

Trade Credit in Brazil and Mexico, Navigating Creditor's Rights and Insolvency

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*The Finance, Credit & International
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Receivables

Current Receivables

- Banking System and
- Foreign Exchange Controls

Delinquent Receivables

- Maturity of Legal System, Efficiency of Courts, and Law Corruption, or
- Bank System and Foreign Exchange Controls

Legal Reforms in Latin America

Legal reforms in favor of trade creditors have been instituted in the following countries in Latin America:

- Honduras
- Colombia
- El Salvador
- Chile
- Peru
- Guatemala
- Mexico
- Costa Rica
- Panama
- Guyana
- Dominican Republic

The Common Law

Key features:

- Judicial decisions are binding—the highest court can only be overturned by that same court or through legislation.
- Generally, everything is permitted that is not expressly prohibited by law.
- Few provisions are implied in a contract and consequently parties must set out all the terms governing the relationship between the parties.
- Law is developed by judges through decisions rather than by the legislative process.

United States, Canada, England, and Australia have a common law system.

The Civil Law

Key features:

- Comprehensive compilation of legal rules and statutes.
- Only legislative enactments are considered binding.
Although judges tend to follow previous judicial decisions, they are not bound.
- Have courts specific to the underlying codes, e.g. constitutional court, administrative court, and civil court systems.
- Limited freedom of contract because many provisions are implied into the contract by law.
- Judge's role is generally to establish facts of the case and apply the provisions of the applicable code.

Latin American and South American countries predominantly utilize this system.

Understanding the Legal System

Civil Law vs Common Law*

	Common Law	Civil Law
1. Freedom of K	1. Extensive freedom of contract	1. Code dictates many provisions b/w parties
2. Writings of Legal Scholars	2. Little influence	2. Depending on country, can be highly persuasive authority
3. Judicial Decision	3. Binding	3. Generally, not binding (Can depend on what court)
4. Written Constitution	4. Constitution is interpreted in the context of the common law. In some instances there is no written constitution.	4. Constitution is usually always written.

*World Bank Public-Private Partnership in Infrastructure Resource Center 2014

Maturity of the Legal System

- Are your receivables enforceable in the country of your debtor?
- Does the country have an effective Law regulating security interests/rights as effective collateral?
- Are secured creditors protected in cases of debtor's insolvency?
- What could be the expectations for unsecured creditors?

2014 WORLD BANK GROUP - DOING BUSINESS -Economy Rankings

Mexico has an overall ease of doing business rank of fifty three (53) out of 189 countries behind only three other countries in Latin America and the Caribbean, behind Puerto Rico (U.S.)(40), Peru (42), and Colombia (43). Mexico is 25th in terms of registering property, 6th in terms of getting credit, 11th in protecting investors, 5th in terms of enforcing contracts, and 3rd in terms of resolving insolvency issues. Mexico is 7th in terms of trading across borders.

Brazil has an overall ease of doing business rank of 116 out of 189 countries twenty second (22) in Latin America/Carib. For context, Argentina, the next biggest economy on the Latin America list came in at 126 and 26. Brazil is 11th in terms of registering property, 19th in terms of getting credit, 13th in protecting investors, 19th in terms of enforcing contracts, and 21st in terms of resolving insolvency issues. Brazil is 27th in terms of trading across borders.

Economy Rankings

Economies are ranked on their ease of doing business, from 1 – 189. A high ranking on the ease of doing business index means the regulatory environment is more conducive to the starting and operation of a local firm. This index averages the country's percentile rankings on 10 topics, made up of a variety of indicators, giving equal weight to each topic. The rankings for all economies are benchmarked to June 2013.

