



INSOL
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Module 4E Guidance Text

Mexico

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1. INTRODUCTION TO INTERNATIONAL INSOLVENCY LAW IN MEXICO

Welcome to **Module 4E**, dealing with international insolvency law in **Mexico**. This Module is one of the elective module choices for the Foundation Certificate. The purpose of this guidance text is to provide:

- a general overview, including the background and history, of insolvency law in Mexico;
- a relatively detailed overview of Mexico's insolvency system, dealing with both corporate and consumer insolvency; and
- a relatively detailed overview of the rules relating to international insolvency and how they are dealt with in the context of Mexico.

This guidance text is all that is required to be consulted for the completion of the assessment for this module. You are not required to look beyond the guidance text for the answers to the assessment questions, although bonus marks will be awarded if you do refer to materials beyond this guidance text when submitting your assessment.

Please note that the formal assessment for this module must be submitted by **11 pm (23:00) BST (GMT +1) on 31 July 2024**. Please consult the Foundation Certificate in International Insolvency Law website for both the assessment and the instructions for submitting the assessment. Please note that no extensions for the submission of assessments beyond 31 July 2024 will be considered.

For general guidance on what is expected of you on the course generally, and more specifically in respect of each module, please consult the course handbook which you will find on the web pages for the Foundation Certificate in International Insolvency Law.

2. AIMS AND OUTCOMES OF THIS MODULE

After having completed this module you should have a good understanding of the following aspects of insolvency law in Mexico:

- the background and historical development of insolvency law in Mexico;
- the various pieces of primary and secondary legislation governing Mexican insolvency law;
- the operation of the primary legislation in regard to liquidation and corporate rescue;
- the operation of the primary and other legislation in regard to corporate debtors;
- the rules of international insolvency law as they apply in Mexico; and
- the rules relating to the recognition of foreign judgments in Mexico.

After having completed this module you should be able to:

- answer direct and multiple-choice type questions relating to the content of this module;
- be able to write an essay on any aspect of Mexican insolvency law; and
- be able to answer questions based on a set of facts relating to Mexican insolvency law.

Throughout the guidance text you will find a number of self-assessment questions. These are designed to assist you in ensuring that you understand the work being covered as you progress through text. In order to assist you further, the suggested answers to the self-assessment questions are provided to you in **Appendix A**.

3. AN INTRODUCTION TO MEXICO

The United Mexican States, better known as Mexico (also the Mexican Republic), is located in North America and has a surface area of 1 964 375 km² and a population of 126 705 138 people.¹

In 2022, Mexico's gross domestic product (GDP) was EUR 1 343 383, which makes Mexico the 15th largest economy between the countries that report their GDP.²

Mexico is a federal presidential republic, and its government is divided in three levels:³

- (i) federal, with a centralised government;⁴
- (ii) local, with a government in each estate;⁵ and
- (iii) municipal, with a government in each municipality.⁶

Mexico's Constitution indicates that the sovereignty resides in the population and is exercised by the Powers of the Union, namely: (i) executive, (ii) legislative and (iii) judicial.

The Executive Power governs according to what is established in legislation. The leader of the Executive Power is the President, who is elected by the population every six years without the possibility of being re-elected. The President has the power to assign the Estate Secretaries and Federal Prosecutor.⁷

¹ Mexico: economy and demography. Available at <https://datosmacro.expansion.com/paises/mexico#:~:text=M%C3%A9xico%2C%20con%20una%20poblaci%C3%B3n%20de,15%20por%20volumen%20de%20PIB>.

² Mexico's GDP. Available at <https://datosmacro.expansion.com/pib/mexico>.

³ The Mexican Government. Available at: https://imt.mx/images/files/SPC/cursos%20Nociones/contenidos/modulo2/mod_2_2_1.htm.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ <https://embamex.sre.gob.mx/nuevazelandia/index.php/sobremexico/gobiernoyestructura>.

The Legislative Power resides in the Congress, which is divided into Representatives and Senators. The Congress must issue the laws that rule the structure and operation of the country.⁸

The Representative's Chamber consists of 500 representatives. Three hundred representatives are elected by a relative majority and 200 by the principle of proportional representation.⁹

The Senate consists of 128 senators. Each of the 32 States of the Mexican Republic have two senators elected by a relative majority and one is assigned to the first minority.¹⁰

The Judicial Power oversees and supervises the fulfilment of the Constitution and other laws. The Constitution is the supreme law and no other law can contravene it. The Supreme Court is the highest tribunal in Mexico and is tasked with analysing and ensuring that no law contravenes the Constitution, as well as resolving any conflict between the Federation and the States.¹¹

Mexico's current Constitution was enacted on 5 February 1917. The legal system in Mexico is based on civil law, and therefore it is statutorily based. In March 2021 a precedential system was introduced, however to interpret the law courts have always looked at case law known as *jurisprudencia*, established by the Supreme Court of Justice and the federal collegiate courts. The most important source of law is the Constitution, followed by general laws, federal laws, local legislation, and finally municipal regulations.

4. LEGAL SYSTEM AND INSTITUTIONAL FRAMEWORK

4.1 Legal system

The historical background of the Mexican insolvency system dates from the Spanish Vice Royalty, and can be found in the Bilbao Ordinances (1737).¹² The purpose of the Bilbao Ordinances was to regulate the commercial customs of that time in one legal code. Chapter XVII of the Bilbao Ordinances was entitled *De los atrasados, fallidos, quebrados, o alzados; sus clases, y modo de procederse en sus quiebras* (The delayed, failed, bankrupt or debtors; their classes and way to proceed in their insolvencies).¹³

Later, after Mexico's independence from Spain, the Bankruptcy Law was published in 1853, which was influenced by the Spanish and French insolvency laws. In 1854 the Bankruptcy Law was incorporated into the Commercial Code of 1854 in the Chapter entitled "Bankruptcies". The Commercial Code did not provide for a company's liquidation, the court's influence in the proceeding was minimal and the receiver's powers were rather broad.¹⁴

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² S Martinez and L Fernando, *Concursos Mercantiles* (Editorial Porrúa, Mexico's City, 2016) at 8.

¹³ Orígenes históricos, evolución y antecedentes del derecho de insolvencia (2017), available at <https://modumlegal.mx/origenes-historicos-evolucion-y-antecedentes-del-derecho-de-insolvencia/>.

¹⁴ S Martinez and L Fernando, *Concursos Mercantiles* (Editorial Porrúa, Mexico's City, 2016) at 8.

The Commercial Code of 1854 was abrogated in 1883 when a new Commercial Code was issued that provided for a suspicious period, a provisional and a definitive receiver, and a presumption that all goods acquired by the debtor's wife were donated by him.¹⁵

The Commercial Code of 1883 was amended by the Commercial Code of 1890, which introduced rules for the revocation and grouping of creditors. This Commercial Code regulated insolvency proceedings for more than 50 years.¹⁶

The chapter dealing with bankruptcy proceedings in the Commercial Code was replaced by the *Ley de Quiebras y Suspensión de Pagos* (The Bankruptcy and Suspension of Payments Law) in 1943. This law was aimed at protecting commercial companies that fell into an insolvency situation, as well as those third parties that could be affected by such a situation. The proceeding was a universal, judicial, and administrative process to which a debtor could have access in the event that it could not satisfy its matured debts, in order to sell its assets and pay its creditors according to the order and rules foreseen by the law.

The Bankruptcy and Suspension of Payments Law incorporated institutions such as the suspension of payments by the debtor, a preventive agreement and the debtor's removal from the administration into the Mexican insolvency system. It also proposed solutions for the debtor's recovery or if that was not possible, the sale of all of its assets. The law also introduced the effects of the declaration of bankruptcy of a debtor, bankruptcy organs, the company's rehabilitation, the prevention of the company's bankruptcy, etcetera.

In 2000 the Bankruptcy and Suspension of Payments Law was replaced by the Commercial Insolvency Law (*Ley de Concursos Mercantiles*) which is currently in force. The Commercial Insolvency Law changed the insolvency system in Mexico in order to make it more modern and to streamline it in accordance with international standards.

The Commercial Insolvency Law introduced a conciliation stage,¹⁷ and thus its main objective is the conservation of the debtor company. It introduced new roleplayers in the proceedings such as the visitor and the conciliator, as well as the Federal Institute of Insolvency Experts as part of the Federal Judiciary Branch.¹⁸ It includes determined terms, and it incorporated the UNCITRAL Model Law on Cross-Border Insolvency.¹⁹

Mexico did not import or model the Commercial Insolvency Law on the laws of any other jurisdiction. The Commercial Insolvency Law was however drafted to adopt the UNCITRAL Model Law on Cross-Border Insolvency and to facilitate the co-operation with other countries in cross-border insolvencies. The legislators also noted the necessity for modernising the insolvency legal system to acknowledge the current commercial reality in the country and the

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Commercial Insolvency Law, Title I, Chapter V.

¹⁸ *Idem*, Title II, Chapter I.

¹⁹ *Idem*, Title XII.

rest of the world, as well as to attend to globalisation challenges in respect of insolvency proceedings.²⁰

4.2 Institutional framework

4.2.1 Constitutional basis

In Mexico, the Constitution establishes two orders: the Federation and the States.²¹ There is no subordination between them since each one enjoys decision-making capacity within its competence. The States may freely legislate their constitution and local laws, in which they establish their own rules and structure of government. Such legislation may however not be contrary to the federal pact established in the Constitution.²²

The legal system thus consists of general laws, federal laws, local laws, and municipal ordinances. The general and federal laws are issued by Congress, the local laws are issued by the local Legislatures and the municipal ordinances by the City Council of each municipality.

General laws are valid throughout the country, meaning all federal, state, and municipal orders must comply with general laws, whereas federal laws regulate matters exclusively of the Federal order, local laws are valid only in the States they were issued, and municipal ordinances will only rule issues within the municipalities.

Article 73(IX) and (X) of the Constitution establishes that the Federal Legislative Power (Congress) has the exclusive power to legislate on matters of commerce.²³

Consequently, all mercantile matters (matters related to commerce) will be regulated by general laws issued by Congress and must be complied with by the 32 states that constitute the Mexican Republic.

In this regard, the Commercial Insolvency Law (which establishes the rules for the insolvency proceeding of persons (individuals or legal entities) engaged in commerce), is considered a "general matter" since it is a purely mercantile proceeding and therefore the Commercial Insolvency Law was issued by Congress.²⁴

²⁰ Ley de Concursos Mercantiles, Exposición de Motivos, available at <https://legislacion.scjn.gob.mx/Buscador/Paginas/wfProcesoLegislativoCompleto.aspx?q=V95NcogKxHpUN4bFbjWt9j8muee4v7g9xqmeAc4lckxeEdPlu8MLP2XcTLligZH5rcjz5B5e+I8if5pLE4OOjg==>.

²¹ Constitution, art 40.

²² *Ibid.*

²³ *Idem*, art 73(IX) and (X).

²⁴ *Ibid.*

4.2.2 Judicial system

The Federal Judicial Branch is composed of the Supreme Court of Justice, Collegiate Circuit Courts, Collegiate Courts of Appeal (formerly Unitary Circuit Courts)²⁵ and District Courts.²⁶ There are 32 circuits, being one circuit for each federal entity of the Mexican Republic.

In addition to the fact that article 73 of the Constitution determines the “general nature” of commercial matters, article 104 of the Constitution provides that the Federal Courts have the jurisdiction to resolve commercial issues.²⁷

Thus, according to the Constitution, it is the Commercial District Judges who are competent to resolve and process bankruptcy proceedings (first-degree judges). This is also confirmed by article 17 of the Commercial Insolvency Law, which provides that the Commercial District Judge with jurisdiction in the place where the debtor has its domicile is competent to hear the insolvency proceeding.

In this regard, Commercial District Judges had jurisdiction regarding bankruptcy matters until 2022. Nevertheless, on 4 March 2022 the Federal Judiciary Council issued a General Agreement²⁸ (General Agreement 4/22) in which it is stated the creation, denomination and commencement of duties of the First and Second District Courts Specialised in Commercial Insolvency Matters, as well as their jurisdiction.²⁹

It is important to note that Commercial District Judges not only resolve commercial or bankruptcy matters, but also have jurisdiction over other matters such as *Amparo*,³⁰ administrative, labour or criminal matters, depending on the circuit to which they belong (this being the main reason for the need of a specialised court for bankruptcy proceedings and the issuance of the General Agreement 4/22).

Therefore, because of the General Agreement 4/22, the District Courts Specialised in Commercial Insolvency Matters exercise territorial jurisdiction throughout the Mexican Republic and have jurisdiction to solve *Amparo* proceedings related to bankruptcy matters.³¹

On the other hand, the Collegiate Courts of Appeal (formerly Unitary Circuit Courts) will resolve appeals against first-degree judgments. However, in insolvency proceeding Collegiate Courts of Appeal will only hear appeals against the following judgments:

²⁵ Unitary Circuit Courts were replaced by the Collegiate Courts of Appeal through the “Decree declaring various provisions of the Constitution of the United Mexican States, related to the Judicial Power of the Federation, amended and added”, published on 11 March 2021.

²⁶ Constitution, art 94.

²⁷ *Idem*, art 104.

²⁸ General Agreement 4/2022 of the Plenary of the Federal Judiciary Council.

²⁹ In the authors' opinion, under the principle of the hierarchy of laws, the appropriate instrument for creating specialised bankruptcy courts should be a constitutional reform of arts 73 and 104 of the Constitution and art 17 of the Commercial Insolvency Law.

³⁰ See the discussion in this regard below.

³¹ General Agreement 4/2022 of the Plenary of the Federal Judiciary Council.

- (a) a judgment that declares the insolvency of the debtor;³²
- (b) a judgment that denies declaring the insolvency of the debtor;³³
- (c) the recognition, classification and priority of credits judgment;³⁴
- (d) a judgment that approves the reorganisation agreement;³⁵ and
- (e) a judgment that orders the bankruptcy (liquidation) of the debtor.³⁶

However, every other resolution dictated within the insolvency proceeding can be appealed through an appeal for revocation which will be resolved by the Bankruptcy Court.³⁷ Consequently, the Collegiate Courts of Appeal will hear and resolve appeals against the main and most important judgments in the insolvency proceeding, whereas appeals for revocation against procedural decisions will be heard and resolved by the Bankruptcy Court.

In Mexico there is a constitutional procedure called *Amparo* (constitutional review), which is a proceeding against human rights violations. An *Amparo* claim can be filed against an appellate judgment handed down in an insolvency proceeding. If the judgment was issued by a Collegiate Court of Appeal, another Collegiate Court of Appeal of the same circuit will resolve the *Amparo* claim.³⁸ However, if the judgment is related to bankruptcy matters, the *Amparo* claim will be resolved by the District Courts Specialised in Commercial Insolvency.³⁹

Finally, an *Amparo* judgment handed down by either a Collegiate Court of Appeal or the Bankruptcy Court, may be subject to a final review by a Collegiate Circuit Court which will issue a final and irrevocable judgment on the matter that has been submitted to its consideration.⁴⁰

It is important to mention that an *Amparo* claim against a judgment that resolves the appeal against the recognition, classification and priority of credits judgment handed down by a Collegiate Court of Appeal will be resolved by a Collegiate Circuit Court, without it firstly being reviewed by another Collegiate Court of Appeal. The reason for this difference is that the recognition, classification and priority of credits judgment is considered to resolve the main conflict of the insolvency proceeding, being how much the debtor owes to each of its creditors and how the creditors must be classified and prioritised.

Finally, the Supreme Court of Justice of Mexico can hear and resolve *Amparo* claims that would in principle be heard by the Collegiate Circuit Courts when such proceedings are of primary interest and importance for the nation. The Supreme Court of Justice can extraordinarily review

³² Commercial Insolvency Law, art 49.

³³ *Ibid.*

³⁴ *Idem*, art 135.

³⁵ *Idem*, art 162.

³⁶ *Idem*, art 175.

³⁷ *Idem*, art 268.

³⁸ *Amparo* Law, art 36.

³⁹ General Agreement 4/22, art 3.

⁴⁰ *Amparo* Law, art 34.

the Collegiate Circuit Court's judgment when there is a constitutional or human rights interpretation to settle.⁴¹

4.2.3 Legislation applicable to bankruptcy proceedings

Bankruptcy proceedings in Mexico are governed by the rules set forth in the Commercial Insolvency Law.

In 2000, within the framework of Mexico's subscription to the UNCITRAL Model Law on Cross-Border Insolvency, Mexico abrogated its old Bankruptcy and Suspension of Payments Law in order to adopt modern legislation that was adapted to the requirements of the time.

Thus, on 12 May 2000 the Commercial Insolvency Law was published in the Official Gazette of the Federation. The main purpose of the Commercial Insolvency Law is to preserve companies and prevent that the generalised default of payment obligations by the debtor jeopardises its viability and the viability of other enterprises with whom the debtor maintains a business relationship.⁴²

From the statement of motives for the enactment of the Commercial Insolvency Law, the legislators pointed out that the main objective of the creation of this new law was to promote healthy and sustained economic growth that could provide development opportunities to the population, offering certainty and confidence to individuals in the resolution of disputes.⁴³

4.2.3.1 Supplementary jurisdiction to the Bankruptcy Law

The supplementary nature of Mexican legislation means that in order to make-up for a deficiency in, or poor regulation of, a general law, another specific law should be applied. In this context there must be two laws: the law supplied (that deals with the specific aspect) and the supplementary law.

In this respect, article 8 of the Commercial Insolvency Law states that when circumstances are not foreseen in the Commercial Insolvency Law, the following laws may be used in a supplementary manner:

- (a) the Commerce Code;⁴⁴
- (b) commercial legislation;⁴⁵
- (c) the special and general mercantile practices;⁴⁶

⁴¹ *Idem*, art 40.

⁴² Commercial Insolvency Law, art 1.

⁴³ Explanatory Memorandum of the Commercial Insolvency Law.

⁴⁴ Commercial Insolvency Law, art 1(I).

⁴⁵ *Idem*, art 1(II).

⁴⁶ *Idem*, art 1(III).

(d) the Federal Code of Civil Procedures;⁴⁷ and

(e) the Federal Civil Code.⁴⁸

Thus, in the event of an inadequate or incomplete regulation of any legal provision in the Commercial Insolvency Law, the sources of law mentioned above may be consulted.

Usually, the Commerce Code will be used in respect of procedural requirements not specifically provided for in the Commercial Insolvency Law, as in the case of the regulation of the appeal for revocation, personality requirements of the person requesting the proceeding, and judicial terms not provided for in the Commercial Insolvency Law, amongst others.

On the other hand, mercantile legislation will be used when a specific matter arises that may be dealt with in terms of other mercantile matters that have their own statutes, such as the Law of Credit Institutions, the Law of Credit Instruments and Credit Operations and the Law of Mercantile Corporations.

Finally, the federal civil codes will be used whenever the Commercial Code and the mercantile laws do not provide specific provisions regulating a specific matter.

4.2.4 Federal Institute of Specialists in Commercial Bankruptcy Proceedings

The Federal Institute of Specialists in Commercial Bankruptcy Proceedings (better known as IFECOM) was created by the Commercial Insolvency Law as an auxiliary body of the Federal Judiciary Council⁴⁹ with technical and operational autonomy, whose main purpose is to authorise the registration of persons meet the necessary requirements to perform the functions of visitor, conciliator or receiver (specialists), within the different phases of the commercial bankruptcy proceedings.⁵⁰

With respect to its functions, IFECOM plays a supporting role to the administration of justice as it acts as expert in matters of insolvency proceedings, and its opinions and rulings with respect to each of the points that are submitted for its consideration do not constitute a definitive judgment, but rather serve as guiding criteria for the Bankruptcy Courts.⁵¹

Therefore, the main functions of IFECOM are as follows, namely to:

- (a) authorise the registration, as specialists in commercial insolvency proceedings, of those persons who demonstrate that they meet the necessary requirements for the performance of the functions of visitor, conciliator and receiver;⁵²

⁴⁷ *Idem*, art 1(IV).

⁴⁸ *Idem*, art 1(V).

⁴⁹ Administrative Body of the Federal Judiciary.

⁵⁰ Commercial Insolvency Law, art 311.

⁵¹ *Amparo* appeal 193/2009.

⁵² Commercial Insolvency Law, art 311(I).

- (b) establish and maintain the registry of visitors, conciliators and receivers;⁵³
- (c) revoke, when appropriate, the authorisation to perform the functions of visitors, conciliators and receivers;⁵⁴
- (d) appoint the persons who will perform the functions of visitor, conciliator and receiver in each commercial insolvency proceeding from among those registered with IFECOM;⁵⁵
- (e) establish the applicable regime to regulate the fees for visitors, conciliators and receivers;⁵⁶
- (f) supervise the services performed by the visitors, conciliators and receivers in the insolvency proceedings;⁵⁷ and
- (g) act as a consultative body for the specialists in commercial insolvency proceedings and for the jurisdictional bodies in charge of the application of the law, with respect to the criteria for interpretation and application of the Commercial Insolvency Law provisions (considering that the opinions issued by IFECOM in the exercise of this function will not be binding on the court).⁵⁸

IFECOM manages its activities through a board of directors consisting of the general director and four members that are appointed by the Federal Judiciary Council. These appointments must ensure a multidisciplinary integration of the members of the Board, covering administrative, accounting, economic, financial and legal matters.⁵⁹

4.2.5 Specialists in insolvency proceedings

Considering that the insolvency proceeding is multidisciplinary, the Commercial Insolvency Law determines that the IFECOM must designate judicial assistants with experience and broad knowledge in accounting, financial, administrative and legal matters to assist the Bankruptcy Court in the issuance of more comprehensive judgments that meet the needs of a company in operation.⁶⁰ For this reason, there are individuals called “insolvency specialists” who intervene in the insolvency proceedings.

These insolvency specialists will act as visitors, conciliators or receivers depending on the stage of the proceeding; having different functions and obligations.

In general, the insolvency specialists must not have any type of conflict of interest in the proceeding, and if they do, they must inform IFECOM or the Bankruptcy Court so that a substitute insolvency specialist may be appointed. Insolvency specialists are entitled to receive

⁵³ *Idem*, art 311(II).

⁵⁴ *Idem*, art 311(III).

⁵⁵ *Idem*, art 311(IV).

⁵⁶ *Idem*, art 311(V).

⁵⁷ *Idem*, art 311(VIII).

⁵⁸ *Idem*, art 311(IX).

⁵⁹ *Idem*, art 314.

⁶⁰ *Idem*, art 311(IV).

fees for the exercise of their functions, which will be considered as ordinary operating expenses of the debtor, and their payment will have a preference over other recognised debts.⁶¹

The insolvency specialists must be registered in IFECOM's records and will be appointed at random to the bankruptcy proceedings.⁶² IFECOM will supervise the insolvency specialists throughout the proceeding and may sanction them if their performance does not comply with the provisions of the Commercial Insolvency Law.⁶³

The appointment of the visitor, conciliator or receiver may be challenged by the debtor before the judge, and by any of the creditors within three days from the date on which the appointment was made known to them.⁶⁴

The insolvency specialists will be liable to the debtor and the creditors for their own acts and those of their assistants, in respect of the damages they have caused in the performance of their duties, for the breach of their obligations, and for the disclosure of confidential information in the performance of their duties.⁶⁵

4.2.5.1 Visitors

Visitors are specialists whose main function and obligation is to review the accounting and financial information of the debtor in order to determine whether or not the debtor falls within the insolvency scenarios set forth in articles 9 and 10 of the Commercial Insolvency Law.⁶⁶

The visitor acts in a stage prior to the beginning of the insolvency proceeding called "the visit", named that way as it consists of an appearance of the visitor at the debtor's domicile to perform a sort of audit on its financial records, documents and accounting books.⁶⁷

The visitor and his assistants will have access to the accounting books, records, and financial statements of the debtor, as well as to any other document or electronic means of data storage in which the financial and accounting situation of the company is recorded and are related to the object of the visit. The visitor and his assistants may conduct interviews with the executive, managerial and administrative personnel of the debtor, including its external financial, accounting or legal advisors.⁶⁸

The visitor, based on the information contained in the minutes of the visit, must render to the judge, within fifteen calendar days from the date of the beginning of the visit, a reasoned and circumstantial opinion regarding the financial situation of the debtor.⁶⁹

⁶¹ *Idem*, art 333.

⁶² *Idem*, art 325.

⁶³ *Idem*, art 337.

⁶⁴ *Idem*, art 53.

⁶⁵ *Idem*, art 61.

⁶⁶ *Idem*, art 30.

⁶⁷ *Idem*, art 31.

⁶⁸ *Idem*, art 34.

⁶⁹ *Idem*, art 36.

