The main role of the liquidating trustee is to sell the assets of the estate to pay off the creditors in the order and manner set forth in the judgment that settled the amount and classification of the claims. The Law provides for the possibility of selling the company as a going concern.

31. Under the Law, the liquidation stage does not have a term. The liquidating trustee must provide the court with a status report every 2 (two) months. Liquidation continues until no assets are left. If the liquidating trustee runs out of assets before he has finished paying off the creditors, the proceeding may be temporarily closed until the debtor receives more assets. Creditors keep their right to request the continuation of the liquidation proceeding every time the debtor receives new assets until their claims are extinguished by the statute of limitations. No discharge takes place.[25]

32. The commencement of the liquidation stage and the appointment of the liquidating trustee have the following effects:[26]

(a) Remove the debtor from the management of the company and suspend the ability of the debtor to perform legal acts on behalf of the company; therefore, any legal acts performed by the debtor or its legal representatives after commencement of the liquidation stage may be void;

(b) The administration of the debtor's assets is turned over to the liquidating trustee, who may elect to continue or discontinue the debtor's business pending final liquidation, and has full authority to manage the business and dispose of the debtor's assets;

(c) Third parties having possession of the debtors' assets are ordered to deliver such assets to the liquidating trustee and to make payments only to the liquidating trustee. Payments made to the debtor cause double payment obligations.

G. Rankings and Priorities in Bankruptcy

33. The Law provides the following rankings and priorities to pay off the creditors' claims during the liquidation stage:[27]

[24] Articles 167 and 168.
[25] Article 235.
[26] Article 169.
[27] Articles 217 to 224.

(a) Debts for wages and indemnities in favor of employees accruing during the year prior to the judgment commencing the proceeding;

(b) Expenses incurred in the management of the state authorized by the conciliator or the liquidation trustee, and repayment of the DIP financing obtained to maintain the company as a going concern and to get the liquidity required to pay the proceeding. Thereafter, expenses incurred in the preservation, maintenance, repair and administration of the debtors' assets, as well as expenses incurred in litigation and other proceedings that may benefit the state;

(c) Secured creditors, on the understanding that secured creditors must only contribute to the expenses mentioned in subsection (b) above to the extent such expenses were incurred strictly in connection with their collateral;[28]

(d) Labor debts other than those described in subsection (a) above and debts in favor of tax authorities;

(f) Creditors with special privileges, other than secured creditors;

(g) Unsecured creditors; and

(h) Subordinated creditors.

34. In the event the assets of the estate, other than collateral in favor of secured creditors, are not sufficient to pay the labor claims mentioned in paragraph 33 (a) above, the liquidating trustee is entitled to use the proceeds of sale of the collateral in favor of secured creditors to pay those labor claims, passing over to secured creditors only the remaining proceeds. In such a case, the outstanding amount of secured creditors' claims shall be considered as preferential claims (*créditos contra la masa)* and should be paid with claims ranked in paragraph 33 (b) above.

35. As mentioned in paragraph 19 above, the Law did not originally regulate subordinated creditors. This rank was added after the Vitro case. Subordinated creditors are insiders and creditors who voluntarily agree to subordinate their collection rights after unsecured creditors.[29] For purposes of the ranking and priorities in liquidation, insiders include all persons mentioned in paragraph 28 above, but *exclude* (a) holding companies, (b) insiders with *secured debt*, and (c)

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[28] Secured creditors includes only *in rem* security interests, which are limited to mortgages on real estate assets and pledges on movables and intangibles.
[29] Article 222 Bis.

controlling shareholders described in paragraph 28 (b).[30] Accordingly, insiders with secured debt receive the same treatment as other secured creditors, and holding companies and shareholders that control a debtor or another company belonging to the same group, without security interests, are treated as unsecured creditors.

H. Special Provision Regarding Third-Party Releases

36. To avoid repeating the circumstances that took place in the Vitro case, the 2014 reform incorporated in article 166 the following: "*Any payment term extension, discount, waiver or any other benefit contained in the restructuring agreement in favor of the debtor shall only be effective against the debtor, and not against third party obligors, except with the express consent of the affected creditor*."

37. The addition is important and may be raised for discussion by the Mexican courts, as many guarantees under Mexican law—including security interests—are ancillary to the secured obligation. In such cases, if the secured obligation is extinguished or modified, the guarantee is automatically extinguished or modified.