Resolving Insolvency – Brazil

DB 2014 RANK 135 DB 2013 RANK*** 146

BRAZIL		
Nature of Export Procedures	Duration (days)	US\$ Cost
Documents preparation	6	325
Customs clearance and technical control	3	400
Ports and terminal handling	3	500
Inland transportation and handling	1	990
Totals	13	2,215

BRAZIL

Nature of Import Procedures	Duration (days)	US\$ Cost
Documents preparation	8	275
Customs clearance and technical control	4	450
Ports and terminal handling	3	500
Inland transportation and handling	2	1,050
Totals	17	2,275

Indicator	Brazil	Latin America & Caribbean	OECD
Documents to export (number)	6	6	4
Time to export (days)	13	17	11
Cost to export (US\$ per container)	2,215	1,283	1,070
Documents to import (number)	8	7	4
Time to import (days)	17	19	10
Cost to import (US\$ per container)	2,275	1,676	1,090

Resolving Insolvency - Mexico

DB 2014 RANK 26 DB 2013 RANK*** 26

Mexico		
Nature of Export Procedures	Duration (days)	US\$ Cost
Documents preparation	5	200
Customs clearance and technical control	2	150
Ports and terminal handling	2	200
Inland transportation and handling	2	900
Totals	11	1,450

Mexico

Nature of Import Procedures	Duration (days)	US\$ Cost
Documents preparation	4	290
Customs clearance and technical control	2	200
Ports and terminal handling	3	300
Inland transportation and handling	2	950
Totals	11	1,740

Indicator	Mexico	Latin America & Caribbean	OECD
Documents to export (number)	4	6	4
Time to export (days)	11	17	11
Cost to export (US\$ per container)	1,450	1,283	1,070
Documents to import (number)	4	7	4
Time to import (days)	11	19	10
Cost to import (US\$ per container)	1,740	1,676	1,090

Brazil and Mexico

Areas of Focus:

- Enforceability of invoices
- Security interests
- Creditors rights in insolvency

Brazil

- Enforceability of invoices
- Security interests
- Creditors' rights in insolvency

Brazilian Legal System

Domestic sales

- Purchase order
- Duplicatas (domestic bill of credit)
- Sales contract (not usual)

Export sales

- Sales contract
- Invoices
- Bill of exchange / promissory note
- Duplicatas, bills of exchange and promissory notes are listed as “bill of credit” and can be protested. The protested bills are listed by main local credit reporting databases such as Equifax and Serasa Experian.
- Most of the importers that default on payments do not have protested bills, at least in the early stages of the delays in payments. Protesting a bill of exchange or promissory note may bring strong collecting power.

Brazil

Enforceability of Invoices

Regular clients with high credit limits

- Line of Credit Contract with collateral security
- Security on property or real estate (mortgage)
- Personal guarantees (aval or fiança)
- Collateral Security Letter – Carta de Fiança
- Partners or shareholders as personal guarantors
- Bills of credit with collateral security
- Personal guarantors on the bills (aval)
- How will this be effective?

A Line of Credit Contract with collateral security is a stronger document in case of payment default. It does not replace the bills of credit but is complementary. You may have Line of Credit Contract and for each shipment or sale you issue the bills of credit. If you protest the bills and still don't get paid, you may enforce the collateral securities.

Brazil

Enforceability of Invoices

Crucial Initial Steps

- Corporate Authority and Due Diligence in Brazil
- Verify the corporate authority of the company you are dealing with before starting to supply them or even entering into a supply contract.
- The corporate authority of a Brazilian legal entity must be established under Brazilian law.
- For both a Brazilian corporation (S.A.) and a Brazilian limited liability company (Ltda.) the power to execute documents binding the company rests with the authorized officer or officers recorded in the company's corporate documents.

Brazil

Enforceability of Invoices

Crucial Initial Steps- Documents

It is common for foreign suppliers to request, in the case of an S.A., the bylaws and the relevant resolution or resolutions appointing the officers (either the shareholders' resolution appointing the board of directors and the board resolution appointing the officers or, if the S.A. does not have a board of directors, simply the shareholders' resolution appointing the officers).

- Foreign suppliers also ask for a simplified certificate from the Board of Trade.
- In the case of a Ltda., it is common to request the articles of incorporation, which will normally have the name of the officer or officers – if not, the officers may have been appointed by a separate act of the quota holders (similar to shareholders but specific to certain types of company), which should be requested for analysis.