The final report issued by the visitor will determine whether the company is insolvent according to the financial circumstances determined by the Commercial Insolvency Law, and, therefore, whether it can be declared insolvent by the Bankruptcy Court. In this regard, the report of the visitor must be issued within 15 calendar days from the date of the start of the visit (the date determined by the judge). The report must consider the facts set out in the claim and the defense,⁷⁰ and shall describe all the facts and information found during the inspection and the omissions, if any. The report shall be written in the presence of two witnesses appointed by the company and the court clerk before whom the proceedings are being conducted, who shall sign the report issued by the visitor.⁷¹

Thus, the visitor's report must conclude whether the company is in general breach of its obligations and whether or not the visitor considers that the judge should decree injunctions for the protection of the insolvency estate.⁷²

The judge shall, on the day following the day on which he receives the visitor's report present it to the company, to the creditors, and the Public Prosecutor's Office (if the latter has filed for insolvency proceedings) so that they may present their arguments in writing within a common period of five days.⁷³

4.2.5.2 Conciliators

The conciliator is a specialist that the IFECOM must appoint within five days after receiving the notification of the insolvency proceeding judgment and the beginning of the conciliation stage.⁷⁴ The appointment must be made in accordance with the previously discussed procedure.⁷⁵

The main activity entrusted to the conciliator is to ensure that the debtor and its recognised creditors reach a reorganisation agreement in terms of the Commercial Insolvency Law.⁷⁶ The conciliator may meet with the debtor and its creditors as he deems appropriate, as well as with those who request to meet with the conciliator, either jointly or separately, and communicate with them in any manner that the conciliator considers appropriate.

The conciliator shall decide on the termination of pending contracts and shall approve, subject to the opinion of the comptrollers, if any,⁷⁷ the contracting of new credits, the constitution or substitution of collateral and the sale of assets that are not linked to the ordinary operation of the debtor's business.⁷⁸

⁷⁰ *Idem*, art 40.

⁷¹ *Idem*, art 36.

⁷² *Idem*, art 37.

⁷³ *Idem*, art 41.

⁷⁴ *Idem*, art 43(IV).

⁷⁵ See para 4.2.5 above in this regard.

⁷⁶ Commercial insolvency Law, art 121.

⁷⁷ *Idem*, art 92.

⁷⁸ *Idem*, art 75.

Likewise, if the conciliator considers that it is best for the protection of the insolvent estate, he may request the judge to remove the debtor from the administration of the company.⁷⁹ If the removal of the debtor from the administration of the company is decreed, the conciliator will assume, in addition to his own, the powers and obligations of administration that the Commercial Insolvency Law attributes to the receiver for the administration.⁸⁰

When the conciliator assumes the administration of the debtor company, the conciliator shall always act as a diligent administrator in his own business, being liable for any loss or damage suffered by the company due to the conciliator's fault or negligence. Likewise, the conciliator must take the necessary steps to identify the assets owned by the bankrupt debtor that are in the possession of third parties.⁸¹

Finally, when the debtor remains in administration of its company, the conciliator has the power to supervise the operation of the company and its accounting.⁸²

4.2.5.3 Receivers

The receiver is a specialist that the IFECOM must appoint within five days after receiving notification of the bankruptcy judgment in the bankruptcy or liquidation stage.⁸³ The appointment must be made in accordance with the previously established procedure,⁸⁴ or the conciliator must be ratified as receiver.⁸⁵

The main function of the receiver is to dispose of the property, rights and assets that compose the insolvent estate in order to pay the recognised creditors of the company with the profits obtained from the disposal.⁸⁶

For this purpose, the receiver will have the broadest powers of control over the assets of the company and will act as the sole representative and administrator of the debtor for purposes of the insolvency proceeding.

Article 177 of the Commercial Insolvency Law provides that a receiver will have the powers and duties attributed by law to the conciliator, except those necessary to reach a reorganisation agreement and in respect of the recognition of claims.⁸⁷

However, in the event that the insolvency proceeding begins at the bankruptcy stage, the receiver will have the powers attributed by the Commercial Insolvency Law to the conciliator regarding the recognition of claims against the debtor.⁸⁸

⁷⁹ *Idem*, art 81.

⁸⁰ *Idem*, art 82.

⁸¹ *Idem*, art 78.

⁸² *Idem*, art 75.

⁸³ *Idem*, art 170.

⁸⁴ See para 4.2.5 above in this regard.

⁸⁵ Commercial Insolvency Law, art 170.

⁸⁶ *Idem*, art 197.

⁸⁷ *Idem*, art 177.

⁸⁸ *Ibid.*

The receiver in the performance of the administration of the debtor company must always act as a diligent administrator in his own business, being responsible for the losses or damages that the company suffers due to the receiver's fault or negligence.⁸⁹

4.2.6 *Appealing and enforcement of bankruptcy judgments*

Within insolvency proceedings, there are two types of judgments, namely main and interlocutory (ancillary) judgments. Main judgments rule on matters arising in connection with the ordinary course of the insolvency proceedings, while interlocutory decisions rule on ancillary matters relating to the proceedings.

In this regard, article 268 of the Commercial Insolvency Law establishes two remedies to challenge both main and interlocutory judgments, stating that when the law does not explicitly provide for an appeal, the appeal for revocation will be the appropriate means of challenge.

As mentioned above,⁹⁰ an appeal will only be admissible against the following decisions, and the Unitary Circuit Courts will hear appeals against these first-degree judgments, namely the:

- (i) judgment that declares the insolvency of the debtor;⁹¹
- (ii) judgment that denies declaring the insolvency of the debtor;⁹²
- (iii) recognition, classification, and priority of credits judgment;⁹³
- (iv) judgment that approves the reorganisation agreement;⁹⁴ and
- (v) judgment that orders the bankruptcy (liquidation) of the debtor.⁹⁵

However, every other resolution dictated within the insolvency proceeding can be appealed through an appeal for revocation, that the Bankruptcy Court will hear.

As mentioned above, an *Amparo* claim can be filed against the appeal judgment. If a Collegiate Court of Appeal issued the judgment, another Collegiate Court of Appeal of the same circuit will resolve the *Amparo* claim. However, if the judgment was issued by the Bankruptcy Court (meaning a District Court Specialised in Commercial Insolvency Matters), the *Amparo* claim will be resolved by the other District Court Specialised in Commercial Insolvency Matters other than the one handling the insolvency proceeding.

⁸⁹ *Idem*, art 189.

⁹⁰ See para 4.2.2 above in this regard.

⁹¹ Commercial Insolvency Law, art 49.

⁹² *Ibid.*

⁹³ *Idem*, art 135.

⁹⁴ *Idem*, art 162.

⁹⁵ *Idem*, art 175.

Finally, *Amparo* judgments handed down by either a Collegiate Court of Appeal or the Bankruptcy Court may be subject to a final review by a Collegiate Circuit Court, which will issue a final and irrevocable judgment on the matter that has been submitted for its consideration.

The *Amparo* judgment will be returned to the Bankruptcy Court handling the proceeding in order for the Bankruptcy Judge to issue a new judgment with the considerations outlined in the *Amparo* judgment. This new ruling will be irrevocably enforceable unless it does not follow the criteria set out in the *Amparo* judgment.

As mentioned, an *Amparo* claim against the judgment that resolved the appeal against the recognition, classification, and priority of credits judgment handed down by a Collegiate Court of Appeal will be resolved by a Collegiate Circuit Court, without it firstly being reviewed by another Unitary Circuit Court.

Due to the multiple ways to challenge a resolution the insolvency proceedings last for several years, which is one of the reasons why bankruptcy proceedings in Mexico are not usually considered as a first choice by debtors and creditors to resolve insolvency issues and reorganisation plans.

Self-Assessment Exercise 1

Question 1

Which Federal Courts are competent to process insolvency proceedings in Mexico?

Question 2

What is the IFECOM, and what is its main purpose?

Question 3

Why are the insolvency experts important? Name the main function of each of the insolvency experts as provided for in Mexican Insolvency Law.

For commentary and feedback on self-assessment exercise 1, please see [APPENDIX A](#)

5. SECURITY

5.1 General regulation of secured claim

The Commercial Insolvency Law only provides for mortgages and pledges to serve as security. There are other security agreements that are governed by the civil legislation of each state of the Mexican Republic, as well as commercial general laws. Therefore, these other forms of security must be constituted based on such legislation to be valid.⁹⁶

Articles 217 and 218 of the Commercial Insolvency Law establishes the degree and priority of payment of claims, stating that secured claims (mortgage or pledge) will be paid with the property or asset granted as a security and after the payment of “singularly privileged” claims.

Accordingly, secured claims will receive payment from the proceeds of the liquidation of the assets subject to the security interest to the absolute exclusion of creditors with a lower ranking, such as unsecured creditors. The order of payment between secured creditors that were granted the same collateral to secure their debt will be paid according to the provisions applicable concerning the date of registration of the collateral.⁹⁷

Against secured claims, in addition to the singularly privileged creditors, only the following have privilege:

- (a) the labour claims from non-paid salaries up to two years before the declaration of insolvency of the debtor;⁹⁸
- (b) litigation expenses incurred in the defence or recovery of the assets that are the object of the security or privilege;⁹⁹ and
- (c) the necessary costs for the repairs, conservation, and disposal of the said assets.¹⁰⁰

5.2 Specifications on secured claims

Unlike other claims that must be converted into investment units (UDIs)¹⁰¹ using the value of such units on the day that the debtor was declared insolvent, secured claims will maintain the currency or unit in which they were agreed upon and only accrue the ordinary interest stipulated in the contracts, up to the value of the assets securing them.¹⁰²

⁹⁶ *Idem*, art 219.

⁹⁷ *Ibid.*

⁹⁸ *Idem*, art 224(I).

⁹⁹ *Idem*, art 224(IV).

¹⁰⁰ *Idem*, art 224 (II).

¹⁰¹ UDIs or Unidades de Inversión (investment units), are used in Mexico as units of value based on the increase of prices (inflation) and are used to fulfil payments in commercial transactions.

¹⁰² Commercial insolvency Law, art 89(II).

However, for purposes of determining the participation of secured claims in the decisions that must be made in the insolvency proceeding (such as the approval of the reorganisation agreement), the amount of their claims as of the date of the insolvency proceeding will be converted to UDIs. Secured claims will participate as such for this amount, regardless of the value of their security, unless it is considered that its value is less than the amount of the debt.¹⁰³ Also, secured creditors can request the court to be considered as a secured creditor for the value that the creditor itself attributes to its security and as an ordinary creditor for the remaining debt.¹⁰⁴

The value attributed by the creditor to its security will be converted into UDIs considering the value at the date of the declaration of the debtor's insolvency. In this case, the creditor must expressly waive, in favour of the estate, any surplus between the price obtained by enforcing the security and the value attributed to it, considering the value of the UDIs on the date on which the enforcement takes place.¹⁰⁵

5.3 Enforcement of secured claims

Those secured creditors that have not participated in the reorganisation agreement may initiate or continue with the enforcement of their security unless the reorganisation agreement provides for the full payment of their claims under the terms of article 158 of the Commercial Insolvency Law, or the payment of the value of their security. In the latter case, any excess of the debt recognised concerning the guarantee's value will be considered a common claim.

During the conciliation stage, secured creditors can initiate or continue enforcement proceedings to obtain the payment of their credits by executing the secured properties or assets. However, the assets must not be indispensable for the debtor's business and they ought to count with a reasonable opinion of the conciliator.¹⁰⁶ During the bankruptcy stage, secured claims that initiate or continue an enforcement proceeding according to the applicable provisions must notify the receiver and inform him of the details identifying the enforcement proceeding, no matter if the assets are indispensable for the debtor's business or not.¹⁰⁷

Self-Assessment Exercise 2

Question 1

What is considered as security in terms of the Commercial Insolvency Law, and how is security paid?

¹⁰³ *Idem*, art 89, para 4.

¹⁰⁴ *Idem*, art 89, para 5.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Idem*, art 75.

¹⁰⁷ *Idem*, art 213.

Question 2

What kind of currency will be applicable to secured claims?

[For commentary and feedback on self-assessment exercise 2, please see APPENDIX A](#)

6. INSOLVENCY SYSTEM

6.1 General

6.1.1 *The Commercial Insolvency Law*

6.1.1.1 *Commercial debtors*

Insolvency rules relating to commercial debtors are contained in a single piece of legislation, namely the Commercial Insolvency Law. These commercial debtors include the following:

- (a) Small businesses: debtors whose matured payment obligations at the time that the insolvency request or complaint is presented are not more than 400 000 Mexican UDIs.¹⁰⁸ There is no special proceeding in the Mexican insolvency legal system for the bankruptcy of small and medium enterprises;¹⁰⁹
- (b) Individuals:¹¹⁰ legal persons that are considered merchants / traders according to the Commercial Code;¹¹¹
- (c) Private entities: private companies that were constituted in terms of the commercial laws in Mexico and dedicate their business to commercial activities;¹¹²
- (d) The debtor's deceased estate: in the cases in which the debtor has passed away and the deceased's business continues to operate, or if it has ceased its operations and the actions of its creditors have not prescribed, the debtor's deceased estate can be declared bankrupt;¹¹³

¹⁰⁸ At present 1 UDI is equal to 7.6 Mexican pesos.

¹⁰⁹ Commercial Insolvency Law, art 5.

¹¹⁰ According to the case law with number I.111o.C.174 C issued by the Eleventh Civil Collegiate Tribunal in the First Circuit, individuals do not acquire the character of merchant for simply being partners, shareholders, managers, or directors of a company. In order to be considered a debtor by the Commercial Insolvency Law, the individual himself must carry out commercial acts and not as representative of the debtor company.

¹¹¹ Commercial Insolvency Law, art 4(II).

¹¹² *Ibid.*

¹¹³ *Idem*, art 12.

- (e) Partners with unlimited responsibility: the bankruptcy of a company with partners that hold unlimited liability will cause its partners to be declared bankrupt as well;¹¹⁴
- (f) Branches of foreign companies: the bankruptcy proceedings of such companies will only deal with assets and rights located in Mexico and transactions made with the branch with domicile in Mexico;¹¹⁵
- (g) Concessions of public services: a debtor that provides public services because of concession title can be declared bankrupt under the Commercial Insolvency Law, and these proceeding will be governed by the special provisions foreseen for such types of debtors;¹¹⁶
- (h) Financial institutions: even though the Commercial Insolvency Law establishes a few special rules regarding the insolvency proceedings of financial institutions, these proceedings are governed by the Law of Credit Institutions;¹¹⁷
- (i) Auxiliary credit organisations: the insolvency of organisations governed by the General Act on Credit Organisations and Related Activities (such as general deposit warehouses, financial factoring companies, financial leasing companies and exchange houses) is governed by the Commercial Insolvency Law, according to the special procedure foreseen by law;¹¹⁸
- (j) Semi state-owned companies: in the event that these kind of companies initiate a disincorporation or extinction process and if they are managed by the *Servicio de Administración y Enajenación de Bienes* (Administration and Selling of Assets Service),¹¹⁹ they will be considered as debtors for the purposes of the Commercial Insolvency Law;¹²⁰ and
- (k) Trust assets: if the trust purpose concerns business or commercial activities, its patrimony can be declared bankrupt and this proceeding will be governed by the Commercial Insolvency Law.¹²¹

6.1.1.2 Stages of the insolvency proceeding

The Commercial Insolvency Law contains the rules for two stages of the insolvency proceeding,¹²² namely the:

¹¹⁴ *Idem*, art 14.

¹¹⁵ *Idem*, art 15.

¹¹⁶ *Idem*, art 4(II).

¹¹⁷ *Idem*, art 224bis.

¹¹⁸ *Idem*, art 254.

¹¹⁹ The name of this institution was changed by the current Mexican President to Instituto para Devolver al Pueblo lo Robado (Institute to Return To The People What Was Stolen).

¹²⁰ Commercial insolvency Law, art 4(II).

¹²¹ *Ibid.*

¹²² *Idem*, art 2.

- (i) conciliation stage: its aim is to preserve the debtor company by entering into a reorganisation agreement between the debtor and the creditors that own the majority of the debt;¹²³ and
- (ii) bankruptcy or liquidation stage: its purpose is to sell all of the debtor's assets in order to pay the debtor's creditors.¹²⁴

During the insolvency proceeding there is also a pre-stage called the visit period. This visit period commences immediately after the insolvency proceeding is admitted by the Bankruptcy Court.¹²⁵ In México a debtor is not immediately considered legally insolvent by the mere fact that the insolvent voluntarily requested insolvency, or that the complaint is admitted by the court. A visitor appointed by the IFECOM¹²⁶ must review the debtor's accounting documents, agreements and financial information to draw a conclusion indicating whether or not he is of the opinion that the debtor does in fact fall within the insolvency assumptions as foreseen by the Commercial Insolvency Law.¹²⁷

The visitor will render its opinion to the Bankruptcy Court and taking such opinion into consideration, as well as the evidence and arguments of the parties, the Bankruptcy Court will pass a judgment declaring the debtor as insolvent. The conciliation stage will commence with the judgment in which the debtor is declared insolvent by the Court, unless the debtor asked for the insolvency proceeding to begin in the liquidation stage.¹²⁸

6.1.1.3 Purpose of the Commercial Insolvency Law

The commercial insolvency proceeding is considered debtor-friendly as its main purpose is to conserve the debtor company. Furthermore, it foresees principles or features such as: (i) cramdown, (ii) the order in which the debtor may suspend the payment of its debts (excluding those indispensable expenses) because of the debtor's declaration of bankruptcy, (iii) the suspension of all enforcement proceedings against the debtor's assets as a consequence of the debtor's declaration of bankruptcy, and (iv) the conciliator's power to decide if non-indispensable agreements should be terminated, amongst others.

Nonetheless, the commercial insolvency proceeding also contains multiple provisions that protect creditors' rights and interests, such as: (i) ancillary proceedings to nullify acts done to defraud creditors, (ii) criminal offences resulting in, or related to, the insolvency of the debtor, (iii) administrators' or directors' liabilities, (iv) an order and classification for the payment of

¹²³ *Idem*, art 3.

¹²⁴ *Ibid*.

¹²⁵ *Idem*, art 29.

¹²⁶ See the discussion in para 4.2.5.1 above in this regard.

¹²⁷ See para 6.3.1 below in this regard.

¹²⁸ Commercial insolvency Law, art 20. Creditors that present a complaint for a debtor to be declared insolvent can request for the proceeding to be initiated in the liquidation stage. If the debtor agrees for the insolvency to commence in the liquidation stage, and once the general failure to fulfil the payment of its matured debt has been established, the debtor will be declared insolvent by the court and the proceeding will be initiated in the liquidation stage. However, if the debtor does not agree to the insolvency commencing in the liquidation stage, the proceeding will commence in the conciliation stage.

creditors, and (iv) appeals to revoke the court's decisions regarding ancillary determinations or final judgments.

6.1.1.4 Bodies and parties that intervene in the insolvency proceeding

There are several parties involved in commercial insolvency proceedings:

- (i) The court: the Bankruptcy Judge or Bankruptcy Court is considered the governing body of the insolvency proceeding.
- (ii) The debtor: the debtor must be a commercial debtor, meaning an individual whose ordinary occupation is exercising commercial acts; as well as a corporation established in Mexico according to the Mexican commercial laws, or a foreign entity that performs commercial acts in the country.¹²⁹

The debtor must be cashflow or balance-sheet insolvent. The rules for a debtor to be considered cashflow or balance-sheet insolvent will be explained below;

- (iii) The creditors: the person or company to which the debtor owes a debt and is recognised as the debtor's creditor in the recognition and ranking of creditors judgment.

The Commercial Insolvency Law ranks the debtor's creditors as follows:¹³⁰

- (1) labour claims for wages and employee benefits for a period of two years preceding the date of the insolvency judgment;¹³¹
- (2) claims for debtor-in-possession financing;¹³²
- (3) liabilities and obligations of the insolvent estate (such as management fees and other administrative costs);¹³³
- (4) debt arising from the defence and maintenance of the insolvent estate;¹³⁴
- (5) costs originated by judicial or extrajudicial processes aimed to benefit the insolvent state;¹³⁵
- (6) claims secured by mortgages and pledges, including secured tax claims (up to the secured amount);¹³⁶

¹²⁹ *Idem*, art 4(II).

¹³⁰ *Idem*, art 217.

¹³¹ *Idem*, art 224(I).

¹³² *Idem*, art 224(II).

¹³³ *Idem*, art 224(III).

¹³⁴ *Ibid.*

¹³⁵ *Idem*, art 224(IV).

¹³⁶ *Idem*, art 219.

- (7) claims arising from non-secured federal, state, or local taxes;¹³⁷
 - (8) labour claims other than the claims referred to in point (i) above;¹³⁸
 - (9) claims, other than those set out above, that under Mexican commercial law enjoy any special privilege, but only up to the amount of the privilege;¹³⁹
 - (10) unsecured claims (including those claims of secured creditors that exceed the value of their collateral);¹⁴⁰
 - (11) claims of voluntarily subordinated creditors;¹⁴¹ and
 - (12) claims of certain related-party creditors that are subordinate by operation of law;¹⁴²
- (iv) The IFECOM: an auxiliary body of the Federal Judiciary that authorises the registration of visitors, conciliators and receivers that will assist the court in the technical matters of the proceeding, such as accounting, economic, or financial issues that are beyond the court's legal expertise;¹⁴³
 - (v) The conciliator: an insolvency expert whose main duty is to intervene between the debtor and its creditors in the process of entering a reorganisation agreement. The conciliator must also provide a list of creditors to the court and supervise the debtor-in-possession management and operations of the business;¹⁴⁴
 - (vi) The receiver: an insolvency expert that will oversee the debtor's administration once the liquidation stage commences and whose main duty is to sell of the debtor's assets and pay the creditors in the order provided by the law;¹⁴⁵
 - (vii) The visitor: an insolvency specialist compelled to review the debtor's documents, accounting books and other information in order to determine if it falls within the insolvency presumptions foreseen by the Commercial Insolvency Law, and provide an opinion that must be presented to the court; and¹⁴⁶
 - (viii) The comptroller: a person that will look over and represent the creditor's interests, as well as supervise the conciliator and receiver's activities and the debtor-in-possession's operations and management. A comptroller can be appointed by a creditor or group of

¹³⁷ *Idem*, art 221.

¹³⁸ *Ibid.*

¹³⁹ *Idem*, art 220.

¹⁴⁰ *Idem*, art 222.

¹⁴¹ *Idem*, art 222bis(I).

¹⁴² *Idem*, art 222bis(II).

¹⁴³ See the discussion in para 4.2.2 above in this regard.

¹⁴⁴ See para 4.2.5.2 above in this regard.

¹⁴⁵ In the cases where the insolvency proceeding commences in the liquidation stage, the receiver (and not the conciliator) will provide the list of the debtor's creditors to the court.

¹⁴⁶ See para 4.2.5.1 above in this regard.

creditors that represents 10% or more of the total debt. The controller can ask the conciliator or the receiver to allow him to review the debtor's accounting or other information that may affect his clients' interests.¹⁴⁷

6.1.2 Consumer insolvency proceedings

In Mexico the insolvency proceedings of consumers are governed by the civil and the civil procedural codes of each of the Mexican states - meaning there are 33 codes that foresee different provisions for these kinds of proceedings. The application of one code or another will depend on the consumer's domicile.

Consumer insolvency proceedings in Mexico are however not efficient and has barely been used.

In February 2021 an initiative to issue a General Law of Economic Insolvency and Financial Restructuring for Individuals was presented to the Senate, but it has been widely criticised for proposing ineffective solutions and inefficient proceedings.

6.1.3 Financial or credit institutions

The liquidation or bankruptcy proceedings of banking institutions are governed by the *Ley de Instituciones de Crédito* (Law of Credit Institutions), the *Ley de Protección al Ahorro Bancario* (Law for the Protection of Bank Savings), the *Ley General de Sociedades Mercantiles* (General Law of Commercial Companies) and the Commercial Insolvency Law.

The insolvency proceeding of financial or credit institutions are considered "Special Insolvency Proceedings" under the Commercial Insolvency Law (along with the debtors with concessions of public services, such as airlines and auxiliary credit organisations).

Unlike an ordinary insolvency proceeding, the purpose of the insolvency proceedings of credit institutions is not to save the debtor or its business (as is always initiated in the liquidation stage), but the focus is to ensure that people or businesses keep their money at the credit institution.

There only two bodies that can request the bankruptcy of a financial or credit institution, namely the: (i) *Instituto para la Protección al Ahorro Bancario* (Institute to Protect the Bank Savings) and (ii) *Comisión Nacional Bancaria y de Valores* (National Banking and Securities Commission).

Once the bankruptcy request has been presented, the credit Institution must suspend all services and operations. The Bankruptcy Court will dictate all the necessary interim or precautionary measures and the credit institution must answer the bankruptcy request within the next nine days, offering documents and expert opinions as evidence to demonstrate its solvency.

¹⁴⁷ Commercial Insolvency Law, art 62.

In contrast to an ordinary insolvency proceeding in which the IFECOM is in charged to designate the receiver, when a credit institution is declared bankrupt, the Institute to Protect the Bank Savings will name a receiver or act as the receiver.

The *Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros* (National Commission for the Protection and Defence of the Users of Financial Services) can appoint up to three comptrollers to defend the creditor's interests.

Self-Assessment Exercise 3

Question 1

How many stages does the insolvency proceeding in Mexico have? What is the main purpose of each of these stages?

Question 2

Name all of the parties and bodies that may intervene in an insolvency proceeding in Mexico.