I. Collective Debt: Creditors Holding Securities

38. The 2014 reform introduced several rules to regulate the rights of collective creditors. Article 161 Bis provides that legal representation of creditors holding securities shall be governed by the rules specified in the indenture. If no such rules exist, the common representative must call a meeting of holders for them to decide whether to approve or reject the plan. The meeting shall be valid only if holders of 75% of the issuance amount are represented, and the decision is adopted by the majority of the represented holders. The common representative shall be the only person authorized to communicate to the conciliator, the liquidating trustee, or the judge the decision made by the holders' meeting. If the plan is approved, the common representative shall sign the agreement and bind the holders. If the call is not made or the necessary quorum to hold the meeting is not met, each holder may appear individually at the proceeding.

J. Responsibility of Board Members and Relevant Employees

39. The 2014 reform also introduced a new chapter regulating the responsibility of the members of the board of directors, the general manager, and employees with

[30] The reasons for excluding holding companies and controlling shareholders from the treatment applicable to subordinated creditors is not clear in the Law or its legislative process. There is only a reference in the Congress debates when discussing the Law that considers that excluding them could incentivize further contributions of capital to the debtor during the proceeding.

decision-making authority. They will be liable for damages if they conduct themselves in any of the following ways:[31]

(a) Vote in the board meeting or make decisions having a conflict of interest;

(b) Intentionally favor a shareholder or a group of shareholders, causing damage to the rest;

(c) Obtain, without a legitimate cause, an economic benefit, either for them or for third parties, including a shareholder or a group of shareholders;

(d) Intentionally generate or communicate false information;

(e) Order or cause the debtor's transactions not to be registered or registries to be altered;

(f) Allow that false information is incorporated into the debtor's accounting;

(g) Destroy or modify the systems, accounting registries, or support documents;

(h) Alter the terms or conditions of the debtors' balances, agreements, or transactions;

(i) In general, perform illegal actions with willful misconduct or bad faith.

40. The responsibility should be excluded if it is proved that they: (a) conducted themselves with good faith; (b) acted in compliance with the law and the debtors' corporate documents; (c) made their decisions following information obtained by relevant employees, external auditors, or independent experts with credibility; and (d) selected the option or strategy they deemed more appropriate, or complied with the shareholders' meetings minutes, to the extent they were legal.[32]

41. Only the following persons may file a claim for damages against the persons mentioned in paragraph 39 above: (a) the debtor; (b) its shareholders representing at least 25% of the debtor's capital stock; (c) a fifth part of the creditors recognized in the judgment approving the claims and priorities in the proceeding; (d) creditors representing 20% of the total debt recognized in the proceeding, and/or (e) surveyors appointed by creditors.[33] The Law forbids the debtor from excluding in its by-laws responsibility for the behavior described in this section, and may only hire insurance or bonds that cover the damages caused when the employees and members of the board have acted in good faith and in accordance with the law.

[31] Article 270 Bis.
[32] Article 270 Bis-2.
[33] Articles 113 bis and 270 Bis-1.

K. Prepackaged Proceeding

42. The 2007 reform introduced a prepackaged proceeding, which was modified in 2014. To submit to this proceeding, the debtor must negotiate a plan with its key creditors and obtain the approval of creditors representing the majority of its total debt before filing the petition. The petition must be executed by the debtor and the creditors who approve the plan proposal, filed together with the documents mentioned in paragraph 5 above, and a statement by the debtor ensuring that (a) the creditors that signed the petition represent the majority of its total debt and (b) the debtor meets the financial test stated in Article 10 of the Law, or it is imminent that it will meet such test within the following 90 days. If the precedent requirements are met, the court should admit the petition and issue the judgment commencing the insolvency proceeding, skipping the pre-stage of the proceeding. Relief may be requested at the time of the filing. After the judgment commencing the insolvency proceeding is issued, the proceeding continues as a regular proceeding.

43. Law also provides for special insolvency proceedings applicable to certain types of entities. For example, companies that operate with public concessions and financial entities—other than banks. The regulation is similar to the regular proceeding, with certain adjustments required for the type of entity or activity involved.

L. The UNCITRAL Model Law on Cross-Border Insolvency (MLCBI)

44. Mexico was the first country to adopt the MLCBI. It was incorporated into Title XII of the Law since its enactment in May 2000. Title XII incorporates every feature of the MLCBI, but has the following deviations:

(a) Recognition of a foreign proceeding is made in a judgment after the debtor has been served, allowed to respond, provided evidence, and has been heard in a hearing with the petitioner;

(b) Mexican law requires the appointment of an insolvency professional registered with the IFECOM, either a conciliator or a liquidating trustee, to act as intermediaries between the foreign representative and the court;

(c) Mexican law incorporates reciprocity;

(d) When the debtor has an establishment in Mexico, the Law requires that a local insolvency proceeding be commenced covering all stages of the proceeding, including the pre-stage of the proceeding;

(e) Any type of relief requires that recognition of a foreign proceeding be requested, and henceforth, to follow the special proceeding required for recognition; and

(f) The automatic relief under article 20 of the MLCBI only stays enforcement actions; it allows proceedings to continue or to commence.