Brazil

Enforceability of Invoices

Crucial Initial Steps

- Ensure that there are no restrictions in the bylaws/articles or any shareholders' agreement that would require approval from the board of directors or the shareholders for a particular transaction to proceed. In such cases, a resolution approving the terms of, and the transactions contemplated by, the supply contract and authorizing a specified person or persons to execute the supply contract on its behalf must also be requested.
- Many Brazilian companies are still owned by the founding family, which can over time include several branches of the family, whose relationships will be governed by the shareholders' agreement. It is important to ensure that all necessary approvals have been followed: particularly where management represent (or are even the same individuals as) just one branch of the family.

Brazil

Enforceability of Invoices

Choice of Law and Forum

- Resolving a dispute in the Brazilian courts can be time-consuming and expensive, and overseas suppliers may be understandably wary of submitting to the jurisdiction of an unknown court system.
- Judgments rendered by a foreign court or decisions of an overseas arbitral tribunal cannot be enforced directly in Brazil but must first be approved by a Brazilian Superior Court. (Note- it use to be the Supreme Court of Brazil.)
- Not surprisingly, this process can take a long time. The situation is different for decisions rendered by an arbitral tribunal in Brazil, which are usually upheld by the Brazilian courts without any need for discussion of the merits of the case.
- For any cross-border supply agreement involving Brazil, it is therefore advisable for the parties to include an arbitration clause in their agreement, using the rules of a recognized international arbitration body, such as the ICC or the Brazil-Canada Chamber of Commerce, and with the seat of the arbitration in Brazil: usually São Paulo or Rio de Janeiro.

Brazil

Enforceability of Invoices

Brazil Credit Conditions

- Consistent with observations in the Americas overall, Brazilian respondents' perception of default risks don't vary much between domestic and foreign trade. The payment terms set for B2B customers by Brazilian respondents average 29 days from the invoice date.
- Average credit term set by respondents in the Americas: 31 days; Europe: 33 days.
- Consistent with the overall survey pattern, the credit terms extended by Brazilian respondents to domestic (averaging 29.6 days) and foreign (averaging 28.4 days) B2B customers do not differ much.
- The Brazilian manufacturing sector set the longest credit terms for B2B customers (averaging 32 days), the financial services sector the shortest (22 days).
- Small enterprises in Brazil offer the longest credit terms to B2B customers (averaging 32 days) and medium-sized enterprises the shortest (26 days).

Atradius Payment Practices Barometer, International Survey of B2B Payment Behaviour, Survey Results Brazil, September 2013

Brazil

Security Interests

The Brazilian legal system has many of the same protections for creditors available in the U.S.

These include:

1. a guarantee from the parent company or the promoters of the Brazilian buyer,
2. bank guarantees,
3. irrevocable letters of credit and collateral in the form of mortgage over immovable property or
4. a pledge over movable property.

Whatever type of security the parties ultimately agree to, it is essential to specify the payment obligations in the underlying supply agreement to ensure that the secured obligations are defined in sufficiently clear terms. This is particularly important where the supply agreement takes the form of a framework agreement and deliveries and payments are to be made on the basis of separate orders.

Brazil

Security Interests

Trade creditors have mechanisms to secure unpaid debts:

1. Unpaid debts can be secured by surety bonds (*seguro garantia*), contracted by the debtor before an insurance company, in accordance with specific provisions and rules of the insurance authorities.
2. When the credit is unsecured but the debt is represented by a credit note (e.g., trade note, check, promissory note or bill of exchange) the creditor may:
 - Make an extrajudicial protest of the note;
 - File a collection suit; or
 - Seek to file a bankruptcy liquidation suit to recover its credit.

Brazil

Creditors' Rights in Insolvency

Background

Judicial Reorganization (*recuperação judicial*)

Judicial reorganization is the main rescue/reorganization procedure designed to save the entity. The objective of the procedure is to:

1. Overcome financial difficulties
2. Preserve the company, its employees and the creditors' interests
3. Continue the business.