Question 3

Can all kinds of debtors use the rules and proceeding provided by the Commercial Insolvency Law in Mexico? Explain your answer.

[For commentary and feedback on self-assessment exercise 3, please see APPENDIX A](#)

6.2 Personal / consumer bankruptcy

Mexico does not have a modern insolvency regime for individuals or natural persons. However, although there some provisions that attempt to regulate this, the reality is that they are incomplete, obsolete, and entirely out of use.

In this respect, there are two options for being declared insolvent as a natural person in Mexico, namely civil insolvency and commercial insolvency. The main difference between these procedures is that civil insolvency deals with debts of an entirely civil nature, and with commercial insolvency the person seeking to be declared insolvent must be considered a merchant under the country's Commercial Code.

In this regard, each procedure will be briefly described although they do not merit a detailed and in-depth study since they are not used in Mexico.

6.2.1 Civil insolvency proceedings

Civil insolvency proceedings are governed by the local civil codes of each of the Mexican Republic's States. In this regard, there are 32 regulations concerning civil insolvency proceedings. Only the content of the Civil Code of Mexico City will be discussed, as this code was used as the basis for creating the others.

Insolvency proceedings can be initiated either voluntarily or necessarily. It is voluntary when the debtor disposes of his assets to pay his creditors, and it is necessary when two or more creditors have sued or enforced claims before the same or different judges against the same debtor, and there are not sufficient assets to cover each creditor's debt and costs.¹⁴⁸

For the action to proceed according to article 738 of the Code of Civil Procedures for Mexico City, it is necessary to attach to the petition for civil bankruptcy a statement of assets and liabilities with the names and addresses of the petitioner's debtors and creditors, as well as an explanation of the causes that have led to the filing of the petition for insolvency proceedings.

Thus, for the declaration of insolvency proceedings, the debtor must suspend the payment of its civil, liquid, and enforceable debts. This declaration has the following effects:¹⁴⁹

- (a) the inability of the debtor to continue administering his assets and any other administration that by law rests on him;
- (b) the maturity of the term of all debts;
- (c) interest ceases to accrue on the debtor's obligations, except for secured claims which will continue to accrue interest up to the value of the collateral;
- (d) the seizure and securing of the debtor's assets, books, correspondence and documents. Both of these proceedings shall be carried out on the same day, and include sealing the doors of the debtor's warehouses and offices, and furniture subject to seizure which may be found at the debtor's domicile; and
- (e) the prohibition of debtors from making payments or delivering effects to the insolvent party.

However, in this declaration of insolvency a provisional liquidator is also appointed, and the accumulation of all lawsuits brought against the insolvent party is declared.¹⁵⁰ The judge will also order notification by various means to creditors within his jurisdiction and to others by edicts.

¹⁴⁸ Code of Civil Procedures for Mexico City, art 738.

¹⁴⁹ *Idem*, art 739.

¹⁵⁰ With the exception of mortgages, pledges, lawsuits that cannot be accumulated by law and those that have been ruled on in the first instance, which will be accumulated once a final decision has been issued.

Likewise, together with the declaration of insolvency, the judge sets a timeframe of no less than eight days and no more than twenty days to present the debtor's claims, and a hearing date to be held 10 days after the deadline for submitting these claims.¹⁵¹

At the hearing (also known as the rectification and graduation meeting) the study, rectification, and graduation of the claims against the debtor is carried out, where the claims that are not objected to are entered into the list of creditors to be paid from the liquidation of the debtor's assets. A vote by the creditors appoints a definitive receiver and, if this is not possible, a receiver is appointed by the judge in the insolvency proceeding.¹⁵²

An insolvency agreement may be concluded at this meeting. The agreement is adopted if several creditors representing half plus one of those present vote in favour thereof, provided that their interest in the insolvency amounts to three-fifths of the liabilities, deducting the amount of the claims of mortgage and pledge creditors who have opted not to go into insolvency.¹⁵³

If no agreement is reached at the meeting between the insolvent party and the creditors, the debtor's assets shall be sold.

Once the liquidation of the assets has been carried out, the proceeds are distributed under the terms of the list of rectification and graduation of credits, to the mortgagee, to the pledgee, and to any creditor with special privilege having the opportunity not to appear at the insolvency proceeding and to be paid in terms of the right that such creditor has over the assets on which his guarantee is based. However, when several creditors of the same class and number concur, they are paid according to the date of their title if there is undoubted proof of this; otherwise, they are paid *pro-rata*.¹⁵⁴

Finally, once the creditors have been paid in full, an agreement has been concluded or the debtor's assets have been awarded in full, the insolvency proceedings are terminated. If there are insufficient assets to pay all of the creditors, their rights will be reserved and they may enforce their claims against the debtor individually on a later date.¹⁵⁵

6.2.2 Commercial insolvency proceedings of a natural person

As previously discussed, in order to be eligible for the insolvency proceedings provided for in the Commercial Insolvency Law, it is a prerequisite to be a merchant.¹⁵⁶ According to article 4 of the Commercial Insolvency Law, a natural person who is a merchant under the Commercial Code is considered a merchant for the purposes of the Commercial Insolvency Law.

¹⁵¹ Code of Civil Procedures for Mexico City, art 739.

¹⁵² *Idem*, art 745.

¹⁵³ *Idem*, art 754.

¹⁵⁴ *Idem*, art 755.

¹⁵⁵ *Idem*, art 757.

¹⁵⁶ See para 6.1.1.1 above in this regard.

Articles 3¹⁵⁷ and 75 of the Commercial Code define who is considered a merchant and what activities a trader carries out.

In terms of the Commercial Insolvency Law, the insolvency procedure for a natural person is exactly the same as for companies.¹⁵⁸ For this reason, the reader is invited to study the following chapters.

Self-Assessment Exercise 4

Question 1

Name the options that an individual has in order to access an insolvency proceeding in Mexico and name the main differences between these options.

Question 2

Name the effects of the declaration of insolvency within a civil insolvency proceeding.

[For commentary and feedback on self-assessment exercise 4, please see APPENDIX A](#)

6.3 Corporate rescue

6.3.1 Insolvency assumptions

According to articles 9, 10 and 11 of the Commercial Insolvency Law, a debtor will be considered insolvent if it has cashflow problems or a balance-sheet insolvency under the assumptions foreseen by the law. This means that if the debtor does not meet these assumptions provided for by the law, it cannot be declared insolvent and cannot be subjected to the Mexican insolvency proceeding.

Nonetheless, for the admission of the insolvency request or complaint, it is sufficient for it to be presumed that the debtor falls into the insolvency assumptions foreseen by the law, which must be verified during the visit stage by the visitor. Once the visitor has rendered its opinion regarding the debtor's solvency, the court will dictate the judgment that will declare the debtor as insolvent.

¹⁵⁷ Commercial Code, art 3 provides that the following are deemed to be merchants: persons who, having the legal capacity to engage in commerce and make it their ordinary occupation; companies incorporated under commercial law; and foreign companies or the agencies and branches of such companies, which carry on commercial activities within the national territory.

¹⁵⁸ Students should therefore study the following chapters below and apply the principles to the insolvency of natural persons.

Article 9 of the Commercial Insolvency Law establishes that a debtor will be considered insolvent if it has defaulted in fulfilling its payment obligations. A may debtor file an insolvency request if it has fallen into one of the two assumptions foreseen by article 10 (cashflow insolvency or balance sheet insolvency). One or more of the debtor's creditors can also present an insolvency complaint because they consider the debtor has fallen in both insolvency assumptions foreseen by article 10. Furthermore, public entities (parastatal entities) can be regarded as insolvent when its disincorporation or extinction agreement orders that it has defaulted to fulfil its payment obligations.

According to article 10 of the Commercial Insolvency Law, a debtor will be considered as having generally defaulted in fulfilling its payment obligations when it fails to pay its matured debts to two or more different creditors and the:

- (i) payment obligations that the debtor failed to fulfil represent 35% or more of all its payment obligations,¹⁵⁹ or
- (ii) debtor does not have sufficient liquid assets to meet at least 80% of its matured obligations on the date that the insolvency request or complaint was filed.¹⁶⁰

Article 20*bis* of the Commercial Insolvency Law allows the debtor to file its insolvency proceeding, swearing under oath that it (i) complies with the insolvency assumptions foreseen in article 10 of the Commercial Insolvency Law, or (ii) will find itself in such scenarios in the 90 days following the insolvency request.

Finally, article 11 of the Commercial Insolvency Law provides that a debtor will be presumed insolvent in the following cases:

- (i) when a court orders a seizure of the debtor's assets for failing to fulfil a payment obligation or execute a final judgment, and the debtor does not have assets to be enforced or its assets are not enough;
- (ii) if the debtor has failed to fulfil its payment obligations to two or more creditors;
- (iii) if the debtor hides or is absent without leaving someone in charge to fulfil its obligations;
- (iv) if the debtor closes all of its commercial establishments;
- (v) if the debtor engages in fraudulent acts to avoid meeting its obligations;
- (vi) if the debtor fails to fulfil a reorganisation agreement approved in a previous insolvency proceeding; or
- (vii) any other scenarios similar to the ones listed above.

¹⁵⁹ Commercial Insolvency Law, art 10(I).

¹⁶⁰ *Idem*, art 10(II).

6.3.2 The insolvency request and its effects

6.3.2.1 Parties that can request the debtor's declaration of insolvency

The declaration of insolvency can be requested by:

- (i) the debtor;¹⁶¹
- (ii) one or more of its creditors;¹⁶²
- (iii) the Public Prosecutor's Office;¹⁶³ or
- (iv) The *Servicio de Administración y Enajenación de Bienes* (Administration and Selling of Assets Service) (now called the Institute to Return To The People What Was Stolen).

6.3.2.2 Insolvency request

A debtor that considers itself in one or both insolvency assumptions provided by article 10 of the Commercial Insolvency Law can file for insolvency and must use the digital forms published by the IFECOM. The request must contain the following information and documents:¹⁶⁴

- (i) name of the debtor;¹⁶⁵
- (ii) the debtor's domicile and its establishments (specifying the residence of its centre of main interests);¹⁶⁶
- (iii) domicile to hear and receive notifications;¹⁶⁷
- (iv) the debtor's financial statements for the last three years;¹⁶⁸
- (v) the reasons and circumstances that led to the insolvency of the debtor;¹⁶⁹
- (vi) a list of the debtor's creditors, including their names and domicile, and their credits' classification and characteristics;¹⁷⁰

¹⁶¹ *Idem*, art 20.

¹⁶² *Idem*, art 21.

¹⁶³ *Ibid.*

¹⁶⁴ *Idem*, art 22.

¹⁶⁵ *Idem*, art 22(III).

¹⁶⁶ *Ibid.*

¹⁶⁷ *Idem*, art 20.

¹⁶⁸ *Idem*, art 20(I).

¹⁶⁹ *Idem*, art 20(II).

¹⁷⁰ *Idem*, art 20(III).

- (vii) a list of the debtor's debtors, including their names and domicile;¹⁷¹
- (viii) a list of all of the debtor's assets and properties;¹⁷²
- (ix) a list of all the judicial proceedings against the debtor or presented by the debtor;¹⁷³
- (x) the promise to grant, in case the request is admitted, a warranty to guarantee the visitor's fees;¹⁷⁴
- (xi) the corporate acts that prove the shareholders' intention for the debtor company to file for insolvency;¹⁷⁵
- (xii) a preliminary proposal of the reorganisation agreement;¹⁷⁶ and
- (xiii) a preliminary proposal of the plan to preserve the debtor company.¹⁷⁷

6.3.2.3 Insolvency complaint

The insolvency complaint filed by one or more of the debtor's creditors or the Public Prosecutor's Office must be presented in the digital forms published by the IFECOM and contain the following information and documents, namely the:

- (i) name of the court;¹⁷⁸
- (ii) name and domicile of the creditor;¹⁷⁹
- (iii) name and domicile of the debtor, including the domicile of all its known establishments;¹⁸⁰
- (iv) facts that motivate its petition or complaint;¹⁸¹
- (v) request to the court to declare the debtor as insolvent and for the proceeding to begin in the conciliation stage or the bankruptcy stage;¹⁸²

¹⁷¹ *Ibid.*

¹⁷² *Idem*, art 20(IV).

¹⁷³ *Idem*, art 20(V).

¹⁷⁴ *Idem*, arts 20(VI) and 24. If the debtor that filed for insolvency, or the creditor that presented the insolvency complaint, do not guarantee the visitor's fees the insolvency proceeding will be concluded. However, the Mexican Supreme Court of Justice, in the case identified as 1a. VI/2008, interpreted that the mentioned provision must be considered unconstitutional as it violates parties' right to access justice.

¹⁷⁵ *Idem*, art 20(VII).

¹⁷⁶ *Idem*, art 20(VIII).

¹⁷⁷ *Idem*, art 20(IX).

¹⁷⁸ *Idem*, art 22(I).

¹⁷⁹ *Idem*, art 22(II).

¹⁸⁰ *Idem*, art 22(III).

¹⁸¹ *Idem*, art 22(IV).

¹⁸² *Idem*, art 22(VI).

(vi) documents that serve as evidence to prove that the petitioner is a creditor of the debtor;¹⁸³

(vii) promise to grant, in the event that the complaint is admitted, a warranty to guarantee the visitor's fees;¹⁸⁴ and

(viii) documents and evidence that prove the debtor's insolvency.¹⁸⁵

6.3.2.4 Admission of the proceeding

Before admitting the insolvency request or complaint, the court can ask the debtor or the plaintiff to clarify the information provided, or present missing documents. The debtor or the plaintiff will have 10 days to present what the court asked for, and if they fail to do so, the complaint or request will be dismissed.¹⁸⁶

Once the court dictates the admission resolution, it can order the injunctive relief that the debtor or the plaintiff requested in order to protect the debtor's assets or prevent the debtor from dilapidating them, including the prohibition to pay any matured debts except those necessary expenses to maintain the debtor's business, and the suspension of any execution proceeding against the debtor's assets.¹⁸⁷

The resolution in which the court admits the proceeding will also order the IFECOM to name a visitor in the five days following the admission. The court must also notify the tax authorities of the beginning of the proceeding. Furthermore the court will order the debtor or plaintiff to warrant the visitor's fees, warning them that the proceeding will be dismissed if they fail to do so.¹⁸⁸

If a creditor's complaint initiated the insolvency proceeding, the court will notify the creditor in order for it to answer the complaint in the following nine days. The debtor must present a list of its creditors and debtors with the writ in which it answers the complaint and all the evidence that it considers relevant. Once the debtor responds to the complaint, the court will grant the plaintiff three days to present the arguments that it considers pertinent to the debtor's writ, and further evidence to prove its claim.¹⁸⁹

In cases where the debtor does not answer the complaint within the nine days after being notified thereof, the facts stated by the plaintiff will be considered authentic and the court will have to dictate the resolution that declares the debtor's insolvency within the next five days (without the visit taking place).¹⁹⁰

¹⁸³ *Idem*, art 23(I).

¹⁸⁴ *Idem*, art 23(II).

¹⁸⁵ *Idem*, art 23(III).

¹⁸⁶ *Idem*, art 24.

¹⁸⁷ *Idem*, art 26.

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

The debtor that filed for insolvency, or the creditors, and the Public Prosecutor's Office that presented the complaint can ask for the insolvency to be dismissed if all these parties consent to it. The party that requested the initiation of the proceeding will pay for the expenses, including the visitor and conciliator fees.¹⁹¹

6.3.2.5 The visit stage

Once the court orders the IFECOM to designate a visitor, IFECOM will randomly choose a visitor from those registered with it.¹⁹²

IFECOM must inform the Bankruptcy Court of the name of the designated visitor and also inform the visitor of the designation. The visitor will have five days to accept or reject its designation and notify the court of the individuals' names that will help him perform the visit.¹⁹³

The visit has the following purposes:

- (i) to confirm if the debtor is in the insolvency assumptions foreseen by article 10 of the Commercial Insolvency Law, as well as the dates of the debtor's matured and unfulfilled payment obligations;¹⁹⁴ and
- (ii) for the visitor to request all the injunctive reliefs that he or she considers necessary.¹⁹⁵

Once the visitor has accepted its designation, the court will dictate the resolution that orders the visit to the debtor's domicile. Such resolution must contain the following information,¹⁹⁶ namely the:

- (i) name of the visitor and all the individuals that will assist the visitor on the visit;¹⁹⁷
- (ii) place or places at which the visit must take place;¹⁹⁸ and
- (iii) documents and information that the visitor must review during the visit.¹⁹⁹

In the days following this court order, the visitor must present himself at the debtor's domicile. If the visitor fails to do so, the court will request the IFECOM to designate another visitor.²⁰⁰

If the debtor is not available at its domicile for the visit, the visitor will leave a notice letting the debtor know the time at which he will return the next day. If the debtor does not let the visitor

¹⁹¹ *Idem*, art 28.

¹⁹² *Idem*, art 29.

¹⁹³ *Ibid.*

¹⁹⁴ *Idem*, art 30(I).

¹⁹⁵ *Idem*, art 30(II).

¹⁹⁶ *Idem*, art 31.

¹⁹⁷ *Idem*, art 31(I).

¹⁹⁸ *Idem*, art 31(II).

¹⁹⁹ *Idem*, art 31(III).

²⁰⁰ *Idem*, art 32.

enter its domicile, the visitor can ask the court, as a precautionary measure, to declare the debtor's insolvency as a result of its actions.²⁰¹

During the visit, the visitor and his assistants will have access to the debtor's accounting information, contracts, documents and data in which the financial condition of the debtor is contained. The visitor can also perform interviews with the debtor's employees, managers, financial and legal advisors.²⁰² The debtor must cooperate with the visitor and his assistants. If it fails to do so, the visitor can ask the court to dictate whichever precautionary measures are necessary, including the declaration of the debtor's insolvency.²⁰³

Once the visit is conducted, the visitor will draw up a record with all the facts and omissions found during the visit. The record must be drawn up before two witnesses named by the debtor, or if the debtor does not call any witnesses, the record will be drawn up before a court's law clerk. The debtor and its witnesses must sign the record. However, if they refuse to do so, the record will be considered valid. The visitor can prove the facts stated in the record by offering a notarised deed of a notary public in this regard.²⁰⁴

Based on the information contained in the record, the visitor must present an opinion to the Bankruptcy Court within 15 days after the visit regarding the financial and insolvency condition of the debtor by considering the facts provided in the insolvency request or insolvency complaint, as well as the writ answering the complaint. The opinion should be presented in the forms published by the IFECOM. If there are justifiable reasons for doing so, the visitor can ask the court for an extension of the term to present his opinion.²⁰⁵

The day after it receives the visitor's opinion, the court must publish it in order for the debtor, the creditors or the Public Prosecutor (in the cases in which it presents the complaint) to present their final conclusions in the following five days.²⁰⁶

6.3.3 Declaration of insolvency

6.3.3.1 The declaration of insolvency judgment

Once the visitor presents his opinion to the Bankruptcy Court, the debtor, its creditors and the Public Prosecutor will have the opportunity to present their conclusions as to whether the debtor is insolvent or not in accordance with the assumptions set out by the Commercial Insolvency Law.²⁰⁷

The Bankruptcy Court will analyse the visitor's opinion and the parties' conclusions to dictate the declaration of insolvency judgment. This mentioned resolution must contain the following:

²⁰¹ *Idem*, art 33.

²⁰² *Idem*, art 34.

²⁰³ *Idem*, art 35.

²⁰⁴ *Idem*, art 36.

²⁰⁵ *Ibid.*

²⁰⁶ *Idem*, art 41.

²⁰⁷ *Idem*, art 10.

- (i) the debtor's name and domicile;²⁰⁸
- (ii) the date of the resolution;²⁰⁹
- (iii) the reasons that the debtor was considered insolvent according to the assumptions contained in article 10 of the Commercial Insolvency Law;²¹⁰
- (iv) a list of the creditors that the visitor was able to identify in the debtor's accounting documents;²¹¹
- (v) the order to the IFECOM to appoint a conciliator;²¹²
- (vi) the order to appoint the debtor's administrators as depositaries until the appointed of the conciliator;²¹³
- (vii) the declaration that the conciliation stage has begun (unless the debtor requested to be declared bankrupt);²¹⁴
- (viii) the order instructing the debtor to allow the conciliator and controllers to execute their obligations;²¹⁵
- (ix) the order instructing the debtor to provide the conciliator with all the books, registries and documents of its company, as well as the necessary funds to register and publish the resolution of insolvency;²¹⁶
- (x) the order instructing the debtor to suspend the payment of all its debts before the resolution of insolvency, except those that are necessary for the ordinary operation of the company; instructing the debtor to inform the court of all the required payments made to maintain the liquidity of the company within 72 hours after being made;²¹⁷
- (xi) the order suspending all the orders to seize the company's assets or execute its goods during the conciliation stage;²¹⁸

²⁰⁸ *Idem*, art 43 (I).

²⁰⁹ *Idem*, art 43(II).

²¹⁰ *Idem*, art 43(III).

²¹¹ *Ibid.*

²¹² *Idem*, art 43(IV).

²¹³ *Ibid.*

²¹⁴ *Idem*, art 43(V).

²¹⁵ *Idem*, art 43(VI).

²¹⁶ *Ibid.*

²¹⁷ *Idem*, art 43(VIII).

²¹⁸ *Idem*, art 43(IX).

- (xii) the date from which all the debtors' affairs or transactions can be suspected as fraudulent;²¹⁹
- (xiii) the order to the conciliator to publish the insolvency resolution in the Official Gazette of the Federation and a highly circulated newspaper;²²⁰
- (xiv) the order to the conciliator to register the insolvency resolution in the Public Register of Commerce of the debtor's domicile and those other in which the debtor may have branches or offices;²²¹
- (xv) the order to the conciliator to initiate the proceeding to recognise the debts against the debtor;²²²
- (xvi) the notice to the debtor's creditors to request the recognition of their claims to the conciliator;²²³ and
- (xvii) the order to issue a certified copy of the resolution to those that request it.²²⁴

The conciliator must publish and register the insolvency resolution of the debtor within five days after his appointment and notify the debtor's creditors of his appointment.²²⁵

The resolution dictating that the debtor is not insolvent will order that there be a return to the condition before the insolvency complaint or request was admitted and the injunctive reliefs were ordered. The court will penalise the creditor that presented the complaint or the debtor that filed the request by ordering payment of the expenses and costs caused by the proceeding.²²⁶

6.3.3.2 *The appeal against the declaration of insolvency resolution*

The resolution that declared the debtor's insolvency can be appealed by the debtor, the creditor or creditors that presented the insolvency complaint, the Public Prosecutor or the visitor.²²⁷

The appeal against the resolution that declares the debtor's insolvency will not suspend the insolvency proceeding. However, the resolution that states that the debtor is not insolvent can stop the execution of the resolution, meaning that the injunctive reliefs will not be lifted. The expenses and costs will not be paid until the appeal is resolved.²²⁸

²¹⁹ *Idem*, art 43(X).

²²⁰ *Idem*, art 43(XI).

²²¹ *Idem*, art 43(XII).

²²² *Idem*, art 43(XIII).

²²³ *Idem*, art 43(XIV).

²²⁴ *Idem*, art 43(XV).

²²⁵ *Idem*, art 45.

²²⁶ *Idem*, art 48.

²²⁷ *Idem*, art 49.

²²⁸ *Idem*, art 48.

The appeal should be presented nine days after the declaration of insolvency resolution was published. If the Bankruptcy Court admits the appeal, it will give the counterparty nine days to answer the appeal. The parties can offer all the evidence in their writs that they consider necessary or relevant.²²⁹

The appeal will be resolved by a Federal Court of Appeals that will determine whether it admits the appeal within two days after receiving it. The Federal Court of Appeals will also make a decision regarding the admission of evidence. The evidence must be presented within 15 days, which timeframe can be extended by an additional 15 days if necessary. Thereafter, the Federal Court of Appeals will grant the appealing party 10 days to present its conclusions, and another 10 days to the counterparty to present its conclusions. Finally, the Federal Court of Appeals will dictate the resolution within five days after the parties presented their conclusions.²³⁰

6.3.3.3 *The appeal against the declaration of insolvency resolution*

Suspension of enforcement proceedings against the debtor's assets

The resolution that declares the debtor's insolvency, either for the conciliation stage or the liquidation stage to begin, will have the power to suspend all the enforcement procedures, meaning executions or seizures of the debtor's assets.²³¹

The only enforcement procedures that will not be suspended are the procedures that secure the payment of labour wages or compensations (up to two years before the declaration of insolvency).²³²

Furthermore, during the conciliation stage, secured creditors can initiate or continue with the execution procedures if the secured assets are not indispensable for the company's operation, provided that the conciliator approves thereof.²³³

Moratorium

The judgment that declares the debtor's insolvency (for either the conciliation stage or the liquidation stage to begin), will order the debtor to suspend all payments for previous debts, except those that are indispensable for its business and operation.²³⁴

Arraignment

The judgment that declares the debtor's insolvency (for either the conciliation stage or the liquidation stage to begin), will order the arraignment of the individual debtor, or if the debtor is a company, it will order the arraignment of its administrators. Consequently, they will not be

²²⁹ *Idem*, art 50.