45. The reciprocity provision has not hindered recognition of foreign proceedings. To date, only 4 (four) petitions to recognize foreign proceedings have been filed—3 (three) from the U.S.A. and 1 (one) from Switzerland—, and all have been successful, even though Switzerland has not adopted the MLCBI. In addition to recognizing the foreign proceedings, Mexican courts have granted the relief requested.

46. The provision that has been more problematic is the one described in paragraph 44 (d) above, which requires the commencement of a full insolvency proceeding when the debtor has an establishment in Mexico. The rationale for this inclusion is to ensure local creditors are heard.[34] This provision has deterred many companies from requesting recognition in Mexico, including Mexican companies that have filed abroad. Companies want to avoid commencing a parallel proceeding that is unnecessary, will increase expenses, delays and may create conflicts with existing proceedings. All foreign proceedings that have sought recognition in Mexico involve debtors with no establishment in Mexico.

M. Conclusions

47. The Law has been in effect for 26 years, but according to IFECOM statistics,[35] since May 2000 up to November 2025, only 1,133 insolvency proceedings have been filed nationwide. That is a very small figure considering the size of the Mexican economy. Although the Law incorporated many features of modern insolvency proceedings, such as the debtor-in-possession, an automatic stay following issuance of the judgment commencing the proceeding, incentives for the negotiation of a restructuring or reorganization plan, the adoption of the MLCBI, and a pre-package proceeding, the Law has not been successful in encouraging filings or in ensuring efficient proceedings.

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[34] *Amparo en Revisión Civil 361/2004 Décimo Primer Tribunal Colegiado en Materia Civil del Primer Circuito*.

[35] IFECOM, *Estadísticas en Materia Concursal, Cifras del 1 de diciembre de 2024 al 30 de noviembre de 2025*, available at: https://www.ifecom.cjf.gob.mx/index.htm

48. A precise diagnosis of the reasons that have caused such a small number of filings would require many studies and many more pages. I will only mention 2 (two) issues which, in my opinion, have strongly contributed to the lack of success in the application of the Law: (a) in Mexico, approximately 99% (ninety-nine percent) of the business are micro and small companies, which cannot afford a court proceeding where it is necessary to pay sophisticated and expensive lawyers, in addition to the fees of the insolvency professionals registered with IFECOM and other experts—no simplified or alternative proceedings have been regulated; and (b) the lack of experienced judges on commercial and insolvency law has made the appropriate application and enforcement of the Law extremely difficult.

49. During 22 (twenty-two) years—from 2000 to 2022—, federal judges showed very little interest in insolvency cases. Thousands of cases were dismissed, which may be understandable given that the judges handling them were specialized in *amparo* suits and had no training in insolvency. This changed in March 2022, when 2 (two) federal courts were created to handle insolvency cases exclusively. The new courts received a capacity-building program. IFECOM statistics show that the annual number of cases admitted in 2023, 2024, and 2025 nearly doubled compared with previous years. However, Andrés Manuel López Obrador, our former President—who was determined to remove the judges for issuing judgments against the government—, and his political party used dubious mechanisms to obtain an absolute majority in Congress during the 2024 elections and reform the Constitution to replace all judges between 2025 and 2027. The process was completed by our current President, Scheinbaum. In September 2025, 50% (fifty percent) of judges were replaced, including the only judge who had shown interest in insolvency and was voluntarily—and at her own cost—attending international events to receive continuing education.[36]

50. This has been very frustrating, and it forces us to start all over again. However, not everything has been lost. The 2 (two) insolvency courts remain, and some of the trained personnel do as well. Additionally, over these 26 years, practitioners, academics, and insolvency professionals registered with IFECOM have had the opportunity to experience and assess many provisions of the Law that did not achieve the expected results. We have identified many issues that need to be changed to improve our insolvency system. Moreover, the use of alternative dispute resolution mechanisms (ADR) is increasing. A general law was approved to require local and federal courts to establish ADR centers and to certify independent professionals to conduct mediation. Settlements entered with certified mediators will have the same effect as a final judgment. The Law is silent on arbitration, except

[36] Olga Borja Cárdenas, who was *Juez Primera de Distrito en materia de concursos mercantiles, con residencia en la Ciudad de México y jurisdicción en toda la República Mexicana.*

that it expressly provides that arbitral awards issued before the look-back period must be included in the judgment approving the list of claims and their classification. Our goal, and next step, is to work on a reform of our insolvency system that addresses many of the identified problems and expressly considers the regular use of ADR mechanisms, including arbitration. This is an opportunity to address what went wrong, and the experience gained over the last few decades should help improve the system.