A judicial reorganization is permitted if the debtor meets the following requirements:

1. Regular business activities for at least two years;
2. Not be bankrupt;
3. Not have been granted bankruptcy in the past eight years, or reorganization in the past five years;
4. The entity, nor controlling officers of the company, have been convicted for any bankruptcy crime.

Brazil

Creditors' Rights in Insolvency

Background

Is an in-court proceeding and supervised by

1. Judge
2. Judicial Trustee
3. Creditors' Committee (if any).

Many entities prohibited from judicial reorganization:

4. Government owned entities
5. Public or private financial institutions
6. Credit unions
7. Pension companies
8. Health care companies
9. Insurance companies

Brazil

Creditors' Rights in Insolvency

- Debtor has 60 days from time of filing to submit a plan of reorganization.
- The general meeting of creditors, when voting to accept or reject the plan, must occur within 150 days of the filing of the petition.

Practice pointer: Brazilian Bankruptcy Law does not contain rules relating to cross-border insolvency. For cross-border cases, a concurrent proceeding will need to be filed in Brazil.

Brazil

Creditors' Rights in Insolvency

Ranking of creditors in liquidation:

1. Fees owed to the judicial trustee and his assistants.
2. Labor claims and occupational accident claims, related to services rendered after the bankruptcy decree.
3. Funds provided by creditors to the bankruptcy estate.
4. Expenses from the bankruptcy proceeding (such as collection, administration and sale of the bankruptcy estate assets and distribution of the proceeds) and court costs.
5. Obligations arising from juridical acts performed during judicial reorganization proceedings, or after the bankruptcy decree, expenses and taxes related to the period after the bankruptcy decree.
6. Labor related claims
 - Note: labor claims are limited to 150 minimum wages per creditor (currently R\$ 108,600.00).
7. Secured claims
8. Tax claims
9. Special privileged claims.
10. General privileged claims.
11. Unsecured claims
12. Tax fines

Distinction: Note priority of labor claims, secured claims, and unsecured claims versus USA priority.

Brazil

Creditors' Rights in Insolvency

Brazilian Bankruptcy Law permits trade creditors to enforce its debt through:

1. Protest of bill (*protesto*), made to the Protest Registry
2. Foreclosure proceeding (*ação de execução*), made to the court
Note- a debt instrument must indicate Brazil as the place of payment to be used in an *ação de execução*.
3. Collection proceeding (*ação de cobrança*)

A foreclosure proceeding can be brought if:

1. The debt has matured (that is, is due and payable by the debtor)
2. The debt is certain (that is, its existence and calculation does not depend on further evidence), for example, it is based on:
 - a judicial or arbitral award; or
 - a debt instrument that meets all requirements for enforcement.

Brazil

Creditors' Rights in Insolvency

Goods sold on credit and delivered to the debtor within 15 days before bankruptcy can be reclaimed on the creditor's request, unless the goods have been sold.

Brazil

Creditors' Rights in Insolvency

Creditors have the right to vote on the plan

- The debtor must propose a plan for the payment of its debts to its creditors, which may or may not approve the plan.
- Creditors vote at the general creditors' meeting.
- Any creditor may present its objection to the recovery plan within 30 days of publication of the creditors' list.
 - If a creditor objects, the courts can require the creditors to hold a meeting within 150 days of the granting of judicial recovery.

Mexico

- Enforceability of invoices
- Security interests
- Creditors' rights in insolvency

Mexico

Enforceability of Invoices

Forums to seek collection in Mexico:

- Executive proceeding
- Special proceeding
- Ordinary proceeding
- Preliminary proceeding

Mexico

Enforceability of Invoices

Executive proceeding

- When a creditor fails to obtain a security interest, this is the proceeding of choice.
- Admission of evidence is limited.
- Final judgment can be obtained in 1 to 2 yrs.
- Upon filing of *titulo ejecutivo* (document), a presumption is raised that claim of creditor exists and is legally valid.
- Creditor can seek an immediate *ex parte* prejudgment attachment order.

Mexico

Enforceability of Invoices

Special proceeding

- Permits a creditor to foreclose on goods that were placed as collateral to secure a debt by a non-possessory pledge or guaranty trust.
- Creditor can immediately repossess collateral after filing the complaint.
- Can generally obtain judgment in 1 yr or less.

