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Overview of the Dynamics of Mexican Restructuring Proceedings

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Latin America Update

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A Primer on Mexico's Ley de Concursos Mercantiles



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Globalization of the economy, the integration of business operations, trade and finance, the increased interconnected nature of our world, the growth of multinational enterprises operating in different countries, and the continuation of a depressed global financial climate have contributed to an increase in cross-border insolvencies. As a result, countries have prioritized the need to update and improve their bankruptcy laws to adjust to this reality.

Mexico is no exception. In 2000, the Mexican Federal Congress passed its current insolvency law, *Ley de Concursos Mercantiles* (the "*Concursos*").² In 2007 and 2014, Mexico also enacted new amendments to eliminate certain bankruptcy law loopholes that had undermined its consideration as a safe jurisdiction for the reorganization of an enterprise in financial distress. This article provides cross-border insolvency practitioners with an overview of the key features of the *Concursos*.

Background

The *Concursos* became effective on May 12, 2000, when it replaced the *Ley de Quiebras y Suspensión de Pagos*, which had been in place in Mexico since 1943.³ The primary reason for the adoption of the *Concursos* was Mexico's adoption of the Model Law. As more Mexican companies entered the international marketplace and Mexico's economy opened to foreign companies through numerous free-trade agreements, the Mexican government understood the need to enact a new set of bankruptcy laws to meet this reality. The *Concursos* focuses on the reorganization of a debtor⁴ and involves the appointment of court officials to assist in that process. Only if reorganization fails does the debtor enter into liquidation.

Overview of the *Concursos*

Eligibility to File

A *Concursos* proceeding may be commenced by the debtor,⁵ a creditor or the attorney general. A debtor may commence a voluntary reorganization proceeding if (1) a payment default has occurred with respect to the claims of at least two creditors and (2) payments are past due for more than 30 days and represent 35 percent or more of all the debtor's payment obligations as of the date of the filing, or (3) the debtor does not have liquid assets to pay at least 80 percent of its past-due obligations as of the date of the filing.⁶ A creditor or the attorney general can file an involuntary reorganization proceeding, but only if all three of these conditions are satisfied. If a creditor commences an involuntary proceeding and is unable to demonstrate that all three conditions have been met, it must pay all attorneys' fees and expenses incurred by the debtor.

Stages of the *Concursos*

There are three stages of a *Concursos* proceeding: (1) the bankruptcy trial (*declaración de concurso*); (2) the reorganization (or the "*conciliación*"); and (3) if no reorganization is implemented or feasible, the liquidation.

Bankruptcy Trial. Cases are commenced by the filing of a request for bankruptcy for the purposes of reorganization (as opposed to liquidation). At the same time as of the filing of this request, the presiding judge (which is a federal district judge at the debtor's domicile or principal place of business) will notify the *Instituto Federal de Especialistas de Concursos Mercantiles* (IFECOM)⁷ and request the appointment of an auditor. A petition for bankruptcy begins an auditing process in which the auditor performs an analysis of the debtor's books and records to determine whether the company is eligible for reorganization.⁸

After considering the facts of the case, claims made by parties-in-interest (including creditors

¹ The views expressed in this article are merely the views of the authors and do not represent the views of their firms (or any associated clients).

² This law governs cross-border insolvency cases, and its provisions incorporate the United Nations Commission on International Trade Law's Model Law on Cross-Border Insolvency ("Model Law"). *Concursos* of May 12, 2000, as amended.

³ As previously noted, in 2007 and 2014, certain amendments to the *Concursos* were made, including (among other things) the following: (1) an express restriction on the presiding judge from extending any statutory time periods; (2) a more straightforward debtor-in-possession (DIP) financing mechanism (including the priority status of the DIP lenders' claims); (3) allowance of the debtor and holders of at least half of recognized claims in replacing the *conciliator* (defined herein); (4) introducing the concept of a statutory "subordinated creditor"; (5) a debtor's ability to file for insolvency even if not insolvent as long as insolvency is inevitable within 90 days (as evidenced by the debtor's balance sheet or an inability to generally pay its debt); (6) creditors' ability to request the direct liquidation of the debtor; and (7) the concept of director and officer liability.

⁴ Article I of the *Concursos* provides that it is a public policy law aimed at regulating business reorganizations. It is in the public's interest to preserve companies and prevent the generalized default of payment obligations that jeopardize the continuation of companies and the parties that have business relationships with them.