²³⁰ *Idem*, art 51.

²³¹ *Idem*, art 65.

²³² *Ibid.*

²³³ *Idem*, art 75.

²³⁴ *Idem*, art 43(VIII).

able to leave the debtor's domicile without someone with administrative powers and power of attorney there present, and such person needs to be sufficiently instructed in order for the proceeding to be able to continue.²³⁵

The separation of assets

The assets that are in possession of the debtor but are not the debtor's property, can be separated from the bankrupt estate. The owner of the assets must present a separation of assets claim within the insolvency proceeding, offering the evidence that the owner considers sufficient. If the receiver, the conciliator, the debtor and the comptrollers do not object to such separation, the Bankruptcy Court will order the immediate separation of the assets.²³⁶

Should the receiver, the conciliator, the debtor and the comptrollers object to the separation, the separation will be processed as an ancillary proceeding within the insolvency proceeding. In this case the debtor, the receiver, the conciliator and the comptrollers will answer the complaint, the parties will supply evidence, a hearing for evidence and conclusions will be held, and a judgment will be issued by the Bankruptcy Court - either to declare the separation of the assets or the denial of the separation.²³⁷

Administration

The board of directors will maintain the administration of the company, although it will be limited. For example, the conciliator: (i) will decide on the termination of pending agreements,²³⁸ (ii) will approve new debts necessary to maintain the operation of the business (DIP Financing),²³⁹ (iii) will decide on the substitution of collaterals,²⁴⁰ (iv) will decide if it is appropriate to sell the debtor's assets if they are not related to its day-to-day business,²⁴¹ (v) can ask the comptrollers' opinion regarding the sale of perishable goods (the conciliator must however inform the Bankruptcy Court about the sale),²⁴² (vi) can request third parties in possession of the debtor's asset to return these to the debtor,²⁴³ and (vii) can call for a meeting of shareholders or the board of directors.²⁴⁴

Furthermore, the conciliator will supervise the accounting practices and operations of the debtor. Although the debtor can pay for any necessary expenses, it must inform the Bankruptcy Court of these payments within 72 hours of making these payments.²⁴⁵

²³⁵ *Idem*, art 47.

²³⁶ *Idem*, art 70.

²³⁷ *Ibid.*

²³⁸ *Idem*, art 75.

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Idem*, art 80.

²⁴⁵ *Idem*, art 43(VIII).

The conciliator can institute an ancillary proceeding to remove the directors from the debtor company's administration if they are negligent.²⁴⁶

Judicial Proceedings

Pre-insolvency judicial proceedings against the debtor will not be incorporated into the insolvency proceedings, but the conciliator must supervise these proceedings.²⁴⁷

Nonetheless, the insolvency proceedings of other companies in the same corporate group of companies can be incorporated into the proceeding of the first company that filed for bankruptcy, and be heard by the same Bankruptcy Court. The proceeding of each company in the group will however have its own physical court file.²⁴⁸

Obligations

All clauses in agreements entered into by the debtor that can aggravate the debtor's insolvency situation (because of the fact that it was declared insolvent or because it filed for insolvency), will be considered void.²⁴⁹

The general rule is that the debtor will continue to fulfil its obligations, except the matured payment obligations that arose prior to the judgment that declared the debtor's bankruptcy. It can however fulfil those obligations that it considers indispensable for its business operation.²⁵⁰

To determine the debt amounts owed by the debtor, the Commercial Insolvency Law establishes the following rules:

- (i) pending obligations will be considered overdue. Since the debtor is under a judicial order not to fulfil any payment obligations before the judgment that declared it insolvent, there is no point in waiting for pending obligations to mature since they will not be paid. Thus, they are considered overdue from the moment that the debtor is declared insolvent;²⁵¹
- (ii) the debts subject to a suspensive condition will be considered as if the condition never occurred – this kind of debt cannot be claimed against the debtor;²⁵²
- (iii) the debts subject to a resolutive condition will be considered as if the condition did take place, without the parties being obliged to return the services or payments that they received during the period that the obligation subsisted. This provision provided by the

²⁴⁶ *Idem*, art 81.

²⁴⁷ *Idem*, art 84.

²⁴⁸ *Ibid.*

²⁴⁹ *Idem*, art 87.

²⁵⁰ *Idem*, art 43(VIII).

²⁵¹ *Idem*, art 88(I).

²⁵² *Idem*, art 88(II).

Commercial Insolvency Law arises from the fact that the debtor's estate should not be modified;²⁵³

- (iv) the number of periodic payments should be determined according to their present value, considering the interest rate agreed by the parties or the one established by the market (and even if neither is possible according to the legal rate). An example of these periodic payments would be water, electricity, and gas;²⁵⁴
- (v) the creditor of a lifetime pension will have the right to request the recognition of his credit, considering its reposition value determined by the market or by the present value estimated by the commonly accepted practices of the market;²⁵⁵
- (vi) the debtor's obligations that have an undetermined or unknown value must be quantified;²⁵⁶
- (vii) the non-pecuniary obligations will be valued in money, and if it is not possible, the debt will not be recognised as a claim against the debtor;²⁵⁷
- (viii) unsecured claims resulting from the capital and unpaid financial ancillaries will stop bearing interests and be converted to UDIs;²⁵⁸
- (ix) secured claims will be kept in their original currency and will only bear common interest (thus, these claims will no longer bear default interest);²⁵⁹ and
- (x) unsecured claims resulting from debts agreed in a foreign currency will stop bearing interest and will be converted first to Mexican pesos and then to UDIs.²⁶⁰

Pending contracts

The general rule is that the debtor must fulfil its pending contracts. However, the conciliator can object to the fulfilment of pending agreements if such satisfaction will affect the bankrupt estate.²⁶¹

Those parties who had entered into a contract with the debtor have the right to request the conciliator to object to the pending contract's fulfilment. The conciliator has 20 days to indicate whether he will object to the fulfilment of the contract. If the conciliator does not oppose the contract's fulfilment, the debtor will have to warrant the satisfaction of the contract. If the

²⁵³ *Idem*, art 88(III).

²⁵⁴ *Idem*, art 88(IV).

²⁵⁵ *Idem*, art 88(V).

²⁵⁶ *Idem*, art 88(VI).

²⁵⁷ *Idem*, art 88(VII).

²⁵⁸ *Idem*, art 89(I).

²⁵⁹ *Idem*, art 89(II).

²⁶⁰ *Ibid.*

²⁶¹ *Idem*, art 92.

conciliator does not express his intention within twenty days after receiving the request, the other contracting party has the right to terminate the contract.²⁶²

(i) Purchase-sale agreements

The party that sold goods to the debtor can deny to deliver or hand over the goods to the debtor if the payment has not been fulfilled or warranted.²⁶³

In cases where a purchase-sale agreement for a particular good, asset, or property needs to fulfil legal formalities in order to be considered as valid and such formalities were not fulfilled, the party that sold the debtor such good, asset, or property can claim it, and the debtor must return it. However, if the debtor has reliable proof of the agreement's existence and the conciliator agrees, the debtor can ask for the formalities to be performed at that later stage.²⁶⁴

In cases where the goods are in transit and have not been paid for by the debtor at the time when the debtor is declared insolvent, the party that sold the goods to the debtor can oppose the delivery of the goods. The objection to delivering the goods can be resolved within the insolvency proceeding by an ancillary proceeding with the conciliator's intervention.²⁶⁵

In cases where the sale of property was fulfilled with all the legal requirements being met, and the party that sold the property is the debtor, the buyer can ask for the property to be handed over after the buyer paid the total price.²⁶⁶

In cases where the debtor bought goods that have not been delivered, the debtor will not be able to claim its delivery if it does not pay or guarantee the total price. If the delivery of the goods were made because a promise-to-purchase agreement was entered into between the debtor and the seller, or a purchase-sale agreement was not subscribed in a public deed in those cases where the law requires the contract to be registered in a public deed, the seller can claim the goods, and the debtor must return it.²⁶⁷

If the seller was declared insolvent, the buyer can claim the fulfilment of the purchase-sale agreement if it pays the total price of the goods.

(ii) Deposit agreements, credit agreements, commission agreements and mandate agreements

All the deposit agreements, credit agreements, commission agreements and mandate agreements to which the debtor is party will not terminate because of the debtor's declaration of insolvency, as these are considered important for the debtor in maintaining its business.²⁶⁸

²⁶² *Ibid.*

²⁶³ *Idem*, art 94.

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Idem*, art 95.

²⁶⁷ *Idem*, art 96.

²⁶⁸ *Idem*, art 100.

(iii) Current accounts contracts

The current account contracts to which the debtor is party will be terminated in advance and will be liquidated.²⁶⁹

(iv) Repurchase agreements and securities lending transactions

Repurchase agreements and securities lending transactions to which the debtor is party will be terminated when the debtor is declared bankrupt. Depending on the party that the debtor entered into such contract with, the specific rules contained in the Commercial Insolvency Law must be followed following such termination.²⁷⁰

(v) Leasing agreements

Leasing agreements will not be terminated as a result of the debtor's declaration of insolvency. However, if the debtor is the lessee, the conciliator can decide to terminate the agreement, and the debtor must pay the amount determined in the penalty clause of the agreement, or three months' rent as compensation.²⁷¹

(vi) Services agreements

All services that must be provided by or in favour of the debtor in terms of services agreement must be fulfilled.²⁷²

(vii) Lump-sum contracts

Lump-sum contracts are terminated by the declaration of insolvency. However, the debtor can agree for another contractor to fulfil the agreement if the conciliator agrees.²⁷³

(viii) Insurance agreements

The declaration of insolvency will not terminate insurance agreements regarding property. However, insurance over movable assets can be released. Furthermore, if the conciliator does not inform the insurance company about the insolvency proceeding within 30 days after it being opened, the agreement will be considered as terminated.²⁷⁴

On the other hand, regarding individuals' insolvency proceedings, the debtor can request the conciliator's permission to terminate life insurance policies.²⁷⁵

²⁶⁹ *Idem*, art 101.

²⁷⁰ *Idem*, art 104.

²⁷¹ *Idem*, art 106.

²⁷² *Idem*, art 107.

²⁷³ *Idem*, art 108.

²⁷⁴ *Idem*, art 109.

²⁷⁵ *Idem*, art 110.

6.3.4 The conciliation

6.3.4.1 Duration of the conciliation stage

The conciliation stage will last 185 days, which will begin when the declaration of insolvency resolution is published in the Official Gazette of the Federation. The timeframe of 185 days can be extended by 90 days if the conciliator or more than 50% of the creditors request it. Furthermore, a second extension up to an additional 90 days can be requested by the debtor and 75% of the creditors.²⁷⁶

The Commercial Insolvency Law prohibits the conciliation stage from lasting for more periods than previously described, meaning it can last for a maximum of 365 days. If the term of the conciliation stage ends without the debtor and its creditors entering into a reorganisation agreement, the Bankruptcy Court must declare the debtor bankrupt by issuing the bankruptcy resolution.²⁷⁷

6.3.4.2 The designation of the conciliator

The IFECOM must designate a conciliator within five days after the declaration of insolvency resolution is issued by the Bankruptcy Court.²⁷⁸ However, if so requested by the debtor and at least 50% of the creditors, the IFECOM can appoint another conciliator suggested by these parties. Moreover, the debtor and at least 50% of the creditors can appoint a conciliator even though such conciliator is not registered with the IFECOM.²⁷⁹

In pre-pack insolvency proceedings, the debtor and the creditors who entered into the reorganisation agreement can designate a conciliator and agree with the conciliator to the amount of his fees.²⁸⁰

6.3.4.3 The reorganisation agreement

The purpose of the conciliation stage is for the debtor and its creditors to enter into a reorganisation agreement in order to preserve the debtor company.²⁸¹

The conciliator can request the Bankruptcy Court to terminate the conciliation stage before the end of the term if he believes that there is no intention by the debtor and the majority of its creditors to enter into a reorganisation agreement.²⁸²

²⁷⁶ *Idem*, art 145.

²⁷⁷ *Ibid.*

²⁷⁸ *Idem*, art 146.

²⁷⁹ *Idem*, art 147.

²⁸⁰ *Ibid.*

²⁸¹ *Idem*, art 149.

²⁸² *Idem*, art 150.

6.3.4.4 The validity of the reorganisation agreement

In order to be valid, the reorganisation agreement must not contain provisions against the public order and must be entered into by more than 50% of the sum of the recognised amount of:²⁸³

- (i) ordinary and subordinated credits;²⁸⁴ or
- (ii) secured and special privileged credits.²⁸⁵

In cases where the debtor has subordinated creditors that represent at least 25% of the total amount of the recognised creditors mentioned in points (i) and (ii) above, the reorganisation agreement must be entered into by the recognised creditors that represent at least 50% of creditors mentioned in points (i) and (ii), excluding the subordinated creditors. However, this provision will not be applied if the subordinated creditors admit the terms agreed to by the recognised creditors.²⁸⁶

The labour and tax creditors will not enter into the reorganisation agreement.²⁸⁷ Nonetheless, the debtor can enter individual agreements with its labour creditors if these agreements do not aggravate the debtor's situation. Furthermore, the law allows the debtor to request the tax authorities to remit the tax debts.²⁸⁸

The reorganisation agreement must contain the terms of the payment of the debts of the insolvent state, the singularly privileged credits, as well as the secured credits.²⁸⁹ Moreover, the reorganisation agreement must provide for financial reserves to pay the debts resulting from the appeals against the recognition of credits resolution that were not recognised initially in the resolution issued by the Bankruptcy Court.²⁹⁰ The agreement must also include tax obligations, including tax credits that have not been determined yet.²⁹¹

Any recognised creditor can agree to write-off its debt, its subordination, or any other particular term that is less favourable than those of the remainder of the creditors of the same classification, as long as the creditor's acceptance is expressed.²⁹²

The individual agreements that the debtor enters into with any creditors from the moment that the debtor is declared insolvent will be considered invalid, and such creditors will lose all their rights in the insolvency proceeding.²⁹³

²⁸³ *Idem*, art 157.

²⁸⁴ *Idem*, art 157(I).

²⁸⁵ *Idem*, art 157(II)

²⁸⁶ *Idem*, art 157.

²⁸⁷ *Idem*, art 156.

²⁸⁸ The Federal Tax Code provides that a debtor that has been declared insolvent and has entered into a reorganisation agreement with its creditors can request a partial waiver of the pre-insolvency debt.

²⁸⁹ Commercial Insolvency Law, art 153.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

²⁹² *Ibid.*

²⁹³ *Idem*, art 163.

According to article 158 of the Commercial Insolvency Law, the reorganisation agreement will be considered subscribed to by all the ordinary and secured creditors if it foresees the payment of:

- (i) all their debt converted to UDIs on the date of the declaration of insolvency resolution;
- (ii) all the amounts that could have been demandable if the debtor was not declared insolvent, from the date of the declaration of the insolvency resolution until the approval of the reorganisation agreement. These amounts must be converted to UDIs considering the UDIs' value on the date that the payment could have been demandable; and
- (iii) the obligations that will be demandable once the reorganisation agreement is approved.

The reorganisation agreement can only foresee the following regarding ordinary creditors that do not enter into the reorganisation agreement, namely a²⁹⁴:

- (i) standby-period considering that interest capitalisation must be equal to the smaller standby-period that the remainder of the ordinary creditors agreed on, and that represents at least 30% of the total debt of all the ordinary creditors;²⁹⁵
- (ii) waiver of the debt and the accrued interest must be equal to the smaller waiver that the remainder of the ordinary creditors agreed on and that represent at least 30% of the total debt of all the ordinary creditors;²⁹⁶ and
- (iii) combination of a standby-period and a waiver of the debt, as long as they are the same as the that agreed upon by the ordinary creditors representing at least 30% of the total debt of all the ordinary creditors.²⁹⁷

The agreement can provide that the debts must remain in the currency or value they were initially agreed to.²⁹⁸

The secured creditors that do not enter into the reorganisation agreement can initiate or continue with the proceedings to execute their collateral unless the agreement foresees the payment of their debt according to the provisions of article 158 of the Commercial Insolvency Law. If the collateral is not enough to pay for the entire secured claim, the remainder of the debt will be considered as an ordinary claim.²⁹⁹

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Idem*, art 160.

6.3.4.5 The approval of the reorganisation agreement

The debtor or the conciliator must present the proposed reorganisation agreement when he considers that would meet the approval of the majority of recognised creditors, in order for the creditors to express their opinions or subscribe to the agreement.³⁰⁰

The proposed reorganisation agreement must be presented in the format published by the IFECOM and with a summary of its content.³⁰¹

The debtor must provide the documents and information that the conciliator or creditors may request to approve the proposed reorganisation agreement.³⁰²

Once the 15 day period given to the creditors to express their opinion or subscribe to the agreement ends, the conciliator must present to the court the reorganisation agreement entered into by the debtor and the required majority of its creditors.³⁰³

The day after the conciliator presents the reorganisation agreement and its summary for approval to the court, the court must provide the creditors with five days to raise their objections regarding the authenticity of their authorisation and exercise their veto right.³⁰⁴

The reorganisation agreement can be vetoed by ordinary creditors whose combined claims represent more than 50% of the total amount of all the common debt, and who did not enter into the agreement. The common creditors will be banned from exercising their veto rights if the reorganisation agreement foresees the payment of their debts according to the provisions of article 158 of the Commercial Insolvency Law.³⁰⁵

Once the mentioned period of five days comes to an end, the court must verify that the reorganisation agreement complies with all legal requirements and that it is not contrary to public order provisions.³⁰⁶

The reorganisation agreement will be binding on the:³⁰⁷

- (i) debtor;³⁰⁸
- (ii) common creditors;³⁰⁹

³⁰⁰ *Idem*, art 161.

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ *Ibid.*

³⁰⁴ *Ibid.*

³⁰⁵ *Idem*, art 163.

³⁰⁶ *Idem*, art 164.

³⁰⁷ *Idem*, art 165.

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*

- (iii) subordinate creditors;³¹⁰
- (iv) secured creditors that entered into the agreement;³¹¹
- (v) special privileged creditors that entered into the agreement; and³¹²
- (vi) secured and special privileged creditors who did not enter into the agreement but whose claims will be paid in accordance with article 158 of the Commercial Insolvency Law.³¹³

The subscription by the secured creditors and the special privileged creditors do not imply the resignation of their collateral.³¹⁴ Thus, these will continue to exist in order to guarantee the fulfilment of the reorganisation agreement.³¹⁵

The resolution in which the Bankruptcy Court approves the reorganisation agreement will terminate the insolvency proceeding.³¹⁶ The resolution will be the only document that will govern the obligations between the debtor and its creditors.³¹⁷ The standby-periods, waivers and other benefits provided by the agreement will only be applicable to the debtor and not its guarantors, unless the creditors agree that the agreement will also bind the debtor's guarantors.³¹⁸

The resolution will also end the conciliator's duties.³¹⁹ However, the court will order the conciliator to cancel the registration of the declaration of insolvency resolution in the Commerce Registry.³²⁰

6.3.5 Claims recognition and classification

6.3.5.1 Graduation of credits

Creditors will be classified in the following classes, depending on the nature of their claims:³²¹

- (i) singularly privileged creditors;³²²
- (ii) secured creditors;³²³

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

³¹² *Ibid.*

³¹³ *Ibid.*

³¹⁴ *Ibid.*

³¹⁵ *Ibid.*

³¹⁶ *Idem*, art 166.

³¹⁷ *Ibid.*

³¹⁸ *Ibid.*

³¹⁹ *Ibid.*

³²⁰ *Ibid.*

³²¹ *Idem*, art 217.

³²² *Idem*, art 217(I).

³²³ *Idem*, art 217(II).

(iii) creditors with special privilege;³²⁴

(iv) common creditors; and³²⁵

(v) subordinated creditors.³²⁶

Singularly privileged creditors have claims arising from the following, namely the:³²⁷

(i) debtor's burial expenses, if the insolvency proceeding judgment takes place after the debtor's death;³²⁸ and

(ii) debts generated from the expenses of the illness that have caused the debtor's death if the insolvency proceeding judgment takes place after the debtor's death.³²⁹

Secured creditors have claims arising from the following, provided that their collateral is duly constituted under the applicable provisions:³³⁰

(i) mortgages;³³¹ and

(ii) those secured by a pledge.³³²

Secured creditors shall receive the payment of their claims from the profit of the assets subject to the collateral, excluding specially privileged creditors and unsecured creditors.³³³

Against secured claims, in addition to the singularly privileged creditors, only the following have privilege:³³⁴

(i) the labour claims from non-paid salaries up to two years before the declaration of insolvency of the debtor;³³⁵

(ii) litigation expenses incurred in the defence or recovery of the assets that are the object of the security or privilege; and³³⁶

³²⁴ *Idem*, art 217(III).

³²⁵ *Idem*, art 217(IV).

³²⁶ *Idem*, art 217(V).

³²⁷ *Idem*, art 218.

³²⁸ *Idem*, art 218(I).

³²⁹ *Idem*, art 218(II).

³³⁰ *Idem*, art 219.

³³¹ *Idem*, art 219(I).

³³² *Idem*, art 219(II).

³³³ *Idem*, art 219, last para.

³³⁴ *Idem*, art 225.

³³⁵ *Idem*, art 225(I).

³³⁶ *Idem*, art 225(II).

(iii) the necessary costs for the repairs, conservation and disposal of said assets.³³⁷

The order of payment between secured creditors that were granted the same collateral to secure their claim will be subject to the order determined in terms of the provisions applicable to the date of registration of such collateral.

According to the Commercial Code or laws of their subject matter, creditors with special privilege are all those who have a special privilege or a right of retention.³³⁸

Creditors with special privilege will be paid on the same terms as secured creditors, or according to the date of their credit if it is not subject to registration, unless several of them concur on a specific good or asset, in which case the distribution will be made *pro-rata* without distinction of dates unless otherwise provided by law.

Labour credits (other than those referred to in section XXIII, paragraph A, of article 123 of the Constitution and its regulatory provisions increasing salaries to those corresponding to the two years before the declaration of the debtor's bankruptcy) and tax credits will be paid after the singularly privileged credits and credits with real security have been paid, but before the credits with special privilege.³³⁹

If tax credits are secured by collateral, they will be paid in advance in accordance with the secured credits up to the amount of the collateral, and any remainder will be paid under those mentioned above.³⁴⁰

All creditors not included in the previous categories are ordinary creditors (unsecured creditors) and will be paid on a *pro-rata* basis without distinction of dates.³⁴¹

Subordinated creditors are creditors who have agreed to subordinate their rights concerning common claims.³⁴² Likewise, subordinated claims are those held by commercial companies belonging to the same corporate group as the debtor.³⁴³

In this regard, a creditor is considered to be part of the same corporate group as the debtor when:

- (i) the controlling companies that directly or indirectly have the right to vote in respect of more than 50% of the capital of another company, have decision-making powers at meetings, can appoint the majority of the members of the management bodies, or by any other means can make fundamental decisions of the company; or³⁴⁴

³³⁷ *Idem*, art 225(III).

³³⁸ *Idem*, art 220.

³³⁹ *Idem*, art 221.

³⁴⁰ *Ibid*.

³⁴¹ *Idem*, art 222.

³⁴² *Idem*, art 222bis.

³⁴³ *Ibid*.

³⁴⁴ *Idem*, art 115(I).

- (ii) controlled companies with more than 50% of the voting shares are owned, either directly or indirectly, or both, by a controlling company.³⁴⁵

Payments shall not be made to creditors of a given class until those of the previous class have been settled by the priority established for such creditors.³⁴⁶

Finally, claims against the estate will be paid in the order indicated hereafter and before any of those described above:³⁴⁷

- (i) claims referred to in section XXIII, paragraph A, of article 123 of the Constitution and its regulatory provisions, increasing the salaries to those corresponding to the two years before the declaration of the debtor's bankruptcy;³⁴⁸
- (ii) claims contracted for the administration of the estate by the debtor with the authorisation of the conciliator or receiver;³⁴⁹ and.³⁵⁰
- (iii) claims contracted to meet the ordinary expenses for the security of the assets of the estate, their repair, conservation and administration, and claims arising from judicial or extrajudicial proceedings for the benefit of the estate.³⁵¹

6.3.5.2 Claims recognition

Within 30 calendar days after the date of publication of the insolvency judgment in the Official Gazette of the Federation, the conciliator must submit to the judge a provisional list of claims payable by the debtor in the form to be determined by the IFECOM.³⁵² Said list shall be based on the debtor's accounts, any other documents that make it possible to determine its liabilities, the information that the debtor itself and its employees are obliged to provide to the conciliator, as well as, if applicable, the information that emerges from the opinion of the visitor and from the requests for recognition of claims that are submitted.

Creditors may apply for the recognition of their claims within:³⁵³

- (i) twenty calendar days following the date of the publication of the insolvency decision in the Official Gazette of the Federation;³⁵⁴
- (ii) the term to formulate objections to the provisional list of the conciliator;³⁵⁵ and

³⁴⁵ *Idem*, art 115(II).

³⁴⁶ *Idem*, art 125.

³⁴⁷ *Idem*, art 224.