Mexico

Enforceability of Invoices

Ordinary proceedings

- Most common proceeding in international commercial disputes.
- Burden of proof entirely on the plaintiff.
 - To prevail, plaintiff should be prepared to provide a credit application, purchase orders, invoices, delivery receipts, bills of lading, etc...
- Usually takes between 2 and 4 yrs to obtain a judgment.

Mexico

Enforceability of Invoices

Preliminary proceedings

- The main purpose of a preliminary proceeding —within the collection process— is to obtain a judicial acknowledgment of debt that will enable an executive action instead of following an ordinary proceeding.
- It usually starts with a formal petition from creditor in which facts relating to the debt are stated and a subpoena or citation for debtor is requested.
- The supporting documents to the acknowledged debt will constitute a título ejecutivo that can be enforceable through an executive proceeding.

Mexico

Enforceability of Invoices

Enforceability of foreign judgments is quite burdensome.

- Foreign creditors must rely on the requirements and formalities provided under Mexican law.
- The process of enforcing a foreign judgment is called *homologacion* and involves numerous local and federal rule hurdles.
- A *homologacion* is generally considered a summary proceeding. Defendants are provided a 9-day period after the filing of the necessary documents to object to the request.

Mexico

Enforceability of Invoices

Homologacion- According to article 571 of the Federal Code of Procedure in Mexico, recognition of a foreign judgment requires:

- 1) All formalities for Letters Rogatory are satisfied.
- 2) Judgment is not the result of an *in rem* right.
- 3) The court rendering the judgment had proper jurisdiction to try the matter and to pass judgment on it.
- 4) Service of process has been completed upon defendant in due legal form.
- 5) The judgment must be final and have the force of *res judicata*.
- 6) There must be no case tried by a Mexican court which is a result of the same legal actions.
- 7) The judgment must not be contrary to Mexican public policy (*ordre public*).
- 8) The judgment must fulfill all the formal requirements necessary to be deemed authentic.

Mexico

Enforceability of Invoices

Contractual Executability (EC) ratings by State

Aguascalientes EC2+	Guerrero EC3	Quintana Roo EC4+
Baja California EC2+	Hidalgo EC4	San Luis Potosí EC3
Baja California Sur EC4	Jalisco EC3	Sinaloa EC3+
Campeche EC3	State of Mexico EC1	Sonora EC4+
Coahuila EC2+	Michoacán EC4+	Tabasco EC3+
Colima EC2+	Morelos EC4	Tamaulipas EC2+
Chiapas EC3+	Nayarit EC2	Tlaxcala EC4
Chihuahua EC4	Nuevo León EC1	Veracruz EC5
Mexico City (DF) EC3+	Oaxaca EC3	Yucatán EC3
Durango EC2+	Puebla EC4	Zacatecas EC4
Guanajuato EC1	Querétaro EC1	

Moody's de Mexico (Investor Service)

Legend:

EC1 Highest rating

EC2 Superior rating

EC3 Average rating

EC4 Below average rating

EC5 Worst rating possible

Mexico

Security Interests

Mexico has various vehicles that help secure the payment of goods:

- Promissory note (*pagare*)
- Pledge
- Guaranty trust
- Conditional Sale
- Letter of Credit

Mexico

Security Interests

Promissory Notes (*pagares*)

- Document itself proves that debt exists
- Can be utilized to support credit sales
 - Referred to in the credit application
- Relatively easy to execute and lasts 3 years
- Important- getting note properly signed

Notary will ensure that corporation can issue *pagares*, the individual signing in fact has the authority, and the signature is genuine.

Mexico

Security Interests

Pledge

- The pledge is a device that helps secure a loan by creating a security interest on debtor's personal or "movable" property.
- Can have pledge that secures interest in present and future collateral, as well as to secure present and future obligations.
- Trade creditors can include a pledge clause in contract to create a non-possessory pledge.