⁵ Under the *Concursos*, "merchants" are eligible to file for reorganization and are defined as (1) persons with the legal capacity to engage in commerce, (2) corporations incorporated in accordance with commercial laws and (3) foreign corporations and their agencies or branches that engage in commerce in Mexico.

⁶ See Articles 9 and 10 of the *Concursos*.

⁷ IFECOM is an arm of the judicial branch of the Mexican federal government. It maintains the rosters of approved specialists who assist the presiding judge with *Concursos* proceedings.

⁸ Such eligibility requirements include, among other things, whether the debtor has defaulted on its payment obligations and has liquid assets to make necessary payments. See Article 10 of the *Concursos*.

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and the attorney general) and the auditor's assessment, the judge will issue an "order for relief," which officially commences the *Concursos* proceeding. The effects of the order for relief are (1) the implementation of an automatic stay; (2) IFECOM's appointment of a "*conciliator*," who takes possession of the debtor's books and records; (3) service of the order for relief on known creditors while unknown creditors are notified by publication; (4) the requirement that the debtor cease all payments of its debt, except those necessary for regular operation of the company; and (5) the *conciliator*'s initiation of the procedure for the recognition of creditor claims (described in more detail *infra*).

The Conciliation. The objective of this stage of the proceeding is to preserve the debtor's operations while parties-in-interest attempt to negotiate and draft a consensual reorganization plan. The *conciliator* assists in this process by acting as the mediator between the debtor and its creditors, and is responsible for preparing a reorganization plan and submitting a proposed final list of creditor claims to the judge. The debtor is permitted to continue operating its business during this time. However, if the *conciliator* believes that the debtor should not continue operating its business, it may request removal of the debtor's management and may be authorized to assume responsibilities of management.⁹

The conciliation period lasts 185 days and may be extended for two 90-day periods under exceptional circumstances (including at the request of the *conciliator* and recognized creditors if it can be shown that additional time may result in an agreement with the debtor on a consensual reorganization plan). In no event may the conciliation last more than 365 days. During this stage, the *conciliator* publishes the notice of the deadline by which creditors must file proofs of claim (*i.e.*, the bar date). Notice is published in the *Diario Oficial de la Federación* (the main official government publication in Mexico) and in a local newspaper of the place in which the proceeding is pending. The *conciliator* is also required to, among other things, file a progress report every two months setting forth the work that it has performed and the progress made in connection with the negotiation and drafting of a reorganization plan.

A creditor can file a proof of claim (1) within 20 days following the publication of the order for relief, (2) within five days of the filing of a provisional list by the *conciliator* or (3) within nine days of issuance of the *order of recognition, ranking and preference of claims* (the "claim-recognition order"). After the first deadline to file proofs of claim, the *conciliator* must submit to the judge a provisional list of claims against the debtor using information from the debtor, filed proofs of claim and the auditor's report. The filing of this list commences a five-day period for creditors to file objections. The *conciliator* then has 10 business days to revise the provisional list of claims based on the objections filed and must present a proposed final list of claims for sub-

mission to the judge. Within five days, the judge will decide whether to accept this list. If accepted, this list is included in the claim-recognition orders.

As the amendments ... reflect, the Mexican government has shown a willingness to make any necessary adjustments (and improvements) so that Mexico can be considered a viable jurisdiction in restructuring the affairs of a debtor.

After the judge issues the claim-recognition order, the *conciliator* is required to negotiate a reorganization plan with the debtor and recognized creditors. The plan must provide for the payment of (1) qualified labor claims,¹⁰ (2) expenses incurred in the administration of the proceeding (including attorneys' fees), (3) specialists' fees and expenses (including fees and expenses of the auditor and *conciliator*), (4) singularly privileged creditors,¹¹ (5) secured creditors, (6) labor and unsecured tax claims, (7) special-privilege creditors under Mexican law and (8) general unsecured creditors.¹²

Once the *conciliator* determines that enough creditors will vote in favor of the reorganization plan, he/she will submit it to the holders of recognized claims for a 10-day period for comment and approval. In order for a plan to be approved by the judge, it must be agreed to by the debtor and holders of recognized claims holding more than 50 percent of the sum of (1) the total recognized amount of unsecured claims and (2) the amount of the secured claims and claims having a special privilege under Mexican law. Within seven days after the expiration of the 10-day period, the *conciliator* must submit the plan to the judge, which must be signed by the debtor and by the required majority of recognized claim-holders.¹³ The judge then must make the plan available to all recognized claim-holders for five days so that they may file any objections. Following this objection period, the judge will confirm the plan if he/she finds that such plan meets all requirements of the *Concursos*.