³⁴⁸ *Idem*, art 224(I).

³⁴⁹ These claims are better known as DIP Financing in other jurisdictions.

³⁵⁰ Commercial Insolvency Law, art 224(II).

³⁵¹ *Idem*, art 224(III) and (IV).

³⁵² *Idem*, art 121.

³⁵³ *Idem*, art 122.

³⁵⁴ *Idem*, art 122(I).

³⁵⁵ *Idem*, art 122(II).

(iii) the term for the filing of the appeal to the judgment of recognition, graduation and priority of claims.³⁵⁶

Once the deadline for filing the appeal has passed, no recognition of claims may be filed.³⁵⁷

The conciliator shall include in the provisional list that he prepares, those claims that he can determine based on the information mentioned above, in the amount, degree, and priority that corresponds to the provisions of the Commercial Insolvency Law, notwithstanding that the creditor has not requested the recognition of its claim.³⁵⁸ It shall also include those claims whose ownership have been transferred up to that time.³⁵⁹

The amount of the tax credits may be determined at any time. The conciliator shall attach to the lists of recognition of claims all tax claims that are notified to the debtor by the tax authorities with the indication, if applicable, that such authorities may continue with the corresponding verification procedures.³⁶⁰ The conciliator shall also accompany with the lists of recognition of claims, the labour claims.³⁶¹

Requests for the recognition of claims must be submitted to the conciliator and must contain the following information:³⁶²

- (i) the full name and address of the creditor;³⁶³
- (ii) the amount of the claim that the creditor deems it has against, and if applicable, in favour of the debtor;³⁶⁴
- (iii) the guarantees, collateral, conditions, terms and other characteristics of the claim, including the type of document that serves as evidence of the claim;³⁶⁵
- (iv) the degree and priority that in the opinion of the creditor and under the provisions of the law, corresponds to the claim whose recognition is being requested; and³⁶⁶
- (v) if applicable, the documents identifying any administrative, labour, judicial, or arbitration proceeding that has been initiated and is related to the claim in question.³⁶⁷

³⁵⁶ *Idem*, art 122(III).

³⁵⁷ *Idem*, art 122.

³⁵⁸ *Idem*, art 123.

³⁵⁹ *Ibid*.

³⁶⁰ *Idem*, art 124.

³⁶¹ *Ibid*.

³⁶² *Idem*, art 125.

³⁶³ *Idem*, art 125(I).

³⁶⁴ *Idem*, art 125(II).

³⁶⁵ *Idem*, art 125(III).

³⁶⁶ *Idem*, art 125(IV).

³⁶⁷ *Idem*, art 125(V).

The request for claim recognition must be submitted and signed by the creditor in the forms issued by the IFECOM and must be accompanied by the original documents that prove the existence of the claim, or a certified copy thereof. If the creditor does not have the original documents in its possession, it must indicate the place where these original documents are located and demonstrate that it has initiated the procedures to obtain them.³⁶⁸

When in a different proceeding an enforceable judgment, labour award, final administrative decision, or arbitration award has been rendered before the date of retroaction declaring the existence of a claim against the debtor, the creditor in question must submit to the judge and the conciliator a certified copy of such decision.³⁶⁹

In the provisional list of claims, the conciliator shall include, for each claim, the following information:³⁷⁰

- (i) the full name and address of the creditor;³⁷¹
- (ii) the amount of the claim that it considers should be recognised;³⁷²
- (iii) the guarantees, collateral, conditions, terms and other characteristics of the claim, including the type of document that serves as evidence of the claim;³⁷³
- (iv) under the provisions of the law, the grade and priority deemed to correspond with the claim;³⁷⁴ and
- (v) a list in which he shall express, for each claim, the reasons and causes why he supports each proposal, justifying the differences that, if any, exist to what is registered in the debtor's accounting or to what is requested by the creditor.³⁷⁵ It shall also include a reasoned list of those claims it proposes not to recognise.³⁷⁶

The conciliator shall present with the provisional list of claims those documents that he made use of in drafting the list, which shall be an integral part of the list; or if the documents cannot be presented with the provisional list, indicate the place where they can be found.³⁷⁷

Once the conciliator submits the provisional list of claims to the judge, the court shall present it to the debtor and the creditors so that within a non-extendable term of five calendar days, they may submit in writing to the conciliator, through the judge, their objections, accompanied by

³⁶⁸ *Idem*, art 125.

³⁶⁹ *Idem*, art 127.

³⁷⁰ *Ibid.*

³⁷¹ *Idem*, art 127(I).

³⁷² *Idem*, art 127(II).

³⁷³ *Idem*, art 127(III).

³⁷⁴ *Idem*, art 127(IV).

³⁷⁵ *Idem*, art 128.

³⁷⁶ *Ibid.*

³⁷⁷ *Ibid.*

the documents they deem relevant, which shall be made available to the conciliator through the judge, on the day following its receipt.³⁷⁸

The conciliator shall have a non-extendable period of 10 days to prepare and submit to the judge the definitive list of recognition of claims which shall be prepared based on the provisional list of claims and the objections, if any, filed against it.³⁷⁹ It shall also include the terms approved in a judgment that constitutes *res judicata* the claims in respect of which the existence of a final decision is known, as well as the tax and labour credits that up to that term have been notified to the debtor.³⁸⁰ All additional requests presented after the provisional list of claims has been prepared shall also be included in the list to be submitted to the judge.³⁸¹

If the conciliator fails to submit the definitive list before the expiration of the 10 days referred to above, the judge shall issue the necessary measures of constraint and, if the conciliator fails to submit the list within the following five days, the judge shall request the IFECOM to appoint a new conciliator.³⁸²

The conciliator shall not be liable for any errors or omissions appearing in the final claim recognition list, where such errors or omissions have their origin in the failure to record the claim or any other error in the debtor's accounting books, and that could have been avoided by the claim recognition request or by the formulation of objections to the provisional list.³⁸³

Once the aforementioned 10-day period has passed, the judge will issue the judgment of recognition, graduation and priority of claims within the following five days, taking into consideration the definitive list submitted by the conciliator and all the documents that have been annexed to it.³⁸⁴

The judge shall notify the debtor, the recognised creditors, the comptrollers, the conciliator and the Public Prosecutor's Office by publication in the Judicial Gazette³⁸⁵ or on the court's bench the day following the issuance of the judgment of recognition, graduation, and priority of claims.

6.3.5.3 Appeal against the judgment of recognition, graduation and priority of claims

An appeal may be filed against the judgment of recognition, graduation and priority of claims. Such appeal shall not suspend the proceedings.³⁸⁶

The debtor, any creditor, the intervenors, the conciliator, or, as the case may be, the receiver, or the Public Prosecutor's Office may appeal the judgment of recognition, graduation and priority

³⁷⁸ *Idem*, art 129.

³⁷⁹ *Idem*, art 130.

³⁸⁰ *Ibid.*

³⁸¹ *Ibid.*

³⁸² *Ibid.*

³⁸³ *Idem*, art 131.

³⁸⁴ *Idem*, art 132.

³⁸⁵ A daily publication made by the court with the resolutions to filings.

³⁸⁶ Commercial Insolvency Law, art 135.

of claims.³⁸⁷ Creditors that did not request their claim recognition or made objections concerning the provisional list can appeal the judgment of recognition, graduation and priority of claims.³⁸⁸

The appeal must be filed before the judge himself, within nine days after the date on which the notification of the judgment of recognition, graduation and priority of credits takes effect.³⁸⁹ In the same document through which the appeal is filed, the appellant must express his grievances, offer evidence, and indicate the evidence that must be included in the file of the appeal that will be sent to the Court of Appeal. In the event of the omission of this last requirement, the judge will outright dismiss the appeal.³⁹⁰

In the court order in which the appeal is admitted, the judge shall notify the appellant's counterparts so that they may respond as they deem appropriate in respect of the arguments of the appealing party, within nine days following the notification.³⁹¹ In such writ, the appellant's counterpart must offer evidence as to why the appeal should not succeed.³⁹²

The appellant's counterparty may point out additional evidence to be included in the court file, failing which it will be assumed that the counterparty agrees with the evidence submitted by the appellant.

On the day following the expiration of the term to answer the defence, with or without a written answer to the defence, the judge shall send to the Court of Appeal the original pleadings of the appellant; of the other parties, if any; as well as the record of the evidence, together with any other evidence that the judge may deem necessary.³⁹³

Upon receipt of the pleadings and the evidence, the Court of Appeal shall decide on the admission of the appeal without further proceedings. Within 10 days after the admission of the appeal, the Court of Appeal shall summon the parties to a hearing for the presentation of evidence and the formulation of their conclusions.³⁹⁴ The hearing may only be postponed once and in all cases the hearing must be held no later than thirty calendar days following the date initially set.³⁹⁵

Once the hearing has been held, the Court of Appeal will summon the parties for judgment and resolve the appeal within five days.³⁹⁶

Creditors that had not been recognised in the judgment of recognition, graduation and priority of claims and who filed the appeal, may only exercise the rights conferred to recognised

³⁸⁷ *Idem*, art 136.

³⁸⁸ *Ibid.*

³⁸⁹ *Idem*, art 137.

³⁹⁰ *Idem*, art 138.

³⁹¹ *Idem*, art 139.

³⁹² *Ibid.*

³⁹³ *Idem*, art 141.

³⁹⁴ *Idem*, art 142.

³⁹⁵ *Ibid.*

³⁹⁶ *Ibid.*

creditors by the Commercial Insolvency Law upon the existence of an enforceable resolution that grants them the status of recognised creditors.³⁹⁷ For example, only recognised creditors may vote in the reorganisation plan.

If a creditor transfers the ownership of its credits by any means, the creditor as well as the acquirer must notify the conciliator of the transfer and its characteristics in the forms determined for such purpose by the IFECOM.³⁹⁸ The conciliator must make the notification public in terms of the provisions issued by the IFECOM for this purpose.³⁹⁹

6.4 Pre-pack insolvency proceeding

In Mexico it is possible to commence an insolvency proceeding through a prior restructuring plan. Thus, the petition will be admitted for processing when:⁴⁰⁰

- (i) as in an ordinary proceeding, the debtor has defaulted on its payment obligation in respect of two or more different creditors and such past due obligations are at least 30 days past due and represent 35% of all its obligations as of the date of filing of the petition or complaint, and its liquid assets are not sufficient to cover 80% of its due payment obligations;⁴⁰¹
- (ii) the petition or complaint contains all the requirements established by law for the ordinary procedure;⁴⁰²
- (iii) the petition is signed by the debtor and the creditors that hold at least a simple majority of the total debts / claims against the debtor;⁴⁰³ and
- (iv) the request is accompanied by a proposed plan for the restructuring of the debtor's liabilities signed by the creditors that represent the simple majority of the claims.⁴⁰⁴

In such a request, both the debtor and its creditors may request the injunctive reliefs that they deem best and necessary.⁴⁰⁵

In this regard, if the petition for insolvency proceeding with a prior restructuring plan meets all of the requirements mentioned above, the judge will issue a judgment declaring the debtor's insolvency proceeding without the need to exhaust the visit stage.⁴⁰⁶

³⁹⁷ *Idem*, art 143.

³⁹⁸ *Idem*, art 144.

³⁹⁹ *Ibid*.

⁴⁰⁰ *Idem*, art 339.

⁴⁰¹ *Idem*, art 339(I).

⁴⁰² *Idem*, art 339(II).

⁴⁰³ *Idem*, art 339(III).

⁴⁰⁴ *Idem*, art 339(IV).

⁴⁰⁵ *Ibid*.

⁴⁰⁶ *Idem*, art 341.

Thus, the insolvency judgment must contain all the legal requirements provided by the Commercial Insolvency Law, and from that moment on the insolvency proceeding will be processed as if it were an ordinary proceeding, except that the debtor, or if applicable the conciliator, must submit a vote and subsequent judicial approval of the restructuring plan submitted with the petition.⁴⁰⁷

Self-Assessment Exercise 5

Question 1

What is the hypothesis foreseen by the Mexican Commercial Insolvency Law to consider a debtor as insolvent?

Question 2

What must the visitor review and analyse in order to present his opinion to the Bankruptcy Court?

Question 3

What happens if the court determines that the debtor does not fall into the insolvency assumptions foreseen by the Commercial Insolvency Law?

Question 4

Can creditors initiate judicial proceedings against the debtor aside from the insolvency proceeding?

Question 5

How many days does the conciliation stage last and how many times can it be extended?

Question 6

Can all of the debtor's creditors subscribe to the reorganisation agreement?

Question 7

What are the requirements for the approval of a reorganisation agreement?

⁴⁰⁷ *Idem*, art 342.

Question 8

How are claims classified in the Commercial Insolvency Law?

Question 9

What are the requirements for the admission of a pre-packed proceeding?

[For commentary and feedback on self-assessment exercise 5, please see APPENDIX A](#)

6.5 Corporate liquidation

6.5.1 Out-of-court liquidation

Companies can be wound-up by means of an out-of-court liquidation proceeding. This proceeding is contained in the *Ley General de Sociedades Mercantiles* (General Law of Commercial Companies).

A company can be wound-up for the following reasons:

- (i) the end of the company's term. According to the law, when a company is established the shareholders can decide the term of its existence. Once the term ends, the company must be dissolved and wound-up;⁴⁰⁸
- (ii) in the event that the corporate purpose of the company is illegal, or its activities are illegal, the company will be dissolved and wound-up. Most likely the company will be dissolved by a court resolution that orders the dissolution and liquidation of the company;⁴⁰⁹
- (iii) in the event that the corporate purpose of the company was accomplished;⁴¹⁰
- (iv) in the event that the shareholders agree to dissolve and wind-up the company;⁴¹¹
- (v) in the event that all of the shares are owned by one shareholder, as Mexico's laws do not allow for companies to have only one shareholder;⁴¹² and
- (vi) in the event that the company loses two-thirds of its share capital.⁴¹³

⁴⁰⁸ General Law of Commercial Companies, art 229(I).

⁴⁰⁹ *Idem*, art 229(II).

⁴¹⁰ *Idem*, art 229(III).

⁴¹¹ *Idem*, art 229(IV).

⁴¹² *Idem*, art 229(V).

⁴¹³ *Idem*, art 229(VI).

Once the company is dissolved its liquidation can begin.⁴¹⁴ A receiver or receivers will be in charge of the company's liquidation, and will thus represent the company.⁴¹⁵ Consequently, the receiver will have the powers to administrate the company, but the receiver will not be able to initiate new operations since his activities are aimed at liquidating the company.

The appointment of the receiver must be made in accordance with the provisions of the company's by-laws, or according to a decision taken by shareholders in the meeting in which it was agreed to wind-up or recognise the dissolution of the company.⁴¹⁶

If the company is dissolved as the company's term came to an end or because of a court resolution, the appointment of the liquidator must be made immediately after the term ended or the judgment was issued.⁴¹⁷

The company's administrators must remain in their positions until the appointment of the receiver is inscribed in the Commerce Registry and until the receiver takes possession of the company's assets, documents and accounting information.⁴¹⁸ The company's administrators must hand to the receiver an inventory of the company's liabilities and assets, including debts and accounts receivables, merchandise, real property, etcetera.⁴¹⁹

The appointment of the receiver can be revoked by agreement of the shareholders or by a judicial resolution if there is a serious cause for the receiver's removal.⁴²⁰ The receiver whose appointment has been revoked must remain in this position until a new receiver is appointed and takes office.⁴²¹

Receivers will have the powers to:⁴²²

- (i) conclude the company's pending operations;⁴²³
- (ii) collect whatever is owed to the company;⁴²⁴
- (iii) pay what is owed by the company;⁴²⁵
- (iv) sell the company's assets;⁴²⁶

⁴¹⁴ *Idem*, art 234.

⁴¹⁵ *Idem*, art 235.

⁴¹⁶ *Idem*, art 236.

⁴¹⁷ *Ibid.*

⁴¹⁸ *Idem*, art 237.

⁴¹⁹ *Idem*, art 241.

⁴²⁰ *Idem*, art 238.

⁴²¹ *Ibid.*

⁴²² *Idem*, art 242.

⁴²³ *Idem*, art 242(I).

⁴²⁴ *Idem*, art 242(II).

⁴²⁵ *Ibid.*

⁴²⁶ *Idem*, art 242(III).

- (v) wind-up the equity in order to pay the shareholders;⁴²⁷
- (vi) prepare a final balance sheet that will be registered in the Commerce Registry and published in the electronic system of the Commerce Registry;⁴²⁸
- (vii) request the Commerce Registry to cancel the company's by-laws;⁴²⁹ and
- (viii) safe-keep the company's documents and books for 10 years after the liquidation is finished.⁴³⁰

A shareholder cannot request that the receiver pay such shareholder his entire social property, but can ask the receiver to pay him partially if it is compatible with the company's creditors interests, when the company's debts are not yet extinguished or if the amount was deposited but for some reason the shareholder's payment was not done.⁴³¹ The agreement of the partial distribution must be published so that the creditors can have the right to oppose it.⁴³²

Once the company is wound-up it will only have legal personality in respect of actions required in order to give effect to the liquidation.⁴³³

The liquidation must resolve or terminate the legal relationships of the company with third parties, and it requires the sale of the company's assets and rights in order to obtain cash. Once all of the company's assets are turned into cash, the receiver must prepare a final balance sheet and a projection of the distribution of the residual assets (the cash obtained by the receiver), in accordance with the following.⁴³⁴

- (i) the final balance sheet will indicate the percentage of the corporate assets that must be handed over to each shareholder;⁴³⁵
- (ii) the final balance sheet must be published in the electronic system of the Economy Ministry. The balance sheet and the company's documents will remain available to the shareholders. The shareholders can present their claims to the receiver with 15 days of publication;⁴³⁶ and
- (iii) once the term of 15 days has lapsed the receiver will call for a shareholders' meeting in order to approve the balance sheet.⁴³⁷

⁴²⁷ *Idem*, art 242(IV).

⁴²⁸ *Idem*, art 242(V).

⁴²⁹ *Idem*, art 242(VI).

⁴³⁰ *Idem*, art 245.

⁴³¹ *Idem*, art 243.

⁴³² *Ibid.*

⁴³³ *Idem*, art 244.

⁴³⁴ *Idem*, art 247.

⁴³⁵ *Idem*, art 247(I).

⁴³⁶ *Idem*, art 247(II).

⁴³⁷ *Idem*, art 247(III).

Once the balance sheet is approved the receiver will pay the shareholders. If the shareholders do not collect their payment within two months after the approval of the balance sheet, their payment will be deposited into a bank account chosen by the shareholder.⁴³⁸

6.5.2 Court liquidation

As previously discussed, the Commercial Insolvency Law contains a liquidation stage the purpose whereof is to wind-up the debtor company in order to sell all of its assets and pay its creditors (as far as it is possible).⁴³⁹

The bankruptcy or liquidation stage can begin if:⁴⁴⁰

- (i) the debtor presents its bankruptcy request asking for its proceeding to start in the liquidation stage;⁴⁴¹
- (ii) a creditor presents a bankruptcy complaint against a debtor asking for the proceeding to start in the liquidation stage, and the debtor agrees with such petition when it answers the bankruptcy complaint;⁴⁴²
- (iii) the term foreseen by law for the conciliation stage comes to an end without the debtor and the creditors entering into a reorganisation agreement;⁴⁴³ and
- (iv) the conciliator requests early closure of the conciliation stage from the court if the conciliator believes that it is not possible for the debtor to subscribe to a reorganisation agreement with its creditors.⁴⁴⁴

The purpose of the liquidation stage is the sale of all of the debtor's assets in order to pay the recognised creditors from the capital obtained by such sale.

Under Mexican Law there is never an obligation on the debtor company or its directors to file for liquidation. The Commercial Insolvency Law does however provide for a number of instances where directors and certain employees will be responsible for the damages that they have caused the debtor company when it was insolvent.

6.5.2.1 The bankruptcy resolution

The judgment that declares the bankruptcy or liquidation of the debtor must contain the following, namely the:⁴⁴⁵

⁴³⁸ *Idem*, art 248.

⁴³⁹ Commercial Insolvency Law, art 3.

⁴⁴⁰ *Idem*, art 3(I).

⁴⁴⁰ *Idem*, art 3(II).

⁴⁴¹ *Idem*, art 3(I).

⁴⁴² *Idem*, art 3(II).

⁴⁴³ *Idem*, art 3(III).

⁴⁴⁴ *Idem*, art 3(IV).

⁴⁴⁵ *Idem*, art 175.

- (i) suspension of the debtor's ability to exercise capacity over the goods and rights that forms part of the bankrupt estate;⁴⁴⁶
- (ii) order to prohibit the debtor's debtors from- making any payments without the receiver's authorisation;⁴⁴⁷
- (iii) order to the IFECOM to appoint a receiver or ratify the conciliator as receiver;⁴⁴⁸
- (iv) order to the debtor, its administrators and directors to hand over to the receiver all of the debtor's goods and rights;⁴⁴⁹ and
- (v) order those who possess any of the debtor's assets to hand them over to the receiver.⁴⁵⁰

The receiver must publish the bankruptcy judgment in the Official Gazette of the Federation and register it in the Commerce Registry.⁴⁵¹ The receiver must also inform the creditors about his appointment as receiver, as well as his domicile.⁴⁵²

The bankruptcy judgment can be appealed by the debtor, any recognised creditor or the conciliator.⁴⁵³ As previously discussed, the Unitary Circuit Court will hear and resolve the appeal against the judgment and if an *Amparo* claim is presented against the Unitary Circuit Court's resolution, another Unitary Circuit Court will hear and resolve the *Amparo* claim.⁴⁵⁴ Finally, the *Amparo* resolution dictated by the Unitary Circuit Court can be reviewed by a Collegiate Circuit Court.

It must be noted that if the bankruptcy judgment was issued due to the debtor requesting for its insolvency proceeding to begin in the liquidation stage, or due to the conciliator requesting the conciliation stage to end before the term foreseen by the law, the appeal against the bankruptcy judgment will suspend the proceeding.⁴⁵⁵ However, if the bankruptcy judgment was issued due to the fact that the timeframe for the conciliation stage provided by law came to an end without the debtor and its creditors entering into a reorganisation agreement, the appeal against the bankruptcy judgment will not suspend the proceeding.⁴⁵⁶ The receiver will thus be able to begin his duties, and the consequences of the debtor's bankruptcy will take effect.

⁴⁴⁶ *Idem*, art 175(I).

⁴⁴⁷ *Idem*, art 175(II).

⁴⁴⁸ *Idem*, art 175(III).

⁴⁴⁹ *Idem*, art 175(IV).

⁴⁵⁰ *Idem*, art 175(V).

⁴⁵¹ *Idem*, art 171.

⁴⁵² *Idem*, art 172.

⁴⁵³ *Idem*, art 175.

⁴⁵⁴ See para 4.2.2 above in this regard.

⁴⁵⁵ Commercial Insolvency Law, art 175.

⁴⁵⁶ *Ibid*.

6.5.3 *The effects of the bankruptcy resolution*

The liquidation judgment will have the same effects as the resolution that declares the debtor insolvent and with which the conciliation stage usually starts:

6.5.3.1 *Suspension of enforcement procedures against the debtor's assets*

The resolution that declares the insolvency of the debtor, either for the conciliation stage or the liquidation stage to begin, will contain the order to suspend all of the enforcement procedures against the debtor's assets (that is, executions or seizures of the debtor's assets).⁴⁵⁷

The only enforcement procedures that will not be suspended are those that secure the payment of labour wages or compensations (up to a period of one year before the declaration of insolvency).⁴⁵⁸

Furthermore, during the conciliation stage secured creditors can initiate or continue with the execution procedures if the secured assets are not indispensable to the company's operation, provided that the conciliator approves thereof.⁴⁵⁹ During the liquidation stage, secured creditors can initiate or continue with the execution procedures of the secured assets (even those necessary for the company's operation) and they only have the obligation to inform the receiver that the procedure has been initiated or continued.⁴⁶⁰

During the first 30 days of the bankruptcy stage, the receiver can avoid execution against assets that are necessary for the company's operations if the receiver believes that the bankrupt estate will benefit from the sale of the asset to be sold as part of a group of assets.⁴⁶¹ The receiver must evaluate the secured asset and pay the secured creditor either the value of the asset shown in the valuation, or the value that the creditor specified when it presented the recognition of its claim, whichever is lower.⁴⁶² In the event that the payment made to the secured creditor is not sufficient to pay its whole recognised credit, the receiver must recognise the remainder of the debt as non-secured debt and pay it on the same terms as the remainder of the non-secured creditors.⁴⁶³

6.5.3.2 *Moratorium*

The judgment that declares the insolvency of the debtor (for either the conciliation stage or the liquidation stage to begin), will contain the order that the debtor has to suspend all previous debts, except those that are indispensable for its business and operation.⁴⁶⁴

⁴⁵⁷ *Idem*, art 169(V).

⁴⁵⁸ *Idem*, art 65.

⁴⁵⁹ *Idem*, art 75.

⁴⁶⁰ *Idem*, art 213.

⁴⁶¹ *Idem*, art 214.