Mexico

Security Interests

Example of a pledge inserted in goods contract:

“As a guarantee for payment of the goods to be purchased on credit out of this contract, the buyer creates in favor of seller, a security interest on first order and place through a non-possessory pledge under Section 7, Chapter 4, Title 2, of the Negotiable Instruments and Credit Transactions Law [“Ley General de Titulos y Operaciones de Credito] on the specific assets and goods that are pointed out in the attached Exhibit”

Mexico

Security Interests

Guaranty trust

- Through this mechanism the issuer of a guarantee undertakes to be responsible for the fulfillment of a contractual obligation in the event of a default by the buyer.
- A guarantee is often granted by either individuals or companies in general, and is also known as a personal guarantee, or an unconditional guarantee endorsement.
- Generally, the grantor of this last device is jointly and severally liable for the debt, and can be sued directly regardless of the action against the original debtor being exhausted or not

Mexico

Security Interests

Other ways to ensure payment:

Conditional Sale

Through this device seller reserves title to the goods sold until buyer completes full payment. This method has proven very effective when the goods sold can be identified and can also be recorder in the City's Public Registry of Commerce (in buyer's place of business). Proper recording allows a seller immediate repossession of the goods sold should buyer default payment, even in bankruptcy or strike proceedings.

Letter of Credit

Through a letter of credit the issuing bank commits up front to pay on behalf of buyer a specified amount of money to the seller when presented with a specified set of documents: invoices, packing list, bills of lading, etc. Although this is the safest way of securing payment, it is also the more difficult to get since buyer will have to secure a line of credit from the issuing bank.

Mexico

Creditors' Rights in Insolvency

Background

- Mexican bankruptcy law is formally known as the *Ley de Concursos Mercantiles* (the "LCM")
- A case under the LCM may be commenced by (i) the debtor, (ii) a creditor or (iii) the Attorney General (*Ministerio Público*).
- Under the LCM, a debtor is deemed to have "generally defaulted on its payment obligations" if:
 - (1) a payment default has occurred with respect to the claims of at least two creditors;
 - (2) payments are past due for more than 30 days and represent 35% or more of all the debtor's payment obligations as of the date of the filing; and/or
 - (3) the debtor does not have liquid assets (e.g., cash deposits, short-term securities, and accounts receivable) to pay at least 80% of the obligations past due as of the date of the filing.
- A debtor may commence a voluntary reorganization proceeding under the LCM if it satisfies condition (1) and either (2) or (3). A creditor, whether unsecured or privileged, or the Attorney General can file an involuntary reorganization proceeding under the LCM only if all three conditions are satisfied.

Mexico

Creditors' Rights in Insolvency

Background

Creditors must file proofs of claim using the form provided by the Federal Institute of Reorganization Specialists (Instituto Federal de Especialistas de Concursos Mercantiles ("IFECOM")).

IFECOM is an arm of the judicial branch of the federal government. Its role is similar to that of the Office of United States Trustee in the United States. IFECOM maintains lists of people approved to act as specialists Auditors, Conciliators or Trustees -- in reorganization proceedings. IFECOM sets the fees to be paid to specialists and monitors their work.

A creditor with a claim against the debtor has three opportunities to file a proof of claim:

- (1) within 20 days following the date of publication of the Order for Relief;
- (2) within 5 days of the filing of a provisional list of creditors by the Conciliator; or
- (3) within 9 days of the issuance of the Order of Recognition and, Ranking and Preference of Claims

Practice Pointer: Failure to file a POC within these deadlines results in the loss of the claim.

Mexico

Creditors' Rights in Insolvency

Background

Only "recognized" creditors may participate in plan negotiations. Recognized creditors are those listed in the Order of Recognition, Ranking and Preference of Claims.

- All debts of the debtor are accelerated. All unsecured claims cease to accrue interest as of the date of the order of relief. Unsecured claims denominated in a foreign currency are converted to pesos.
- A secured claim will remain denominated in the original currency and *will* continue to accrue interest to the extent the collateral is sufficient to satisfy the secured claim.