Liquidation. A debtor may be placed into liquidation (1) upon its request, (2) if a reorganization plan is not approved within the statutory time period or (3) if the *conciliator* determines that a consensual reorganization plan is not possible. Once a debtor enters liquidation, it must cease managing its business, disposing of assets or performing under contracts. The IFECOM will appoint a trustee or ask the *conciliator* to act as trustee. Thereafter, after taking con-

¹⁰ These include claims for salaries and severance earned within two years prior to the entry of the order for relief.

¹¹ These only apply if the debtor is a natural person, and include funeral and medical expenses.

¹² In a *Concurso* proceeding, all unsecured claims cease to accrue interest and are converted into Unidades de Inversión, a measuring unit of constant value that is published by the Banco de México.

¹³ There is no express requirement for a creditors' meeting to be held to vote on the proposed plan.

⁹ The *Concursos* does not list specific grounds for removal and generally leaves this decision to the discretion of the judge and *conciliator*.

trol of the debtor's business, the trustee must file a report on the state of the debtor's books, an inventory list and a balance sheet listing all assets up to the date of the appointment. The trustee must sell the debtor's assets for the highest price possible (typically at a public auction).

Final Words

As the world becomes even more interconnected and companies continue to operate in multiple jurisdictions, it

is imperative for insolvency practitioners to keep abreast of developments in the insolvency laws of foreign nations. While this article is not intended to provide an exhaustive, complete overview of the *Concursos*, it aims to highlight its salient key features. As the amendments in both 2007 and 2014 reflect, the Mexican government has shown a willingness to make any necessary adjustments (and improvements) so that Mexico can be considered a viable jurisdiction in restructuring the affairs of a debtor. **abi**

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Creditors' Possibility of Recovering Goods from Bankrupt Debtors Under Insolvency Proceedings: An Overview of U.S. and Mexican Insolvency Laws

Separation Action Under Mexican Insolvency Law

Mexico's insolvency law, "Ley de Concursos Mercantiles" (LCM), provides for a "separation action" that gives the right to legitimate owners of goods in possession of debtors who file for bankruptcy to recover them, as long as such goods are identifiable and their ownership has not been transferred by a definitive and irrevocable legal title. This includes goods acquired by the bankrupt on credit and other assets in their possession as a result of a lease agreement, deposit, usufruct or similar. [1] Articles 70 and 71 of LCM set forth a specific and detailed list of cases in which this action proceeds and the requirements to be met for its applicability.

Despite the fact that articles 70 and 71 of the LCM provide a catalog of cases in which the separation action applies, as well as the requirements to be fulfilled, some Mexican federal courts have developed judicial precedents changing the meaning of such an action, as well as its usefulness. They have construed the theory of the separation action as being limited by Article 1 of Mexico's Business Reorganizations Law, which sets out the "spirit" of said statute: that it is in the public interest to *preserve* companies that file for bankruptcy, and it avoids that generalized noncompliance with payment obligations may put at risk the viability of such companies and of the others with which they maintain a business relationship. These courts, in conjunction with the official conciliators appointed by the IFECOM (Official Government Institute for Insolvencies in Mexico), have considered that in order to guaranty an adequate protection to companies filing for bankruptcy and their assets, as well as achieve the main goals of conservation and reorganization of said companies, they are obliged to follow certain rules and principles in favor of the bankrupt and, consequently, to the detriment of the creditors who could have access to the separation action. [2]

This has led bankruptcy courts, in practice, to deem separation actions as inapplicable in almost all cases, after considering that the goods and assets subject to separation are essential for the continued operation of the bankrupt; therefore, taking them away from the company would prevent its reorganization — which is precisely the main goal of Mexico's Business Reorganizations Law. As can be

seen, Article 1 has prevailed over Articles 70 and 71 of the LCM, a situation that does not find support in the law or in mandatory jurisprudence.