⁴⁶² *Ibid.*

⁴⁶³ *Ibid.*

⁴⁶⁴ *Idem*, art 43(VIII).

6.5.3.3 Arraignment

The resolution that declares the insolvency of the debtor (for either the conciliation stage or the liquidation stage to begin), will order the arraignment of the individual debtor, or if the debtor is a company, it will order the arraignment of its administrators.⁴⁶⁵ Consequently, they will not be able to leave the debtor's domicile without someone with administration powers and power of attorney present, and such person needs to be sufficiently instructed in order for the proceeding to be able to continue.⁴⁶⁶

6.5.3.4 The separation of assets

The assets that are in the possession of the debtor but are not its property, can be separated from the bankrupt estate.⁴⁶⁷ The owner of the assets must present a separation of assets claim in the insolvency proceeding, offering the evidence that the owner considers sufficient.⁴⁶⁸ If the receiver, the conciliator, the debtor and the comptrollers do not object to such separation, the Bankruptcy Court will order the immediate separation of the assets.⁴⁶⁹

If the receiver, the conciliator, the debtor and the comptrollers object to the separation, the claim will be processed as an ancillary proceeding.⁴⁷⁰ The debtor, receiver, conciliator and comptrollers will thus answer the complaint, the parties will supply evidence, a hearing for evidence and final conclusions will be held and a judgment will be issued by the Bankruptcy Court to either declare the separation of the assets or the denial of the separation.

6.5.3.5 Administration

In the conciliation stage the debtor company will remain in possession of its administration, but in the liquidation stage the directors of the debtor company will be removed from the administration and the receiver will be the only manager of the debtor company.⁴⁷¹

6.5.3.6 Judicial proceedings

Judicial proceedings against the debtor will not be incorporated into the insolvency proceedings. The receiver must however supervise the proceedings and represent the debtor in defending the bankruptcy estate.

Nonetheless, the insolvency proceedings of other companies in the same corporate group can be incorporated into the proceeding of the company that filed for bankruptcy first and be heard

⁴⁶⁵ *Idem*, art 47.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Idem*, art 70.

⁴⁶⁸ *Ibid.*

⁴⁶⁹ *Ibid.*

⁴⁷⁰ *Ibid.*

⁴⁷¹ *Idem*, art 178.

by the same Bankruptcy Court, but the proceeding of each company will have its own physical court file.⁴⁷²

6.5.3.7 *The appointment of the receiver*

The liquidation judgment will bring to an end the duties of the conciliator and a receiver will be appointed by the IFECOM.⁴⁷³

In the event where the insolvency proceeding begins in the liquidation stage, the receiver will be in charge of recognising the credits (debts) against the debtor (meaning the receiver will prepare a list of all of the claims against the debtor, indicating the amount of their debt, as well as the type, classification and order of preference of their credit). The Bankruptcy Court will use this list to dictate the recognition, classification and order of preference judgment.

6.5.3.7 *The removal of the debtor from the administration of its company*

As mentioned before, the debtor-in-possession will be removed once the liquidation stage starts and administration will be handed over to the appointed receiver, who will have all the power of ownership and administrative acts. The debtor will only have ownership and administrative powers regarding those assets that are inalienable, non-sizeable and indefeasible.⁴⁷⁴

The debtor must provide the receiver with all its rights, goods, corporate books, documents, information and electronic data storage devices.⁴⁷⁵ The Bankruptcy Court can dictate all the necessary legal measures for the receiver in order to take possession of the debtor's assets and for the debtor and its employees to cooperate. Once the receiver has possession of the debtor's goods and rights, the receiver will be considered its legal depository or guardian.⁴⁷⁶

Within 60 days after taking possession of the debtor's administration, goods, rights and assets, the receiver must render a report to the Bankruptcy Court in which the receiver must include: (i) an opinion on the company's accounting, (ii) a balance sheet from the date that the receiver assumed the debtor's administration and (iii) the details about the assistance received from the debtor.⁴⁷⁷

6.6 Receivership

As stated above,⁴⁷⁸ the insolvency proceeding consists of two successive stages: conciliation and bankruptcy (also known as receivership), and insolvency may be initiated either in

⁴⁷² *Idem*, art 15.

⁴⁷³ *Idem*, art 169(V).

⁴⁷⁴ For example, if the debtor is an individual he will remain in possession of the ownership and administrative powers of his and his family's clothes and furniture. Commercial Insolvency Law, art 160(II).

⁴⁷⁵ *Ibid*.

⁴⁷⁶ *Idem*, art 191.

⁴⁷⁷ *Idem*, art 190.

⁴⁷⁸ See para 6.1.1.2 above in this regard.

conciliation or directly in bankruptcy. The purpose of bankruptcy is to sell the debtor company, its productive units or its assets in order to make payment to the recognised creditors.

As noted before, when bankruptcy is declared, the judge will order the IFECOM to ratify the appointment of the conciliator as receiver within five days or, if not possible, appoint a receiver under the general provisions issued for such purpose.⁴⁷⁹

The day after the appointment of the receiver, the IFECOM will inform the judge of the appointment.⁴⁸⁰ Within five days of his appointment, the receiver must communicate to the judge the name of the persons who will assist him in the performance of his duties, even though the receiver will immediately commence his duties as soon as he is appointed.⁴⁸¹

The receiver must register the bankruptcy judgment and publish an excerpt thereof in the corresponding public registries.⁴⁸² The receiver must also post a section of the resolution in the Official Gazette of the Federation and in one of the newspapers with the largest circulation in the area where the case is being heard.⁴⁸³ The receiver must further inform the creditors of his appointment and indicate a domicile within the jurisdiction of the court that is in charge of the insolvency proceeding, where the receiver may be contacted in the fulfilling of the law's obligations on him.⁴⁸⁴

The bankruptcy judgment may be appealed within nine days after the date on which the resolution is made known to the creditors.⁴⁸⁵

The bankruptcy judgment will be appealable by the debtor, any recognised creditor, or the conciliator on the same terms as the bankruptcy judgment.⁴⁸⁶

It is important to note that the effects of the insolvency judgment apply to the bankruptcy judgment. Likewise, the powers and obligations attributed to the conciliator by the Commercial Insolvency Law, other than those necessary for the achievement of an agreement and the recognition of credits, will also be attributed to the receiver as at the date of the receiver's appointment.⁴⁸⁷

When the conciliation stage ends early because the debtor has filed for bankruptcy, or when the conciliation term and its extensions (if any) have concluded and the judge has granted its conclusion, the person who has initiated the recognition of claims will remain in office until the conclusion of such work. If the insolvency proceeding begins at the bankruptcy stage, the receiver will also have the powers that the law attributes to the conciliator for the purpose of the recognition of credits.

⁴⁷⁹ Commercial Insolvency Law, art 169(V).

⁴⁸⁰ *Idem*, art 170.

⁴⁸¹ *Ibid.*

⁴⁸² *Idem*, art 171.

⁴⁸³ *Ibid.*

⁴⁸⁴ *Idem*, art 172.

⁴⁸⁵ *Idem*, art 175.

⁴⁸⁶ *Ibid.*

⁴⁸⁷ *Idem*, art 177.

The judgment declaring bankruptcy will imply the outright removal (without the need for an additional court order) of the directors from the administration of the debtor company, and the directors will be replaced by the receiver.⁴⁸⁸ For the performance of his duties and subject to the provisions of the Commercial Insolvency Law, the receiver will have the broadest powers that may be applicable by law.⁴⁸⁹

The debtor shall retain the disposition and administration of those assets and rights that are legally inalienable, unseizable, and imprescriptible.⁴⁹⁰

In this regard, the receiver must initiate the “occupation tasks” from his appointment and take possession of the goods, documents and information in possession of the debtor and initiate his administrative activities.⁴⁹¹ For this purpose, the judge must take the relevant measures and issue as many resolutions as necessary for the immediate occupation of (taking possession of) the books, papers, documents, electronic means of storage and information processing, and all the assets in possession of the debtor and third parties.⁴⁹²

The occupation of (taking possession of) the debtor's assets, documents and papers shall be carried out under the following rules:⁴⁹³

- (i) until the receiver appointed by IFECOM takes office, the conciliator shall continue to perform the functions of supervision and vigilance entrusted to him;⁴⁹⁴
- (ii) as soon as the receiver takes office, the assets, cash, books, securities and other documents of the debtor will be handed over to him through an inventory; and⁴⁹⁵
- (iii) the depositaries of the assets that have been attached, as well as those appointed by the insolvency judge when decreeing injunctive relief, will be ordered to deliver them to the receiver immediately.⁴⁹⁶

When the receiver continues the operation of the debtor's business, sales of goods or services related to the company shall be made in the ordinary course of business.⁴⁹⁷

The receiver managing the debtor company must always act as a diligent administrator in his own business, being responsible for the losses or damages that the company suffers due to his fault or negligence.⁴⁹⁸

⁴⁸⁸ *Idem*, art 178.

⁴⁸⁹ *Ibid*.

⁴⁹⁰ *Idem*, art 179.

⁴⁹¹ *Idem*, art 180.

⁴⁹² *Ibid*.

⁴⁹³ *Idem*, art 181.

⁴⁹⁴ *Idem*, art 181(I).

⁴⁹⁵ *Idem*, art 181(II).

⁴⁹⁶ *Idem*, art 181(III).

⁴⁹⁷ *Idem*, art 184.

⁴⁹⁸ *Idem*, art 189.

Within 60 days from the date on which the receiver takes possession of the debtor's business, he must deliver to the judge:⁴⁹⁹

- (i) an opinion on the debtor's accounting status;⁵⁰⁰
- (ii) an inventory of the debtor's business;⁵⁰¹ and
- (iii) a balance sheet, as of the date on which the receiver assumes the administration of the company.⁵⁰²
- (iv) a report regarding the assistance received by the debtor regarding the company's operations.⁵⁰³

Any acts performed by the debtor and its representatives without the receiver's authorisation, as from the declaration of bankruptcy, shall be null and void, except those performed by the debtor and its representatives concerning those assets owned by it that are legally inalienable, unattachable and imprescriptible.⁵⁰⁴ Such authorisation must be in writing and may be general or specific.⁵⁰⁵

If before the declaration of bankruptcy the debtor had been removed from the administration of its business or its powers had been limited concerning some of its assets, any acts carried out in contravention of the order of removal of the limitation of powers will be null and void where third parties had been aware of such situation.⁵⁰⁶ The declaration of nullity shall not be applicable when the bankrupt estate benefits from the consideration obtained by the debtor.⁵⁰⁷

Whenever so requested by the receiver, the debtor must appear before the receiver.⁵⁰⁸ Depending on the nature of the information required by the receiver, the receiver may require the debtor to appear in person and not through a representative; or the receiver may indicate which of the debtor's administrators, managers, employees or dependents must appear.⁵⁰⁹ In order to exercise the power referred to above the receiver may request the assistance of the judge, who will dictate the measures of constraint that the judge deems appropriate.⁵¹⁰

In the case of legal entities, the provisions relating to the debtor's obligations set out above will rest on those who, under the law, the by-laws in force, or their articles of incorporation, have the legal representation of the legal entity.⁵¹¹

⁴⁹⁹ *Idem*, art 190.

⁵⁰⁰ *Idem*, art 190(I).

⁵⁰¹ *Idem*, art 190(II).

⁵⁰² *Idem*, art 190(III).

⁵⁰³ *Idem*, art 190(IV).

⁵⁰⁴ *Idem*, art 192.

⁵⁰⁵ *Ibid*.

⁵⁰⁶ *Ibid*.

⁵⁰⁷ *Ibid*.

⁵⁰⁸ *Idem*, art 195.

⁵⁰⁹ *Ibid*.

⁵¹⁰ *Ibid*.

⁵¹¹ *Idem*, art 196.

6.6.1 Disposal of assets

Once bankruptcy has been declared, even if the recognition of credits has not been concluded, the receiver will proceed to sell the assets and rights that make up the estate, in order to try to obtain the highest possible profit from the sale.⁵¹²

Should the disposal of all of the assets and rights of the estate as a productive unit allows maximising the proceeds of the disposal, the receiver must consider the convenience of keeping the company in operation.⁵¹³

The disposal of the assets must be carried out through the public auction procedure provided for in the Commercial Insolvency Law.⁵¹⁴ The bidding must take place within no less than 10 calendar days and no more than 90 calendar days from the date on which the bidding notice is published for the first time.⁵¹⁵

The receiver will publish the call for the auction under the general provisions issued by IFECOM, and this notice must contain the following information:⁵¹⁶

- (i) a description of each of the assets or group of assets of the same kind and quality that are intended to be sold;⁵¹⁷
- (ii) the minimum price that will serve as a reference to determine the award of the auctioned assets, accompanied by a reasoned explanation of such cost and, if applicable, the documentation on which it is based;⁵¹⁸
- (iii) the date, time and place where the auction will be carried out; and⁵¹⁹
- (iv) the dates, locations and hours where the interested parties may see, visit or examine the assets in question.⁵²⁰

From the day on which the notice of the auction is published until the day immediately preceding the auction date, any person interested in participating may submit to the judge, in a sealed envelope, bids for the assets to be auctioned. Proposals submitted thereafter shall not be admitted.⁵²¹

⁵¹² *Idem*, art 197.

⁵¹³ *Ibid*.

⁵¹⁴ *Idem*, art 198.

⁵¹⁵ *Ibid*.

⁵¹⁶ *Idem*, art 199.

⁵¹⁷ *Idem*, art 199(I).

⁵¹⁸ *Idem*, art 199(II).

⁵¹⁹ *Idem*, art 199(III).

⁵²⁰ *Idem*, art 199(IV).

⁵²¹ *Idem*, art 200.

All bids or offers made in a bidding procedure must:⁵²²

- (i) be submitted in the format published for such purpose by the IFECOM;⁵²³
- (ii) provide for payment in cash. In those cases in which it is possible to determine with precision the amount that would correspond to any recognised creditor as insolvency fee derived from a sale, the creditor in question will be allowed to apply the said amount to a bid, equating it to cash payment;⁵²⁴
- (iii) be valid for at least 45 calendar days following the date of the holding of the auction or, as the case may be, the date on which the bid is submitted;⁵²⁵ and
- (iv) be guaranteed under the terms determined by the IFECOM through its general rules.⁵²⁶

When submitting bids or offers to the judge, bidders or offerors must declare, under oath, their family or patrimonial ties with the debtor, its administrators, or other persons directly related to the debtor's operations.⁵²⁷

Whoever submits a bid or offer on behalf of another person must additionally state the corresponding links of the person that he represents. If the debtor is a legal entity the receiver must disclose to the judge who the holders of the corporate capital are, and in what percentage, and identify its administrators and persons who can bind it with their signature before proceeding with the sale of the assets.⁵²⁸ Any omission or falsehood in this statement will result in the nullity of any award from the acceptance of the bid in question, without prejudice to the resulting liabilities. In this case, the auction shall be deemed not to have taken place.⁵²⁹

The judge shall preside over the auction at the date, time and place authorised, observing the following:⁵³⁰

- (i) access to the auction shall be public;⁵³¹
- (ii) at the time set for the auction, the person presiding over the auction shall declare that it has begun and shall then proceed to open before those present the envelopes containing the bids received, discarding those that do not comply with the requirements outlined in the Commercial Insolvency Law or those who offer a lower price than the minimum price outlined in the call for bids;⁵³²

⁵²² *Idem*, art 201.

⁵²³ *Idem*, art 201(I).

⁵²⁴ *Idem*, art 201(II).

⁵²⁵ *Idem*, art 201(III).

⁵²⁶ *Idem*, art 201(IV).

⁵²⁷ *Idem*, art 202.

⁵²⁸ *Ibid*.

⁵²⁹ *Ibid*.

⁵³⁰ *Idem*, art 203.

⁵³¹ *Idem*, art 203(I).

⁵³² *Idem*, art 203(II).

- (iii) if no valid bids have been received, the auction shall be declared void;⁵³³
- (iv) the person presiding over the auction shall read aloud the amount of each of the proposals admitted, expressly mentioning those made by persons who have a familial or patrimonial relationship with the debtor in terms of the Commercial Insolvency Law;⁵³⁴
- (v) at the end of the reading, the person presiding over the auction shall indicate the bid with the highest price for the goods subject to the auction and shall ask if any of those present wishes to offer a higher price. If anyone offers a higher price within 15 minutes, the person presiding shall ask again if any other bidder is interested in offering an even higher price, and so on successively concerning the bids that are made,⁵³⁵ and
- (vi) if the last bid or the original approved bid is not improved after any period of 15 minutes from the previous request for a higher proposal, it shall be declared the winner.⁵³⁶

After the session, the judge shall order the adjudication of the assets, upon payment, in favour of the bidder who has made the winning bid. In all cases, the total price must be exhibited within 10 days from the date on which the auction was held, failing which the offer shall be dismissed, and the auction shall be deemed to not have been held. In this case, the bidder shall forfeit the deposit, or the corresponding guarantee shall be forfeited to the benefit of the estate.⁵³⁷

The receiver may request the judge's authorisation to dispose of any asset or group of assets of the estate through a procedure other than auction when the receiver considers that a higher value could be obtained in this way. In this case, the receiver's request must contain a:⁵³⁸

- (i) detailed description of each of the assets or group of assets of the same kind and quality that are to be sold;⁵³⁹
- (ii) description of the procedure through which it is proposed to carry out the disposal;⁵⁴⁰ and
- (iii) reasoned explanation of the convenience of carrying out the disposal in the manner proposed and not by auction.⁵⁴¹

If, after six months from the beginning of the bankruptcy stage all of the assets of the estate have not been disposed of, any interested person may submit to the judge an offer to purchase any asset or group of assets from amongst the remaining assets.⁵⁴²

⁵³³ *Idem*, art 203(III).

⁵³⁴ *Idem*, art 203(IV).

⁵³⁵ *Idem*, art 203(V).

⁵³⁶ *Idem*, art 203(VI).

⁵³⁷ *Idem*, art 204.

⁵³⁸ *Idem*, art 205.

⁵³⁹ *Idem*, art 205(I).

⁵⁴⁰ *Idem*, art 205(II).

⁵⁴¹ *Idem*, art 205(III).

⁵⁴² *Idem*, art 207.

The offer must be presented on the forms and under the terms and conditions issued by the IFECOM for such purpose, indicating the assets included and the price offered and the offer must be accompanied by the guarantee determined by the IFECOM through rules of general application.⁵⁴³ On the day following the receipt of the offer the judge will present it to the debtor, the recognised creditors and the comptrollers for a period of 10 days. If they have not expressed their opposition to the offer in writing to the judge at the end of this period, the court will order the receiver to convene, within three days following the receipt of the order, an auction indicating the minimum price of the bid to be received.⁵⁴⁴

The auction shall be held no less than 10 calendar days and no more than 90 calendar days from the date of the notice.⁵⁴⁵ A bid received shall be considered as a bid at the auction. The person who submitted the bid may not improve it or participate in the bids.⁵⁴⁶

As part of the receiver's responsibility, the receiver may also proceed to dispose of the assets of the estate, without complying with the provisions of the Commercial Insolvency Law, (i) when the assets require immediate disposal because they cannot be preserved without deterioration or decay, (ii) when they are exposed to a severe decrease of their price, or (iii) their preservation is too costly in comparison to their value.⁵⁴⁷

In such cases, within three business days of the sale the receiver, through the judge, shall report the sale to the debtor, the comptrollers and the recognised creditors. The report shall include a description of the assets in question, their prices and conditions of sale, and the justification of the urgency of the sale and the buyer's identity.⁵⁴⁸

If the receiver foresees the adjudication of the debtor company as an operating unit, or of parts of it consisting of operating units, the receiver must notify the third parties that have contracts pending execution, related to the company or to the unit being sold; informing them that they have a term of 10 calendar days from the date of the notification, to express in writing to the receiver their willingness to terminate their respective contracts. In the case of parties who do not object, their contracts shall continue with the successful bidder.⁵⁴⁹

The notification shall be made in writing at the domicile of the contracting parties when such residence is recorded in the books and documents of the debtor company. When the domicile of one or several contracting parties is not known, the notification shall be made through a publication in a newspaper of major circulation, for two consecutive days and including the name of the contracting parties to whom the notice is addressed. The notification shall be deemed to have been made on the day following the last publication.⁵⁵⁰

⁵⁴³ *Ibid.*

⁵⁴⁴ *Ibid.*

⁵⁴⁵ *Ibid.*

⁵⁴⁶ *Ibid.*

⁵⁴⁷ *Idem*, art 208.

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Idem*, art 211.

⁵⁵⁰ *Ibid.*

During the first 30 calendar days of the bankruptcy stage, the receiver may avoid the separate execution of a guarantee when he considers that it is in the estate's best interest to dispose of it as part of a group of assets. In such cases, before the disposition of the group of assets in question, the receiver will perform an appraisal of the assets securing the claim.⁵⁵¹

When an asset subject to security is executed or disposed of, the amount with which the creditor must contribute to the payment of the singularly privileged creditors and the debts against the estate shall be deducted from the sale proceeds.⁵⁵²

If it is not possible to precisely determine the contribution that would correspond to the secured creditor at the time of the execution, the minimum amount that can be foreseen will be deducted.⁵⁵³ According to the calculations made for this purpose by the receiver, the difference between this and the maximum amount that could result will be reserved.⁵⁵⁴ The final adjustment will be made as soon as possible to determine the amount of the corresponding contribution accurately.⁵⁵⁵

6.6.2 *Payment to recognised creditors*

At least every two months from the date of the bankruptcy judgment, the receiver will submit to the judge a report of the disposals made and the status of the remaining assets, and a list of the creditors to be paid, as well as the bankruptcy quota to which they are entitled.⁵⁵⁶

Concerning the claims that have been challenged, the receiver must reserve the sum of the amounts, if any, that may correspond to them. Such reserves will be invested in fixed-income instruments of a credit institution, whose yields protect the actual value of such resources predominantly in terms of inflation and which, in addition, have the appropriate characteristics of security, profitability, liquidity and availability.⁵⁵⁷

Upon resolving the challenge, any surplus shall be paid to the recognised creditor in question or repaid to the estate, as the case may be. In cases where the resolution of one or more challenges could modify the amount to be distributed to the recognised creditors, the receiver shall distribute only the amount that cannot be reduced due to the resolution of the appeal.⁵⁵⁸ The difference shall be reserved and invested. When the appeal is resolved, the creditor will be paid, if applicable.⁵⁵⁹

⁵⁵¹ *Idem*, art 214.

⁵⁵² *Idem*, art 216.

⁵⁵³ *Ibid.*

⁵⁵⁴ *Ibid.*

⁵⁵⁵ *Ibid.*

⁵⁵⁶ *Idem*, art 229.

⁵⁵⁷ *Ibid.*

⁵⁵⁸ *Idem*, art 230.

⁵⁵⁹ *Ibid.*

In cases where no judgment of recognition, graduation and priority of credits has been issued, the proceeds of the disposals carried out must be invested in terms of the requirements mentioned above.⁵⁶⁰

The bankruptcy distributions will continue to be made as long as there are assets susceptible to execution.⁵⁶¹

If the insolvency proceeding is to be terminated, and there are still credits pending recognition because the judgment has been challenged, the judge will wait to declare the termination of the insolvency proceeding until the corresponding challenge is resolved.⁵⁶²

All of the assets of the estate shall be deemed to have been realised, even if part of them remain, if the receiver proves to the judge that they have no economic value, or that their value is less than the expenses imposed on them or the expenses necessary for their disposal. In such cases, after hearing the comptrollers, the judge shall decide on the way forward in respect of assets.⁵⁶³

After the insolvency proceeding, the creditors who have not obtained full payment will individually retain their rights and actions for the remaining debt against the debtor.⁵⁶⁴

At the end of the insolvency proceeding, if any additional assets of the debtor are found or if assets that should have been included as part of the estate are returned to the debtor, these assets will be disposed of and distributed under the terms outlined in the Commercial Insolvency Law.⁵⁶⁵

Self-Assessment Exercise 6

Question 1

Name the principal effects of a bankruptcy declaration.

Question 2

Briefly describe the receiver's duties once he is appointed within the bankruptcy stage.

Question 3

How does the disposal of assets take place during the bankruptcy stage?

⁵⁶⁰ *Ibid.*

⁵⁶¹ *Idem*, art 232.

⁵⁶² *Idem*, art 233.

⁵⁶³ *Idem*, art 234.

⁵⁶⁴ *Idem*, art 235.

⁵⁶⁵ *Idem*, art 236.

For commentary and feedback on self-assessment exercise 6, please see APPENDIX A

6.7 Fraudulent acts and the liability of the company's administrators

6.7.1 Suspicious period

The Commercial Insolvency Law provides for a suspicious period in which the debtor's operations and transactions can be reviewed and nullified if they were done to defraud the creditors and harm the debtor's estate. Those transaction made before the suspicious period will however remain valid.