Mexico

Creditors' Rights in Insolvency

The Major Players

- *Auditor*- After a district judge has approved a valid request for reorganization, the judge gives notice to IFECOM, which then appoints an "Auditor" (*visitador*) to review the debtor's books to determine whether the debtor is eligible for reorganization.
- *Conciliator*- The Conciliator acts as mediator between the debtor and its creditors and is responsible for preparing a reorganization plan. In addition, the Conciliator monitors the administration of the company and presents the list of creditors to the judge.
- *Trustee*- The Trustee is entrusted with selling the assets of the estate in the event conciliation fails and the case proceeds to liquidation. It is not uncommon for the Trustee to be the same person designated as Conciliator.

Mexico

Creditors' Rights in Insolvency

The Major Players

Controller- Controllers (*Interventores*) represent the interests of creditors in a proceeding under the LCM and act much like an official committee of unsecured creditors in a United States bankruptcy case. They act as "watchdogs" and oversee the Conciliator and the Trustee to ensure they perform their duties properly.

- A Controller may be appointed by the court *only upon* request of a creditor or group of creditors representing at least 10 percent of the total amount of the debtor's debt.
- The interested creditors have the right to submit a proposal regarding the person to be nominated as Controller.
- Controller's have the authority to request information from the Conciliator relating to the debtor and management.
- **Distinction Note:** Fees are paid by the *creditor or group*.

Mexico

Creditors' Rights in Insolvency

Three major phases- the bankruptcy trial, the conciliation, and if no reorganization is implemented, the liquidation.

Bankruptcy trial

- Cases under the LCM are commenced by the filing of a claim or a request for bankruptcy (*concurso*) for the purpose of reorganization.
- The debtor itself, any creditor, or the Attorney General can file a claim, which is similar to a complaint commencing a lawsuit in the United States if a creditor commences the case.
- Once order for relief entered, the debtor is ordered to cease all payments of its debts, except those necessary for regular operation of the company.
- Much like in the United States, entry of an Order for Relief automatically stays all collection efforts by creditors (but not necessarily all lawsuits).

Mexico

Creditors' Rights in Insolvency

Conciliation

- The purpose of conciliation is to preserve the company's operations while the parties attempt to negotiate and draft a consensual reorganization plan. The Conciliator facilitates this process.
- During the conciliation phase, the Conciliator must publish notice of the deadline by which creditors must file claims (i.e., the bar date). Notice must be published in the DOF and in a local newspaper of the place where the proceeding is pending.

Mexico

Creditors' Rights in Insolvency

Plan of Reorganization

Once the court publishes the list of recognized claims, the Conciliator is required to attempt to reach an agreement with the debtor and holders of recognized claims on a plan of reorganization. If the Conciliator believes that the debtor and a majority of holders of recognized claims support a plan of reorganization for the debtor, it must circulate the plan to all holders of recognized claims.

Mexico

Creditors' Rights in Insolvency

The plan of reorganization *must* provide payment of these creditors in the following order:

1. Qualified labor claims
2. Claims related to the administration of the estate
3. Specialists' fees and expenses
4. Singularly privileged creditors
5. Secured creditors
6. Labor and unsecured tax claims
7. Creditors with a special privilege
8. General unsecured creditors

Mexico

Creditors' Rights in Insolvency

Practice Pointer: If possible, try and create a security interest when you sell goods in Mexico.

1. Secured creditors have high priority.
2. Dissenting creditors have a powerful voice in the reorganization plan.
3. Any recognized holder of a secured claim that did not approve of the reorganization plan may commence or continue to foreclose on the collateral securing the claim, unless the plan provides for the repayment of their claims, or the payment of the value of their collateral.

Mexico

Creditors' Rights in Insolvency

Practice Pointer: Under the LCM, the issuance of the Order for Relief effectively sets a “look back” period of 270 days before the entry of the Order for Relief during which any suspicious transfers may have occurred.

Fraudulent conveyance: according to the LCM, is any transfer by the debtor designed to defraud its creditors if the transferee had knowledge of the fraudulent purpose, or if the transfer was made at no cost to the transferee.

LCM has a list of transactions that are presumed to be fraudulent conveyances.

Thank you for your time



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