Therefore, the separation action has been repealed *de facto* and creditors are left in a doubly disadvantageous position, since not only do they have to bear the burden of the debt owed by the bankrupt — which very likely the creditor will not be able to fully recover, as a general unsecured claim, resulting in distributions of pennies on the dollar or nothing — but on top of that, they are prevented from recovering goods and assets that could be commercially exploited with third parties to make up for their current losses of profit.

While some creditors who fulfill the requirements of the separation action would be able to separate their assets from the bankruptcy estate, some Mexican federal courts have considered that the possession of the assets in the possession of the creditor are necessary for the operation of the company as administrative expenses [3] pursuant to Article 224 of the LCM. With this, the separation action is inhibited, and the right, for example, that a lessor would have to separate his assets from the bankruptcy estate to place it in a new lease is *de facto* repealed.

Usually, a creditor's main interest is to recover their goods and assets in order to create a profit from them with third parties other than the bankrupt. This has proven to be impossible in most cases due to Mexican courts' restrictive interpretation of the separation action.

Reclamation Rights Under the U.S. Bankruptcy Code, General Rules

U.S. bankruptcy law gives a different treatment to the type of cases described above. As a general rule, under section 2-702 of the Uniform Commercial Code, in cases where the seller discovers that the buyer has received goods on credit while insolvent, the seller may reclaim those goods upon demand made within 10 days after their receipt, as long as the goods are in the buyer's possession at the time reclamation is sought, and they are identifiable.

Additionally, § 546(c) of the Bankruptcy Code sets forth the right of a seller that has sold goods to the debtor in the ordinary course of its business to reclaim such goods if the debtor has received the goods while insolvent, within 45 days before the date of the commencement of the relevant bankruptcy proceeding, as long as the seller demands in writing the reclamation of such goods:

- no later than 45 days after the date of receipt of those goods by the debtor; or
- no later than 20 days after the date of the commencement of the case if the 45-day period expires after the commencement of the bankruptcy case.

As in Mexico, § 503(b)(9) of the Bankruptcy Code provides that after notice and a hearing, payment of administrative expenses shall be allowed, including the value of any goods received by the debtor within 20 days before the date of the commencement of a case under chapter 11 in which the goods have

been sold to the debtor in the ordinary course of the debtor's business. These are considered administrative expense claims under § 503(b)(9) of the Bankruptcy Code, which are therefore given priority treatment over general unsecured claims. Hence, they must be paid in full for a chapter 11 debtor to emerge from bankruptcy. Thus, § 503(b)(9) claims are generally paid faster.

Given that it is an administrative expense and not a pre-petition claim, a chapter 11 debtor with the necessary funds can cover the allowed administrative expense before confirmation of a plan. Accordingly, creditors that successfully assert a § 503(b)(9) claim for goods delivered within 20 days of the petition date have an increased likelihood for a full and quicker recovery. [4]

Proposal to Unify Judicial Criteria

Taking into consideration the foregoing, this article does not intend to make an exhaustive study of the separation action (ruled by the LCM) nor the possibility of recovering creditors' assets in insolvency proceedings under U.S. law. Rather, it intends to explain judicial practices by some Mexican federal courts, and provide elements to overcome their shortcomings, by taking advantage of existing U.S. law and judicial precedents in cross-border litigation proceedings.

The authors of this article consider that Mexican federal courts should standardize their criteria and make a true evaluation of the *ratio legis* of the separation action as it was conceived in the LCM. Using the U.S. legislation as a reference, creditors should be allowed to reclaim goods and assets from a debtor-applicant for bankruptcy proceedings upon written demand, as long as the goods or assets were received by debtor within a specific time frame before the date of the commencement of the bankruptcy proceeding. This would leave creditors in a better position than where they currently stand, since they would have two options: (1) recover the goods and assets transferred to the bankrupt, which would enable creditors to obtain a profit from them by third parties; or (2) allow the debtor (bankrupt) to continue with the possession of such goods or assets, but give the creditor a priority claim over them — that is, get paid for their use as an administrative expense, prior to any other credit.

[1] Articles 70 and 71 of LCM.

[2] On March 4, 2022, by General Agreement of the Federal Judiciary Council 4/2022, published in the Official Gazette of the Federation, such collegiate body ordered the creation of the First and Second District Courts specialized in Commercial Bankruptcy ("bankruptcy courts").