According to the Commercial Insolvency Law, the suspicious period will commence 270 days before the date of the declaration of the insolvency resolution.⁵⁶⁶ Nonetheless, this period can be extended by up to three years before the declaration of insolvency resolution.⁵⁶⁷

Finally, if there are subordinated creditors then the initial term of 270 days will be extended by another 270 days in respect of subordinated claims.⁵⁶⁸

To extend the suspicious period, the conciliator, the receiver, the comptrollers or any creditor can initiate an ancillary proceeding within the insolvency proceeding to extend the suspicious period, indicating the facts that could be considered as fraudulent acts and offering the evidence that it considers important. It is not necessary to prove that the suspicious acts are in fact fraudulent acts for the suspicious period to be extended.⁵⁶⁹

6.7.2 Fraudulent acts

The law indicates that all fraudulent acts will be invalid.⁵⁷⁰ The law considers fraudulent acts as those operations or transactions made by the debtor before the declaration of insolvency, with the purpose of defrauding the creditors, if the third party with whom the operation or transaction was done had knowledge of it being a fraudulent act.⁵⁷¹ However, if no consideration was received, the knowledge of the third party of it being a fraudulent act will not have to be proved.⁵⁷²

The Commercial Insolvency Law considers the following as fraudulent acts, provided that they were made during the suspicious period:⁵⁷³

⁵⁶⁶ *Idem*, art 112.

⁵⁶⁷ *Ibid.*

⁵⁶⁸ *Ibid.*

⁵⁶⁹ *Ibid.*

⁵⁷⁰ *Idem*, art 113.

⁵⁷¹ *Ibid.*

⁵⁷² *Ibid.*

⁵⁷³ *Idem*, art 114.

- (i) operations or transactions where which the counterparty did not pay anything;⁵⁷⁴
- (ii) transactions or sales in which the debtor paid a notoriously superior amount or received a notoriously smaller amount for the good or service;⁵⁷⁵
- (iii) transactions made by the debtor where the terms and conditions were not compatible with the market conditions or the commercial customs and practices;⁵⁷⁶
- (iv) debt remissions made by the debtor;⁵⁷⁷
- (v) payment of unmatured payment obligations made by the debtor;⁵⁷⁸ and
- (vi) discounts made by the debtor during the suspicious period will be considered as advance payments.⁵⁷⁹

The transactions will not be declared invalid if the estate can benefit from the payments made to the debtor. If the third parties return whatever they received from the debtor, they will be allowed to request the recognition of their claims.⁵⁸⁰

The following actions will also be presumed to fraudulent acts if they were made during the suspicious period, if the third party does not prove their good faith:⁵⁸¹

- (i) granting collateral or incrementing the current ones, when the original obligations did not foresee such guarantees or incrementation;⁵⁸² and
- (ii) the debt payment made in kind when the obligation was originally agreed on other terms, or when the compensation was agreed to be money.⁵⁸³

If the debtor is an individual, the transactions or operations will be presumed fraudulent if they were made during the suspicious period, if the third party does not prove his good faith and if these transactions were entered into with the following people:⁵⁸⁴

- (i) the debtor's spouse, co-habitant, relatives (including parents, siblings, uncles, aunts, grandparents, cousins, mother-in-law, father-in-law, brothers-in-law or sisters-in-law),⁵⁸⁵ or

⁵⁷⁴ *Idem*, art 114(I).

⁵⁷⁵ *Idem*, art 114(II).

⁵⁷⁶ *Idem*, art 114(III).

⁵⁷⁷ *Idem*, art 114(IV).

⁵⁷⁸ *Idem*, art 114(V).

⁵⁷⁹ *Idem*, art 114(VI).

⁵⁸⁰ *Ibid.*

⁵⁸¹ *Idem*, art 115.

⁵⁸² *Idem*, art 115(I).

⁵⁸³ *Idem*, art 115(II).

⁵⁸⁴ *Idem*, art 116.

⁵⁸⁵ *Idem*, art 116(I).

- (ii) companies in which the debtor is the administrator, part of the board of directors, has more than 50% of the shares of the company, enough votes or power in shareholders' meetings to appoint the members of the board of directors or power to make the important decisions relating to the company.⁵⁸⁶

If the debtor is a company, the transactions or operations will be presumed fraudulent acts if they are made during the suspicious period, if the third party does not prove his good faith and if these transactions were entered into with the following people:⁵⁸⁷

- (i) the administrator or the members of the board of directors, as well as certain employees, or their spouses or relatives;⁵⁸⁸
- (ii) individuals that hold more than 50% of the debtor's shares or enough votes or power in the shareholders' meeting to appoint the members of the board of directors, or power to make the important decisions of the company;⁵⁸⁹
- (iii) companies that share the same administrators or members of the board of directors as the debtor;⁵⁹⁰ and
- (iv) companies that are directly or indirectly controlled by the debtor or by the same company that controls the debtor.⁵⁹¹

The person that acted in bad faith and acquired something from the debtor defrauding the creditors in the process, will be responsible for the damages suffered by the estate, when whatever this person acquired from the debtor is transferred to a third party acting in good faith, or if it is lost.⁵⁹² The same liability rests upon those that, in order to avoid the invalidity of the defrauding acts, destroys or hides the assets obtained from the debtor.⁵⁹³

If the courts orders the reimbursement of something to the state, either an asset or money, the third party must return the products or interests that he obtained during the time that he had the asset or money.⁵⁹⁴

6.7.3 The liability of the debtor's administrators

The board of directors, as well as certain employees of the debtor can be held liable to pay the damages caused to the debtor, and the debtor is in default of its payment obligations if:⁵⁹⁵

⁵⁸⁶ *Idem*, art 116(II).

⁵⁸⁷ *Idem*, art 117.

⁵⁸⁸ *Idem*, art 117(I).

⁵⁸⁹ *Idem*, art 117(II).

⁵⁹⁰ *Idem*, art 117(III).

⁵⁹¹ *Idem*, art 117(IV).

⁵⁹² *Idem*, art. 118.

⁵⁹³ *Ibid*.

⁵⁹⁴ *Idem*, art 119.

⁵⁹⁵ *Idem*, art 270bis.

- (i) there is a conflict of interest in respect of a vote taken at a board meeting or a decision taken relating to the debtor's assets;⁵⁹⁶
- (ii) the board of directors or certain employees favour a shareholder or group of shareholders to the detriment of the rest of the shareholders;⁵⁹⁷
- (iii) the board of directors or certain employees obtain, without any valid reason, a benefit for itself or third parties because of their job or position, including benefits to a shareholder or group of shareholders;⁵⁹⁸
- (iv) the board of directors or certain employees publish, provide or generate information knowing that it is false;⁵⁹⁹
- (v) the board of directors or certain employees order or cause an operation or transaction not to be registered by the debtor, or if they modify or order the modification of the debtor's records in order to hide operations or transactions disrupting the financial statements;⁶⁰⁰
- (vi) the board of directors or certain employees order or accept that false data is registered in the debtor's accounting;⁶⁰¹
- (vii) the board of directors or certain employees destroy, modify or order the destruction or modification of accounting systems or registries;⁶⁰²
- (viii) the board of directors or certain employees modify or order the modification of active or passive accounts or the terms and conditions of the agreements entered into by the debtor, register non-existent transactions or expenses, or exaggerate the real ones; as well as do any act or illegal transaction, causing a debt, the insolvency, or damage of the debtor's property, obtaining an economic benefit for themselves or a third party;⁶⁰³ or
- (ix) the board of directors or certain employees take any action in bad faith or conduct any illegal acts.⁶⁰⁴

The liability and responsibility to compensate for the damages caused to the debtor will be paid by all the parties responsible.⁶⁰⁵ The compensation should be sufficient to cover the damages

⁵⁹⁶ *Idem*, art 270bis (I).

⁵⁹⁷ *Idem*, art 270bis (II).

⁵⁹⁸ *Idem*, art 270bis (III).

⁵⁹⁹ *Idem*, art 270bis (IV).

⁶⁰⁰ *Idem*, art 270bis (V).

⁶⁰¹ *Idem*, art 270bis (VI).

⁶⁰² *Idem*, art 270bis (VII).

⁶⁰³ *Idem*, art 270bis (VIII).

⁶⁰⁴ *Idem*, art 270bis (IX).

⁶⁰⁵ *Idem*, art 270bis.

caused to the debtor and the parties responsible must be removed from their respective positions.⁶⁰⁶

The claim to hold the administrators liable and request them to compensate for the damages caused by their actions and omissions will be in favour of the debtors.⁶⁰⁷ The administrators can also be held liable in terms of criminal law if their actions constitute crimes.

The claim can be initiated by the debtor, or the shareholders that individually or together have ownership of the shares that represent 25% or more of the corporate shares.⁶⁰⁸

The administrators, members of the board of directors and certain employees will not be held responsible when their actions and decisions were made and taken in good faith, and the following liability exclusions took place, namely if they:⁶⁰⁹

- (i) fulfilled the legal requirements of the company's by-laws in respect of the decisions that the board of directors must make;⁶¹⁰
- (ii) decided or voted in the board meetings based on the information delivered by certain employees or the external audits, without there being any reason to doubt the information;⁶¹¹
- (iii) chose the most appropriate course of action according to their knowledge and information, and the probable damage caused to the debtor was not foreseeable;⁶¹² and
- (iv) acted by fulfilling the agreements made by the shareholders meeting, provided that such agreements were legal.⁶¹³

Self-Assessment Exercise 7

Question 1

What is the purpose of the suspicious period?

⁶⁰⁶ *Ibid.*

⁶⁰⁷ Commercial Insolvency Law, art 270bis(1).

⁶⁰⁸ *Ibid.*

⁶⁰⁹ *Idem*, art 270bis(2).

⁶¹⁰ *Idem*, art 270bis(I).

⁶¹¹ *Idem*, art 270bis(II).

⁶¹² *Idem*, art 270bis(III).

⁶¹³ *Idem*, art 270bis(IV).

Question 2

What types of operations or transactions are presumed to be fraudulent acts? What must a third party argue and prove in order for the acts not to be declared as void?

Question 3

Are administrators liable if they do not file for bankruptcy if the debtor is insolvent?

[For commentary and feedback on self-assessment exercise 7, please see APPENDIX A](#)

7. CROSS-BORDER INSOLVENCY LAW

Mexico adopted the UNCITRAL Model Law on Cross-Border Insolvency Law in 2000 and incorporated it into the Twelfth Title of the Commercial Insolvency Law.

In article 280 of the Commercial Insolvency Law there is a demand for reciprocity, indicating that the provisions of the Twelfth Title will only apply if there is not an international treaty on the matter to which Mexico is a party, and if reciprocity exists.

The Commercial Insolvency Law also provides that if the debtor who is requesting that its insolvency proceedings be recognised in Mexico has an establishment in the country, a main proceeding must be opened according to the rules foreseen by the law.⁶¹⁴ This means that the insolvency proceeding of the debtor must be requested before a Mexican Bankruptcy Court, all the stages provided for in the Commercial Insolvency Law must be completed, and the foreign proceeding will be recognised in the judgment that declares the bankruptcy of the debtor.

Nonetheless, if the debtor does not have an establishment in Mexico, the foreign insolvency proceeding will be processed as an ancillary proceeding and recognised in Mexico according to the UNCITRAL Model Law on Cross-Border Insolvency Law.⁶¹⁵

Article 290 of the Commercial Insolvency Law, which is contained in the Twelfth Title, establishes that all foreign and national creditors must be treated equally.

An important cross-border insolvency proceeding in Mexico is the case of *Vitro SAB*.⁶¹⁶ Vitro SAB is a glass manufacturer which was established in Mexico and has several subsidiaries, some in the United States (US), the Americas and Europe.

⁶¹⁴ *Idem*, art 293.

⁶¹⁵ *Idem*, art 294.

⁶¹⁶ *Ad Hoc Group of Vitro Noteholders v Vitro, S.A.B. de C.V. (In re Vitro, S.A.B. de C.V.)*, No 12-10542, 2012 WL 5935630 (5th Circuit 28 November 2012).

In 2010 Vitro SAB and some of its Mexican subsidiaries filed for bankruptcy before the Mexican Federal Courts. Vitro SAB had many subsidiary claims and at the time Mexico did not distinguish between subsidiary claims and unsecured claims, and thus the inter-company claims were recognised as unsecured claims. This recognition was appealed by Vitro SAB's non-subsidiary creditors.

It was claimed that the reorganisation plan of Vitro SAB would not be beneficial to the creditors, as it proposed to release creditor claims against the third parties that served as collateral to the debtor's obligations. The inter-company claims crammed down the remainder of the unsecured creditors, which included some noteholders whose notes were guaranteed by some of Vitro SAB's subsidiaries. The Bankruptcy Court approved the plan and dissenting creditors appealed the decision.

In the US the bankruptcy of Vitro SAB was recognised as a non-main proceeding under Chapter 15 of the US Bankruptcy Code. The reorganisation plan was rejected by the US Bankruptcy Court, and Vitro SAB appealed the resolution. The Fifth Circuit Court of Appeals however confirmed the decision, as extinguishing third-party obligations without them going through an insolvency proceeding and the restructuring plan not being fully disclosed to creditors, violated US public policies.

Later on, the Commercial Insolvency Law was amended to introduce inter-company claims as subsidiary claims, as well as the rules already mentioned for them to vote in a reorganisation plan.

Another important case is the Xacur Brothers bankruptcy. In the 1990's the Xacur Brothers requested the suspension of payments under the law in Mexico that was applicable prior to the Commercial Insolvency Law (*la Ley de Quiebras y Suspensión de Pagos*). Some of the creditors requested the bankruptcy of the company's guarantors in the US that owned assets in that country. After the Commercial Insolvency Law was introduced, and with it the adoption of the UNCITRAL Model Law on Cross-Border Insolvency Law, in 2001 the creditors requested the recognition of the US bankruptcy proceedings in Mexico in order to execute their claims.⁶¹⁷

The foreign representative requested the recognition of the foreign US bankruptcy proceeding and in 2004 the proceeding in which the guarantors (that were also the shareholders) were declared bankrupted was recognised.

⁶¹⁷ *Trustee de USA, Darío U. Oscós Coria v Xacur, Ejure Jacobo*, file 29/2001, processed before the Fourth Civil Court in Mexico's City.

Self-Assessment Exercise 8

Question 1

Did Mexico adopt the UNCITRAL Model Law on Cross-Border Insolvency Law just as it is, or did the legislators make any modifications?

Question 2

What important modification to the Commercial Insolvency Law was inspired by the Vitro SAB case?

[For commentary and feedback on self-assessment exercise 8, please see APPENDIX A](#)

8. RECOGNITION OF FOREIGN JUDGMENTS

8.1 Co-operation in international proceedings

The provisions regulating co-operation in international proceedings shall apply to cases in which:⁶¹⁸

- (i) a foreign court or a foreign representative requests assistance in the Mexican Republic in connection with a foreign proceeding;⁶¹⁹
- (ii) assistance is requested in a foreign state in connection with a proceeding that is being processed under the Commercial Insolvency Law;⁶²⁰
- (iii) a foreign proceeding and a proceeding in the Mexican Republic under the Commercial Insolvency Law are being processed simultaneously concerning the same debtor;⁶²¹ or
- (iv) creditors or other interested persons, who are in a foreign state, have an interest in requesting the opening of a proceeding or in participating in a proceeding that is being processed under the Commercial Insolvency Law.⁶²²

The visitor, the conciliator or the receiver will be empowered to act in a foreign state, to the extent permitted by the applicable foreign law, on behalf of a bankruptcy proceeding that has been opened in the Mexican Republic in accordance with the law.⁶²³ Likewise, any foreign

⁶¹⁸ Commercial Insolvency Law, art 292.

⁶¹⁹ *Idem*, art 292(I).

⁶²⁰ *Idem*, art 292(II).

⁶²¹ *Idem*, art 292(III).

⁶²² *Idem*, art 292(IV).

⁶²³ *Idem*, art 282.

representative will be entitled to appear directly before the judge in the proceedings regulated by the Commercial Insolvency Law.⁶²⁴ The mere fact of the filing of a petition by a foreign representative before a court of the Mexican Republic, based on the Commercial Insolvency Law, does not imply the submission of the foreign representative or the assets and business of the debtor abroad to the jurisdiction of the Mexican courts for any purpose other than the filing of the petition.⁶²⁵

A foreign representative shall be entitled to request the commencement of a proceeding under the Commercial Insolvency Law, if the conditions for the commencement of such proceeding are otherwise met. Upon recognition of a foreign proceeding, the foreign representative shall be entitled to participate in any insolvency proceeding commenced under the Commercial Insolvency Law.⁶²⁶

Foreign creditors will enjoy the same rights as domestic creditors with respect to the opening of a proceeding in Mexico and participation therein under the Commercial Insolvency Law, including the recognition of their claims.⁶²⁷

Whenever, in accordance with the law, notice of any proceeding must be given to creditors residing in the Mexican Republic, such notice must also be given to foreign creditors whose domicile is known and who do not have a domicile within the national territory.⁶²⁸ The judge must order that appropriate legal steps be taken to notify any creditor whose address is not yet known.⁶²⁹ Such notice shall be given to each foreign creditor separately, unless the judge considers that some other form of notice is more appropriate in the circumstances of the case.⁶³⁰ No letter rogatory or other similar formality is required.⁶³¹

8.2 Recognition of a foreign proceeding and injunctive relief to be granted

The foreign representative may apply to the judge for recognition of the foreign proceeding in which he has been appointed.⁶³²

All applications for recognition must be accompanied by:

- a foreign court-certified copy of the resolution declaring the foreign proceeding open and appointing the foreign representative,⁶³³

⁶²⁴ *Idem*, art 286.

⁶²⁵ *Idem*, art 287.

⁶²⁶ *Idem*, art 288.

⁶²⁷ *Idem*, art 290.

⁶²⁸ *Idem*, art 291.

⁶²⁹ *Ibid.*

⁶³⁰ *Ibid.*

⁶³¹ *Ibid.*

⁶³² *Idem*, art 292.

⁶³³ *Idem*, art 292(l).

- a certificate issued by the foreign court attesting to the existence of the foreign proceeding and the appointment of the foreign representative;⁶³⁴ or
- any other evidence of the existence of the foreign proceeding and the appointment of the foreign representative, admissible by the judge.⁶³⁵

Any application for recognition shall be accompanied by a statement duly indicating the particulars of all open foreign proceedings in respect of the debtor that the foreign representative is aware of.⁶³⁶ The judge shall require that any document presented in a foreign language in support of a request for recognition be accompanied by its translation into Spanish.⁶³⁷ Likewise, the domicile of the debtor must be stated for the purpose of being served with the application.⁶³⁸ The procedure will be processed as an ancillary proceeding between the foreign representative and the debtor, with the intervention of the visitor, the conciliator or the receiver.⁶³⁹

The judge shall be entitled to presume that the documents submitted to him in support of the application for recognition are authentic, whether they are legalised or not.⁶⁴⁰ In the absence of proof to the contrary, it shall be presumed that the debtor's registered office or habitual residence, in the case of a natural person, is the centre of its / his main interests.⁶⁴¹

From the moment the request for recognition of a foreign proceeding is filed, the foreign representative shall promptly inform the judge of any:⁶⁴²

- material changes in the status of the recognised foreign proceeding or in the appointment of the foreign representative;⁶⁴³ and
- other foreign proceeding being conducted with respect to the same debtor of which the foreign representative is aware.⁶⁴⁴

From the filing of an application for recognition until such application is resolved, the judge may, at the request of the visitor, the conciliator or the receiver (who shall act at the request of the foreign representative), and when the measures are necessary and urgent to protect the assets of the merchant or the interests of the creditors, grant injunctive relief, including the following:⁶⁴⁵

⁶³⁴ *Idem*, art 292(II).

⁶³⁵ *Idem*, art 292(V).

⁶³⁶ *Ibid.*

⁶³⁷ *Ibid.*

⁶³⁸ *Ibid.*

⁶³⁹ *Ibid.*

⁶⁴⁰ *Idem*, art 295.

⁶⁴¹ *Ibid.*

⁶⁴² *Idem*, art 297.

⁶⁴³ *Idem*, art 297(I).

⁶⁴⁴ *Idem*, art 297(II).

⁶⁴⁵ *Idem*, art 298.

- it may suspend any enforcement action against the debtor's assets;⁶⁴⁶ and
- order that the person appointed by the IFECOM may designate the administrator or executor of all or part of the debtor's assets that are in the national territory, in order to protect and preserve the value of those that, due to their nature or concurrent circumstances, are perishable; susceptible to depreciation; or are threatened by any other cause, and such designation may fall upon the foreign representative.⁶⁴⁷

For the adoption of injunctive relief, the provisions of the Commercial Insolvency Law relating to injunctive relief shall be observed, insofar as applicable.⁶⁴⁸ The judge may deny any requested relief when such relief affects the conduct of a foreign main proceeding.⁶⁴⁹ In order to request the mentioned injunctive relief when the debtor has an establishment within the Mexican Republic, it will be necessary to request the recognition of the foreign proceeding in question.⁶⁵⁰

Resulting from the recognition of a foreign main proceeding, any:⁶⁵¹

- enforcement action against the debtor's assets shall be suspended;⁶⁵² and
- right to transfer, encumber or otherwise dispose of the debtor's property shall be suspended.⁶⁵³

If it is necessary to protect the assets of the debtor or the interests of the creditor and the foreign proceedings have been recognised, the foreign representative may urge the visitor, the conciliator or the receiver to apply to the judge for any appropriate measures, including to:⁶⁵⁴

- suspend any enforcement action against the debtor's assets;⁶⁵⁵
- suspend the exercise of the right to transfer or encumber the debtor's assets, as well as to dispose of such assets in any other way;⁶⁵⁶
- order the production of evidence or the provision of information with respect to the assets, business, rights, obligations or liabilities of the debtor;⁶⁵⁷

⁶⁴⁶ *Idem*, art 298(I).

⁶⁴⁷ *Idem*, art 298(II).

⁶⁴⁸ *Ibid*.

⁶⁴⁹ *Ibid*.

⁶⁵⁰ *Ibid*.

⁶⁵¹ *Idem*, art 299.

⁶⁵² *Idem*, art 299(I).

⁶⁵³ *Idem*, art 299(II).

⁶⁵⁴ *Idem*, art 300.

⁶⁵⁵ *Idem*, art 300(I).

⁶⁵⁶ *Idem*, art 300(II).

⁶⁵⁷ *Idem*, art 300(III).

- entrust the foreign representative, the visitor, the conciliator or the receiver with the administration or realisation of all or part of the assets of the debtor which are in the national territory,⁶⁵⁸
- extend any injunctive relief granted pursuant to the Commercial Insolvency Law,⁶⁵⁹ and
- grant any other relief that, pursuant to Mexican law, may be granted to the visitor, the conciliator or the receiver.⁶⁶⁰

Upon recognition of a foreign proceeding, the foreign representative may request the visitor, the conciliator or the receiver to entrust the foreign representative or another person designated by the IFECOM with the distribution of all or part of the debtor's assets located in the national territory; provided that the judge ensures that the interests of the creditors domiciled in Mexico are sufficiently protected.⁶⁶¹

When ordering the relief to the representative of a foreign non-primary proceeding, the judge shall ensure that the relief so ordered concerns assets which, under Mexican law, are to be administered in the foreign non-primary proceeding or which concern information required in that foreign non-primary proceeding.⁶⁶²

In granting or denying a relief or in modifying or terminating such relief, the judge shall ensure that the interests of creditors and other interested persons, including the debtor, are adequately protected. The judge may make any relief granted subject to such conditions as the judge deems appropriate.⁶⁶³

At the request of the foreign representative or any person affected by any relief ordered, or *ex officio*, the judge may modify or annul the relief.⁶⁶⁴

The procedure shall be carried out as an ancillary proceeding with the audience of the visitor, the conciliator or the receiver, if any.⁶⁶⁵

Upon recognition of a foreign proceeding, the foreign representative shall be entitled to request the visitor, conciliator or receiver to initiate actions for the recovery of assets belonging to the estate and for the nullity of acts executed in fraud of creditors.⁶⁶⁶

⁶⁵⁸ *Idem*, art 300(IV).

⁶⁵⁹ *Idem*, art 300(V).

⁶⁶⁰ *Idem*, art 300(VI).

⁶⁶¹ *Ibid.*

⁶⁶² *Ibid.*

⁶⁶³ *Idem*, art 301.

⁶⁶⁴ *Ibid.*

⁶⁶⁵ *Ibid.*

⁶⁶⁶ *Idem*, art 302.

8.3 Co-operation with foreign courts and foreign representatives

The judge, the visitor, the conciliator or the receiver shall cooperate, in the exercise of their functions and to the extent possible, with foreign courts and representatives.⁶⁶⁷

The judge, the visitor, the conciliator or the receiver shall be empowered, in the exercise of his functions, to communicate directly without letters rogatory or other formalities with foreign courts or representatives.⁶⁶⁸

Co-operation may be implemented by any appropriate means, and in particular by the:⁶⁶⁹

- appointment of a person or body to act under the direction of the judge, conciliator, visitor or receiver;⁶⁷⁰
- communication of information by any means that the judge, the visitor, the conciliator or the receiver deems appropriate;⁶⁷¹
- co-ordination of the administration and supervision of the assets and business of the debtor;⁶⁷²
- approval or implementation by the courts of the agreements relating to the co-ordination of the proceedings;⁶⁷³ and
- co-ordination of proceedings that are being followed simultaneously with respect to the same debtor.⁶⁷⁴

8.4 Ancillary procedures

The effects of the recognition of a foreign main proceeding and the constitution in a state of insolvency of a foreign debtor (with respect to the establishment it has in the Mexican Republic and the effects of the recognition of a foreign main proceeding), in relation to a debtor that only has assets within the Mexican Republic, shall be limited to the debtor's establishment within the Mexican Republic and, to the extent required for the implementation of co-operation and co-ordination, to other assets of the debtor that, under Mexican law, must be administered in this proceeding.⁶⁷⁵

⁶⁶⁷ *Idem*, art 304.