[3] Credits contracted for the administration of the bankrupt's estate, as well as those indispensable to maintain the ordinary operation of the company and the necessary liquidity during the insolvency proceedings.

[4] Bernstein, Scott H. & Rich, Robert A., "Claims for Goods Delivered on the Eve of a Bankruptcy Filing: What Every Business Lawyer Needs to Know," *NY Business Law Journal*, Winter 2020, Vol. 14, No. 2.

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D&O Liability in the Mexican Bankruptcy Law

In Mexico, only business debtors, trusted estates, and legal entities that are incorporated under mercantile laws are eligible to file for bankruptcy. The most common commercial companies incorporated in Mexico are *Sociedad Anónima* (limited liability stock corporations) and *Sociedad de Responsabilidad Limitada* (limited liability partnerships), which are governed by the *Ley General de Sociedades Mercantiles* (General Commercial Companies Law).

Directors and Officers (D&Os) of a commercial company are jointly liable for breaching the obligations inherent in their charge. D&Os are obliged to comply with the company's bylaws, to abstain from voting in cases where they may have a conflict of interests, to maintain confidentiality, to maintain accounting records according to the law, to execute the shareholders' resolutions, to inform the statutory auditor about any irregularities of the former D&O, to timeously submit the financial statements, and to abstain from distributing dividends if the applicable reserves are not constituted. If the company is publicly held according to the *Ley del Mercado de Valores* (Stock Market Law), the additional obligations include informing the board of any relevant information, reporting irregularities to the auditing body or external auditor, and to remain loyal to the company.

Except in the case of bankruptcy, an action against the D&O can be brought only by the company itself following prior favorable resolution of the shareholders or by the shareholders themselves if they voted in favor but were outvoted and represent at least 25 percent of the equity. In cases of publicly held companies, the action can be brought by the company and the shareholders that represent at least five percent of the equity; the shareholders do not need to meet and vote to institute the action. D&O can avoid liability through corporate compliance, that is, if they prove that they acted according to the corporate rules, bylaws, or shareholders' resolutions, or according to the information procured by independent experts. For example, the Mexican airline *Grupo Aeroméxico, S.A.B. de C.V.*, a publicly held company incorporated under Mexican law, filed for a chapter 11 in a New York court.

The company's creditors, only have a limited standing to bring actions against D&Os outside bankruptcy.

Within a bankruptcy proceeding, the D&Os of the bankrupt party are liable to the debtor's estate for damages from the following events: voting in a session despite having a conflict of interest, favoring a third party or shareholder to the detriment of the others, procuring false information about the company, manipulating the accounting records, and committing any unlawful act.

The debtor and shareholders that represent at least twenty-five percent of the equity may bring the liability action before the bankruptcy court through an ancillary proceeding. Unlike an action outside bankruptcy but similar to the case of publicly held companies, shareholders do not need to meet and vote to bring an action against the D&O. Upon relief, the D&O is removed. The plaintiff and the D&O may settle upon approval of the Trustee.

Regarding criminal liability, the D&Os of the debtor that knowingly record false transactions or expenses or deceitfully commit any act in detriment the debtor's estate, for their benefit or the benefit of third parties, will be penalized with three to twelve years in prison.

D&Os can avoid liability, even criminal liability, through corporate compliance. However, the liability in matters of bankruptcy cannot be excluded ex-ante in the debtor's corporate rules and bylaws.

In matters of fraudulent conveyances, D&Os can also be held liable but cannot avoid liability through corporate compliance. Certain creditors may bring this action before the bankruptcy court, but there is no possibility of settlement.

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A New Perspective on the Recognition of Foreign Insolvency Proceedings in Mexico

Mexico adopted the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) in May 2000, when the current Business Reorganizations Law (*Ley de Concursos Mercantiles*) (LCM) was enacted. It was incorporated in Title XII of the LCM, which contains essentially the same provisions as the MLCBI, with a few additions. It distinguishes between main insolvency proceedings and non-main insolvency proceedings. The former should take place in the debtor's center of main interest, and the latter should take place in jurisdictions where the debtor has an establishment. It also presumes that the debtor's registered office is its center of main interest.

However, Title XII of the LCM added that if the debtor has an establishment in Mexico, a Mexican insolvency proceeding should be opened for the recognition to take place, and recognition should be granted in the judgment commencing the Mexican insolvency proceeding (*concurso mercantil*). It is important to make it clear that the law requires the opening of a Mexican insolvency proceeding only when the debtor has an establishment in Mexico. If the debtor does not have an establishment in Mexico, the opening of a Mexican insolvency proceeding is not required.

Such a requirement has discouraged foreign creditors and representatives of foreign insolvency proceedings to file for recognition in Mexico. This is understandable, as generally the opening of Mexican insolvency proceedings has been cumbersome. Under Mexican law, an insolvency proceeding may only be opened if the debtor is deemed to have incurred a general default of its obligations. Ordinarily, a general default of the debtor's obligations is deemed to have taken place if the debtor meets a financial test: The debtor must have 35 percent or more of its obligations to two or more different creditors overdue for at least 30 days, and/or lack of liquidity to repay at least 80 percent of its obligations to two or more different creditors due on the date on which the insolvency petition is filed.

[1]

The Mexican insolvency proceeding is formally opened with a judgment that declares the debtor in *concurso mercantil*, which takes place after the judge has received a report by an examiner appointed randomly by the IFECOM [2] providing that the debtor's accounting meets the financial test mentioned in the preceding paragraph. The debtor and the creditor (if the proceeding started due to a complaint filed by a creditor) may refute the examiner's report, and both may have the opportunity to prove their

statements before the opening judgment is issued. This pre-opening proceeding could take from three months to a year. As district judges became more reluctant to resolve *concurso mercantiles*, the average time for a case extended. Only pre-packaged proceedings — which have been regulated — may avoid this pre-proceeding.

The fact that the LCM provides that the recognition of a foreign proceeding when the debtor has an establishment in Mexico will take place in the judgment commencing the proceeding — which is issued after the steps summarized in the previous paragraphs have taken place — explains why filing for recognition when the debtor has an establishment in Mexico has not been tested.

However, analysis has mainly focused on the negative side of the regulation and has ignored the experience on the application of Title XII of the LCM. Title XII has been applied in two cases that took place shortly after the law was enacted. The first judgment that recognized a foreign insolvency proceeding was issued in 2002 and the second in 2005. In both cases, the Mexican court recognized foreign main insolvency proceedings that were taking place in the Southern District of Texas. Moreover, the Mexican court not only recognized the foreign insolvency proceedings as main proceedings, it also recognized the judgments issued under chapter 7 of the U.S. Bankruptcy Code, which were enforced in Mexico.

Other considerations may be taken into account when assessing whether to file for recognition of a foreign proceeding in Mexico. In the first place, we should be careful to properly identify the debtor. If the debtor in the insolvency proceeding to be recognized is a foreign debtor and not a Mexican company, it is quite possible that the foreign debtor does not have establishments in Mexico, because any existing establishments may be owned or leased by a Mexican subsidiary. In that scenario, the easiest course of action could be followed, as it would not be necessary to open a Mexican insolvency proceeding to have the foreign proceeding recognized.

Additionally, even if the debtor has an establishment in Mexico and the more cumbersome course of action needs to be followed, we should consider that Title XII of the LCM allows interim measures to be requested of the judge by the foreign representative at the commencement of the initial filing. Indeed, even though, according to the LCM, in such a case actual recognition does not take place until a judgment that declares the debtor in *concurso mercantil* is issued, the foreign representative may request the interim measures as of the moment it requests recognition of the foreign insolvency proceeding.

Moreover, on March 7, 2022, specialized courts started operating to deal exclusively with insolvency proceedings. Expertise will not take place in a fortnight; however, judges, law clerks and all of the courts' personnel are being trained in insolvency. Academics, practitioners and insolvency experts, including those registered with IFECOM — who deal on a daily basis with complex insolvency cases and the problems the lack of expertise of judges has generated — have had the chance to participate in the training courses to approach the judges and share their experiences. This is excellent news that may

help overcome many of the hurdles and difficulties that were caused by having insolvency cases dealt with by judges with expertise on constitutional law and with no background or knowledge on insolvency.

Ironically, the fact that all Mexican federal judges have expertise on constitutional law — including the new insolvency judges — and therefore have experience in reviewing laws and applying remedies if laws do not honor constitutional rights (such as access to justice, legal certainty and other rights that could be hindered if a foreign proceeding is not timely recognized) could be helpful to ensure the proper application of the rules of the MLCBI adopted by Title XII of the LCM.