⁶⁶⁸ *Ibid*.

⁶⁶⁹ *Idem*, art 305.

⁶⁷⁰ *Idem*, art 305(I).

⁶⁷¹ *Idem*, art 305(II).

⁶⁷² *Idem*, art 305(III).

⁶⁷³ *Idem*, art 305(IV).

⁶⁷⁴ *Idem*, art 305(V).

⁶⁷⁵ *Idem*, art 306.

In the absence of proof, the recognition of a foreign main proceeding shall give rise to a presumption that the debtor is in general breach of its obligations for the purposes of the initiation of a proceeding under the Commercial Insolvency Law.⁶⁷⁶

Without affecting the rights of holders of special privileged claims, secured claims or real security rights, a creditor who has received a partial recovery in respect of its claim in proceedings in a foreign state under an insolvency law may not receive a further dividend in respect of its claim in a foreign state in respect of the same debtor, as long as the dividend received by the other creditors in the same class is proportionally less than the recovery already received by the creditor.⁶⁷⁷

Self-Assessment Exercise 9

Question 1

In which cases will co-operation in cross-border proceedings apply and how will it be implemented?

[For commentary and feedback on self-assessment exercise 9, please see APPENDIX A](#)

9. INSOLVENCY LAW REFORM

Mexico has not recently issued amendments to its laws concerning insolvency matters. The last important amendment was in 2014, when, amongst others, DIP Financing, subsidiary claims, and the prohibition on extending the conciliation period longer than the term foreseen by the law was introduced into the Commercial Insolvency Law.

However, inspired by an initiative of The Mexican Attorneys Bar, the parliamentary group of the *Partido Revolucionario Institucional* presented a bill to the Senate in terms whereof the Fifteenth Title entitled "Emergency Insolvency Regime" will be added to the Commercial Insolvency Law.⁶⁷⁸

Currently, the law that regulates insolvency proceedings in Mexico requires the satisfaction of a certain number of requirements in order to access the procedure. The new initiative proposes eliminating such conditions so that courts will automatically admit an insolvency proceeding when it is voluntarily requested by a company; only demanding a declaration under penalty of perjury that the enterprise complies with the insolvency hypothesis foreseen by the law.

⁶⁷⁶ *Idem*, art 309.

⁶⁷⁷ *Idem*, art 310.

⁶⁷⁸ Decree for the addition of the Fifteen Title "Emergency Insolvency Regime" to the Commercial Insolvency Law, available at https://www.senado.gob.mx/65/gaceta_del_senado/documento/106522.

Furthermore, it proposes that courts must issue the judgment declaring insolvency within three days, ordering injunctive relief to protect the company's viability and assets. Moreover, the initiative allows for the option for the entire procedure to be processed online.

The initiative seeks to accelerate and make more efficient the timing of bankruptcy proceedings in Mexico for those companies affected by *force majeure*, fortuitous events or a declaration of emergency, such as Covid-19.

The initiative was published in the Senate's Gazette on 27 April 2020. It has unfortunately not been studied by the Senators and is pending approval and enactment.

Self-Assessment Exercise 10

Question 1

What is the purpose of the proposed amendment to the Commercial Insolvency Law that has been presented to the Senate?

[For commentary and feedback on self-assessment exercise 10, please see APPENDIX A](#)

10. USEFUL INFORMATION

- <https://www.ifecom.cjf.gob.mx/index.htm#Normativa>
- <https://www.ifecom.cjf.gob.mx/index.htm#Publicaciones>
- <https://www.ifecom.cjf.gob.mx/index.htm#Criterios>
- <https://www.ifecom.cjf.gob.mx/index.htm#Estadisticas>
- http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Ley_de_Concursos_Mercantiles.pdf
- <https://revistas.juridicas.unam.mx/index.php/derecho-privado/article/view/13372>
- <https://expansion.mx/opinion/2020/11/13/por-que-empresas-mexicanas-van-a-tribunales-de-eu-por-su-concurso-mercantil>
- <https://forojuridico.mx/la-necesidad-de-crear-los-juzgados-de-districto-en-materia-mercantil/>
- <https://www.derechoconcurzal.org/images/eventos/presentaciones/Quiebra%20Trasfronteriza%20Jorge%20Sepulveda.pdf>

APPENDIX A: COMMENTARY AND FEEDBACK ON SELF-ASSESSMENT EXERCISES**Self-Assessment Exercise 1****Question 1**

Which Federal Courts are competent to process insolvency proceedings in Mexico?

Question 2

What is the IFECOM, and what is its main purpose?

Question 3

Why are the insolvency experts important? Name the main function of each of the insolvency experts as provided for in Mexican Insolvency Law.

Commentary and Feedback on Self-Assessment Exercise 1**Question 1**

According to the Constitutional text, it should be the Commercial District Judges who are competent to resolve and process bankruptcy proceedings. This is also confirmed by article 17 of the Commercial Insolvency Law, which provides that the Commercial District Judge with jurisdiction in the place where the debtor has its domicile is competent to hear the insolvency proceeding.

Nevertheless, Commercial District Judges used to have jurisdiction regarding Bankruptcy matters until 2022. On 4 March 2022 the Federal Judiciary Council issued the General Agreement 4/22 in which it is stated the creation, denomination and commencement of duties of the First and Second District Courts Specialised in Commercial Insolvency Matters, as well as their jurisdiction.

Question 2

IFECOM is the Federal Institute of Specialists in Commercial Bankruptcy Proceedings which is an auxiliary body of the Federal Judiciary Council, meaning it is part of the Judicial Branch in Mexico. The main purpose of IFECOM is register the persons who will serve as visitors, conciliators or receivers in the insolvency proceedings in Mexico. IFECOM must also appoint the specialist that will intervene in each insolvency proceeding, supervise their service, act as a consultative body as experts of the Commercial Insolvency Law and issue the rules for the performance and payment of the visitors, conciliators and receivers.

Question 3

- (i) The visitor: an insolvency specialist compelled to review the debtor's documents, accounting books and other information in order to determine if it falls within the insolvency presumptions foreseen by the Commercial Insolvency Law, and provide a report that must be presented to the court.
- (ii) The conciliator: an insolvency expert whose main duty is to intervene between the debtor and its creditors in the process of entering a reorganisation agreement. The conciliator must also provide a list of creditors to the court and supervise the debtor-in-possession management and operations of the business.
- (iii) The receiver: an insolvency expert that will oversee the debtor's administration once the liquidation stage commences and whose main duty is to sell of the debtor's assets and pay the creditors in the order provided by the law.

Self-Assessment Exercise 2**Question 1**

What is considered as security in terms of the Commercial Insolvency Law, and how is security paid?

Question 2

What kind of currency will be applicable to secured claims?

Commentary and Feedback on Self-Assessment 2**Question 1**

Only mortgages and pledges will serve as security under the Commercial Insolvency Law. As these are governed by the civil legislation of each state of the Mexican Republic as well as commercial general laws, in order to be valid they have to be properly constituted.

Secured claims will be paid with the property or asset granted as a security and after the payment of "singularly privileged" claims and before creditors with a lower ranking. Their payment will be subject to the order determined under the provisions applicable concerning the date of registration of the collateral according to what the civil or commercial legislation foresees for each type of collateral.

Question 2

Secured claims will maintain the currency or unit in which they were agreed upon and only accrue the ordinary interest stipulated in the contracts, up to the value of the assets securing them. However, for purposes of determining their participation in the decisions that must be made in the proceeding, the amount of those claims as of the date of the insolvency proceeding will be converted to UDIs.

Self-Assessment Exercise 3**Question 1**

How many stages does the insolvency proceeding in Mexico have? What is the main purpose of each of these stages?

Question 2

Name all of the parties and bodies that may intervene in an insolvency proceeding in Mexico.

Question 3

Can all kinds of debtors use the rules and proceeding provided by the Commercial Insolvency Law in Mexico? Explain your answer.

Commentary and Feedback on Self-Assessment Exercise 3**Question 1**

The insolvency proceedings in Mexico have two stages: the (i) conciliation and (ii) liquidation or bankruptcy stage. There is also one pre-stage called the visit.

The main purpose of the conciliation stage is the conservation of the debtor's company throughout the subscription of a reorganisation agreement with the creditors who own the majority of the claims against the debtor.

The main purpose of the liquidation stage is to sell all of the debtor's assets in order to pay its creditors up to the amount that is possible according to the order and classification of claims.

The purpose of the visit is for the specialist called a visitor to review the debtor's accounting, documents and information in order to analyse if the debtor meets the insolvency standards set by the Commercial Insolvency Law.

Question 2

- (a) The court: the bankruptcy judge or court is considered the governing body of the insolvency proceeding.
- (b) The debtor: the debtor must be a commercial debtor, meaning individuals whose ordinary occupation is exercising commercial acts, as well as corporations established in Mexico according to the Mexican commercial laws or foreign entities that perform commercial acts in the country.
- (c) The creditors: the person or company to which the debtors owe a debt and is recognised as the debtor's creditor in the recognition and ranking of creditors judgement.
- (d) The IFECOM: auxiliary body of the Federal Judiciary that authorises the registration of visitors, conciliators and receivers that will assist the court in the technical matters of the proceeding, such as accounting, economy, or financial issues that are beyond the court's legal expertise.
- (e) The conciliator: insolvency expert whose main duty is to intervene between the debtor and its creditors to enter a reorganisation agreement. The conciliator must also elaborate a list of creditors to the court and supervise the debtor in possession management and operations of its business.
- (f) The receiver: insolvency expert that will oversee the debtor's administration once the liquidation stage commences and whose main duty will be to sell of the debtor's assets and pay the creditors in the order foreseen by the law.
- (g) The visitor: insolvency specialists compelled to review the debtor's documents, accounting, and information in order to determine if it is in the insolvency presumptions foreseen by the Commercial Insolvency Law and elaborate an opinion that must be presented to the court.
- (h) The comptroller: a person that will look over and represent the creditor's interests, as well as supervise the conciliator and receiver's activities and the debtor in possession's operations and management.

Question 3

No, not all debtors can request an insolvency proceeding according to the Commercial Insolvency Law. Debtors must be considered commercial debtors, such as merchants or traders or companies established in Mexico according to commercial laws. The law also foresees small businesses, debtor's intestate, branches or establishments of foreign companies, financial institutions, among others. However, consumers must deal with their financial problems according to the rules contained in the civil procedure codes of each state.

Self-Assessment Exercise 4

Question 1

Name the options that an individual has in order to access an insolvency proceeding in Mexico and name the main differences between these options.

Question 2

Name the effects of the declaration of insolvency within a civil insolvency proceeding.

Commentary and Feedback on Self-Assessment Exercise 4

Question 1

According to Mexican legislation, there are only two options to access an insolvency proceeding as an individual. The first one is civil insolvency, and the second one is commercial insolvency. The main difference between those procedures is that the first deals with debts of an entirely civil nature. In contrast, in the second, the person seeking to be declared insolvent must be considered a merchant under the Mexican Commercial Code as the Commercial Insolvency Law demands.

Question 2

- (1) Inability of the debtor to continue administering his assets and any other administration that by law corresponds to him.
- (2) The maturity of the term of all debts.
- (3) Interest ceases to accrue on the debtor's obligations, except for secured claims, which will continue to accrue interest up to the value of the guarantee.
- (4) The seizure and securing of the debtor's assets, books, correspondence and documents. Both of these proceedings shall be carried out on the same day, and include sealing the doors of the debtor's warehouses and offices, and furniture subject to seizure which may be found at the debtor's domicile.
- (5) The prohibition of debtors from making payments or delivering effects to the insolvent party.

Self-Assessment Exercise 5**Question 1**

What is the hypothesis foreseen by the Mexican Commercial Insolvency Law to consider a debtor as insolvent?

Question 2

What must the visitor review and analyse in order to present his opinion to the Bankruptcy Court?

Question 3

What happens if the court determines that the debtor does not fall into the insolvency assumptions foreseen by the Commercial Insolvency Law?

Question 4

Can creditors initiate judicial proceedings against the debtor aside from the insolvency proceeding?

Question 5

How many days does the conciliation stage last and how many times can it be extended?

Question 6

Can all of the debtor's creditors subscribe to the reorganisation agreement?

Question 7

What are the requirements for the approval of a reorganisation agreement?

Question 8

How are claims classified in the Commercial Insolvency Law?

Question 9

What are the requirements for the admission of a pre-packed proceeding?

Commentary and Feedback on Self-Assessment Exercise 5

Question 1

Article 9 of the Commercial Insolvency Law establishes that a debtor will be considered insolvent if it has defaulted to fulfil its payment obligations.

According to article 10 of the Commercial Insolvency Law, it will be considered that a debtor has generally defaulted to fulfil its payment obligations when failed to pay its matured debts to two or more different creditors and:

- (i) The payment obligations that the debtor failed to fulfil represent 35% or more of all its payment obligations.
- (ii) The debtor has not enough liquid assets to meet at least 80% of its matured obligations on the date the insolvency request or complaint was filed.

Question 2

The visitor must review the debtor's accounting, information, contracts, documents, and data in which the financial condition of the debtor is registered. The visitor can also perform interviews with the debtor's employees, managers, financial and legal advisors. The visitor will elaborate his opinion based on such documents and information in order to determine if the debtor financial situation meets the insolvency standards set out by the Commercial Insolvency Law.

Question 3

The resolution that decides that the debtor is not insolvent will order that everything must be returned to the conditions before the insolvency complaint or request was admitted and the injunctive reliefs were ordered. The court will penalise the creditor that presented the complaint or the debtor that filed the request to pay the expenses and costs caused by the proceeding.

Question 4

Yes, creditors can file complaints against the debtor to recover their claims. The judicial proceedings against the debtor will not be accumulated to the insolvency proceedings. However, the conciliator must supervise the proceedings. It is important to mention that all enforcements against the debtor's assets will be suspended, so even if the debtor obtains a judgement against the debtor, he will not be able to seize its assets while the insolvency proceeding is being processed.

Question 5

The Commercial Insolvency Law mentions that the conciliation stage will last 185 days and can be extended for 90 days if the conciliator or more than 50% of the creditors request it. Furthermore, a second extension can be requested by the debtor and 75% of the creditors.

Question 6

No, not all the debtor's creditors can subscribe the reorganisation agreement. Tax creditors and labour creditors will not be part of the negotiations and their claims do not count for voting and approval of the reorganisation agreement.

Question 7

To be valid, the reorganisation agreement must not contain provisions against the public order and ought to be entered by more than 50% of the addition of the recognised amount of:

- (j) ordinary and subordinated credits; and
- (ii) secured and special privileged credits.

The agreement must contain the terms for the payment of the debts against the insolvency state, the singularly privileged credits, as well as the secured credits. Moreover, the reorganisation agreement must foresee the financial reserves to pay for the debts resulting from the appeals against the recognition of credits resolution that were not recognised at first in the resolution issued by the Bankruptcy Court. The agreement must also include tax obligations, including tax credits that have not been determined yet.

Question 8

Creditors will be classified in the following classes, depending on the nature of their claims:

- (a) Labour creditors;
- (b) Tax creditors;
- (c) Claims against the state (including those labour claims for wages and employee benefits for a period of two years preceding the date of the insolvency judgment, claims for debtor-in-possession financing, liabilities and obligations of the insolvency estate, such as management fees and other administrative costs, debts arising from the defense and maintenance of the insolvency estate and costs caused by judicial or extrajudicial processes aimed to benefit the insolvency state;

- (d) Singularly privileged creditors;
- (e) Secured creditors;
- (f) Creditors with special privilege;
- (g) Common creditors; and
- (h) Subordinated creditors.

Question 9

- (a) As in an ordinary proceeding, the debtor has defaulted on its payment obligation regarding 2 or more different creditors and such past due obligations are at least 30 days past due and represent 35% of all its obligations as of the date of filing of the petition or complaint, and its liquid assets are not sufficient to cover 80% of its due payment obligations.
- (b) The petition or complaint must contain all the requirements established by law for the ordinary procedure.
- (c) The petition must be signed by the debtor and the creditors that hold of at least a simple majority of the total debts/claims against the debtor.
- (d) The request must be accompanied by a proposed plan for the restructuring of the debtor's liabilities signed by the creditors that represent the simple majority of the claims.

Self-Assessment Exercise 6**Question 1**

Name the principal effects of a bankruptcy declaration.

Question 2

Briefly describe the receiver's duties once he is appointed within the bankruptcy stage.

Question 3

How does the disposal of assets take place during the bankruptcy stage?

Commentary and Feedback on Self-Assessment Exercise 6

Question 1

With the bankruptcy declaration, the debtor's legal capacity to exercise the estate's assets and rights will be suspended unless such suspension has been previously decreed in the conciliation stage. The IFECOM will have to appoint a receiver who will have the administration and representation of the debtor. In this regard, the judgment declaring bankruptcy will imply the outright removal, without the need for an additional court order, of the debtor from the administration of his company, in which the receiver will replace him. For the performance of his duties and subject to the provisions of the Commercial Insolvency Law, the receiver will have the broadest powers of dominion that may be applicable by law. Debtor's debtors will have the prohibition to pay or deliver goods to it without the receiver's authorisation.

Question 2

The receiver must communicate to the judge, within five days following his appointment, the name of the persons with whom he will be assisted in the performance of his duties, without affecting the fact that as soon as he is appointed, he will immediately commence his duties.

The receiver must register the bankruptcy judgment and publish an excerpt of it in the corresponding public registries. The receiver must also post a section of the resolution in the Official Gazette of the Federation and in one of the newspapers with the largest circulation in the local area where the case is being heard. Likewise, the receiver must inform the creditors of his appointment and indicate a domicile within the court's jurisdiction in charge of the insolvency proceeding to fulfil the law's obligations on him.

Also, the powers and obligations attributed by the Commercial Insolvency Law to the conciliator, other than those necessary for the achievement of an agreement and the recognition of credits (if that recognition was already done), will be understood as attributed to the receiver as of the date of his appointment.

In addition, the receiver must initiate the "occupation tasks" as from his appointment and take possession of the goods, documents, and information in possession of the debtor and initiate his administration activities. In this regard, within 60 days from the date on which the receiver takes possession of the debtor's business, he must deliver it to the judge:

- (a) An opinion on the debtor's accounting status;
- (b) An inventory of the debtor's business; and
- (c) A balance sheet, as of the date on which it assumes the administration of the company.

The receiver has the duty to sell of all the debtor's assets and pay the creditors will the profits he obtains and as far as it is possible, according to the order of payment foreseen by the law.

Question 3

The disposal of the assets must be carried out through the public auction procedure in the Commercial Insolvency Law. The bidding must take place within no less than 10 calendar days and no more than ninety calendar days from the date on which the bid notice is published for the first time.

The receiver can also request the judge's authorisation to dispose of any asset or group of assets of the estate through a procedure other than auction when he considers that a higher value would be obtained in this way.

Under his responsibility, the receiver may also proceed to dispose of the assets of the estate, without complying with the provisions of the Commercial Insolvency Law, when the purchases require immediate disposal because they cannot be preserved without deterioration or decay, or when they are exposed to a severe decrease of their price, or their preservation is too costly in comparison to their value.

Self-Assessment Exercise 7**Question 1**

What is the purpose of the suspicious period?

Question 2

What types of operations or transactions are presumed to be fraudulent acts? What must a third party argue and prove in order for the acts not to be declared as void?

Question 3

Are administrators liable if they do not file for bankruptcy if the debtor is insolvent?

Commentary and Feedback on Self-Assessment Exercise 7**Question 1**

The suspicious period is a term in which the debtor's operations and transactions can be reviewed and nullified if they were done to defraud the creditors and harm the debtor's state.

Question 2

The Commercial Insolvency Law considers the following as fraudulent acts, provided that they were made during the suspicious period:

- (a) Operations or transactions in which the counterparty did not pay anything.
- (b) Transactions or sales in which the debtor paid a notorious superior amount or received a notorious smaller amount for the good or service.
- (c) Transactions made by the debtor in terms and conditions that are not compatible with the market conditions or the commercial customs and practices.
- (d) The payment of unmatured payment obligations made by the debtor.
- (e) The discounts made by the debtor during the suspicious period will be considered as advance payment.

The third party can argue and prove that he did not know about the intention of the debtor to defraud the creditors and that he acted in good faith.

The following actions will also be presumed to fraudulent acts if they are made during the suspicious period if the third party does not prove their good faith:

- (a) Granting collaterals or incrementing the current ones, when the original obligations did not foresee such guarantees or incrementation.
- (b) The debt payment made in kind when the obligation was originally agreed on other terms or when the compensation was agreed to be money.

If the debtor is an individual, the transactions or operations will be presumed to be fraudulent if they are made during the suspicious period, and if the third party does not prove his good faith, if there are entered with the following people:

- (a) The debtor's spouse, cohabitant, relatives (including parents, siblings, uncles, aunts, grandparents, cousins, mother-in-law, father-in-law, brother-in-law or sister-in-law).
- (b) Companies in which the debtor is the administrator or part of the board of directors or has more than 50% of the shared of the company or enough votes or power in shareholders meeting to appoint the members of the board of directors or power to make the important decisions of the company.

If the debtor is a company, the transactions or operations will be presumed to be fraudulent if they are made during the suspicious period, and if the third party does not prove his good faith, if there are entered with the following people:

- (a) The administrator or the members of the board of directors, as well as important employees, or their spouses or relatives.
- (b) Individuals that have more than 50% of the debtor's shares or enough votes or power in the shareholders meeting to appoint the members of the board of directors or power to make the important decisions of the company.
- (c) Companies that share with the debtor the same administrators or members of the board of directors.
- (d) Companies that directly or indirectly controlled by the debtor or by the same company that controls the debtor.

Question 3

No, they are not obliged to file for insolvency or bankruptcy if the company has reached a financial situation to be considered insolvent according to the premises of the law. However, can be held liable and will be responsible to pay for the damages caused to the debtor, and the debtor is in default of its payment obligations if they do any of the actions foreseen by the Commercial Insolvency Law.

Self-Assessment Exercise 8

Question 1

Did Mexico adopt the UNCITRAL Model Law on Cross-Border Insolvency Law just as it is, or did the legislators make any modifications?

Question 2

What important modification to the Commercial Insolvency Law was inspired by the Vitro SAB case?

Commentary and Feedback on Self-Assessment Exercise 8**Question 1**

Mexico made two important modifications to the UNCITRAL Model Law on Cross-Border Insolvency Law:

- (a) Mexico demands for reciprocity; and
- (b) The Commercial Insolvency Law also indicates that if the debtor whose insolvency proceedings is asking to be recognised in Mexico, has an establishment in the country, a main proceeding must be opened accordingly to rules foreseen by the Law.

Question 2

After the Vitro case, the Commercial Insolvency Law was amended to introduce intercompany claims as subsidiary claims, as well as the rules already mentioned for them to vote in a reorganisation plan.

Self-Assessment Exercise 9**Question 1**

In which cases will co-operation in cross-border proceedings apply and how will it be implemented?

Commentary and Feedback on Self-Assessment Exercise 9**Question 1**

Co-operation in cross-border proceedings will apply when a foreign court or a foreign representative requests assistance in the Mexican Republic in connection with a foreign proceeding; assistance is requested in a foreign state in connection with a proceeding that is being processed under the Commercial Insolvency Law; a foreign proceeding and a proceeding in the Mexican Republic under the law are being processed simultaneously concerning the same debtor; or when creditors or other interested persons, who are in a foreign State, have an interest in requesting the opening of a proceeding or in participating in a proceeding that is being processed under the Commercial Insolvency Law.

Also, co-operation may be implemented by any appropriate means, and in particular by:

- (a) The appointment of a person or body to act under the direction of the judge, conciliator, visitor or receiver;
- (b) The communication of information by any means that the judge, the visitor, the conciliator or the receiver deems appropriate;
- (c) The co-ordination of the administration and supervision of the assets and business of the debtor;
- (d) The approval or implementation by the courts of the agreements relating to the co-ordination of the proceedings; and
- (e) The co-ordination of proceedings that are being followed simultaneously with respect to the same debtor.

Self-Assessment Exercise 10

Question 1

What is the purpose of the proposed amendment to the Commercial Insolvency Law that has been presented to the Senate?

Commentary and Feedback on Self-Assessment Exercise 10

Question 1

The initiative seeks to accelerate and make more efficient the timing of bankruptcy proceedings in Mexico for those companies affected by the exercise of *force majeure*, fortuitous event, or a declaration of emergency, such as Covid-19.



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