All rules providing for international cooperation and harmonization contained in the MLCBI were incorporated into Title XII of the LCM. The LCM insists that judges and insolvency professionals must cooperate with foreign courts and representatives of foreign insolvency proceedings. So, a proper interpretation of such rules, together with the principles of constitutional rights, may result in the timely recognition of a foreign insolvency proceeding, even if the debtor has an establishment in Mexico.

[1] If the debtor files its own petition, only one of the two requirements should be met, but if the filing is made by a creditor, both requirements must be met.

[2] The IFECOM (Federal Institute of Experts in Business Insolvency Proceedings) is a body that is part of the federal judicial branch. Its main role is to register and monitor insolvency professionals who must fulfill the roles of examiners, conciliators or liquidators during formal insolvency proceedings.

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Hon. Ruth Haggi Huerta García is a District Judge of the Second District Court for Commercial Insolvency Matters in Mexico City. She has extensive experience within Mexico's Federal Judiciary, having served in numerous judicial positions before becoming a district judge. Judge García holds a law degree from Universidad Contemporánea and a specialization in labor law and labor justice from the Federal Judicial Training School. Her professional training also includes commercial insolvency, civil and commercial law, judicial ethics and administrative law.

Jesús Ángel Guerra Méndez is a partner at Guerra, González y Asociados S.C. in Mexico City, where he has practiced since 2004. He specializes in administrative and constitutional litigation, with significant experience advising on matters involving energy resources, exclusive contracts of the Mexican State, constitutional amparo proceedings, reinsurance, surety, insurance, civil and commercial disputes, and insolvency-related matters. Mr. Méndez has represented financial institutions and beneficiaries in complex litigation and has substantial experience in negotiation and mediation. In addition to his legal practice, he has served as an instructor at Universidad Latinoamericana and Escuela Libre de Derecho in diploma programs focused on special insolvency proceedings and cross-border insolvency. Mr. Guerra Méndez holds an LL.M. in American Law from Boston University School of Law, a *cum laude* specialization in commercial law from Universidad Panamericana A.C., and a degree in private law and private international law from Centro Universitario México. He has also participated in leading international insolvency conferences in Miami, Barcelona and Mexico City.

Dr. Iván J. Romo Valdovinos is the managing partner of SOELI Consulting in Mexico City and has international experience in commercial, labor, litigation, arbitration and insolvency consulting. In 2018, he actively participated in the democratic-electoral process at the federal level. Mr. Romo has participated as counsel representing parties, external advisor or expert witness in several of the most prominent insolvency cases in Mexico, including REFA Mexicana, Vitro, Mexicana de Aviación, Oceanografía, Altos Hornos de México, ICA and Abengoa. He also has been involved in high-profile arbitration and litigation cases, such as the million-dollar disputes that COMMISA and CONPROCA had against PEMEX. In addition, he participated in the Grupo Modelo acquisition process carried out by Anheuser-Busch InBev. Mr. Romo has given lectures and participated in interviews on television, radio and online in such countries as Canada, France, Germany, Italy, Japan, Mexico, Spain, U.K. and U.S. He has taught at bachelor's, graduate, diploma and master's degree levels at such prestigious institutions as Escuela Libre de Derecho, wherein he currently is joint professor of the Bankruptcy Course, Instituto Tecnológico Autónomo de México (ITAM), Instituto Nacional de Desarrollo Jurídico, the Superior Court of Justice of the State of Hidalgo and the Supreme Court of Justice of the Nation. Mr. Romo is a member of the Mexican Bar Association, the Ibero-American Institute of

Bankruptcy Law, the International Insolvency Institute, INSOL International and ABI, which honored him as a member of its 2019 class of “40 under 40.” His experience in the energy sector includes projects for solar parks, renewable energy, and the production, transport and refining of gas, crude oil and electric energy. Over the course of more than four years, Mr. Romo was CEO of Sonpetrol México, a company dedicated to the drilling and workover of gas and crude wells. He currently sits on its board of directors. Mr. Romo obtained his law degree with honorable mention from Escuela Libre de Derecho, his M.B.A. from the Instituto Tecnológico Autónomo de México (ITAM), Mexico, his Master’s in global management from Tulane University and his Ph.D. in law from the Instituto de Investigaciones Jurídicas of Universidad Nacional Autónoma de México (IIJ-UNAM).