

Restructuring in COVID-19 times

We believe that understanding the Mexican insolvency regulation will allow you to be legally prepared to react to the economic slowdown provoked by the COVID-19 pandemic. Companies, their clients, creditors, debtors and suppliers are all being affected, and supply chains might suffer from the current crisis. We want to encourage our clients to keep close communication with their main stakeholders to try to mitigate any adverse circumstance that may arise from the coronavirus restrictions.

Concurso Law regulates the only commercial insolvency procedure available in Mexico known as *concurso mercantil*. This law was enacted on May 12, 2000, and since then, it has had three amendments (in 2007, 2014 and 2019). Following the same logic as the U.S. Chapter 11, the *Concurso* Law seeks to preserve the company. If this is not possible, the *Concurso* Law also governs wind down, liquidation and payment to creditors (*quiebra*).

For a Company to be declared in *concurso mercantil* it must be in “general default of its payment obligations”. The law opens a window for a company that will be *imminently* (within 90 days) in *concurso* to access the *concurso* protections. To be declared in *concurso*, the debtor company shall be in default regarding two or more creditors and meet the following requirements: **(i)** 35% of the company’s total obligations have matured for at least 30 days, and **(ii)** the company lacks enough liquid assets and receivables (as defined under the law) to support at least 80 % of its overdue obligations. For voluntary insolvency, meeting only one requirement suffices. For involuntary insolvency (*i.e.*, creditors demand the company’s *concurso*), both requirements shall be met.

The *Concurso* offers the following advantages: **(i)** publicity and transparency; **(ii)** professional third parties shall be appointed as visitors, conciliators and receivers; **(iii)** all the parties could request injunctions to the Court in order to protect the Estate; **(iv)** the *concurso* judgement brings judicial protection against the execution of the debtor’s assets and orders a payment stay; **(v)** the company preserves its management (although there are rules for management removal); and **(vi)** the proceeding foresees mechanisms to protect the parties from acts in fraudulent conveyance.

The 20-year existence of the law notwithstanding, *concurso mercantil* is seldomly used by companies. According with data of the Federal Institute of Bankruptcy Proceedings (“**IFECOM**” the administrative agency overseeing *concurso* proceedings) since 2000 only 778 insolvency proceedings have been filed. This means approximately 40 per year / 3 to 4 per month.¹ Being one of the world’s largest economies, these are negligible numbers.

In our experience, the best alternative to navigate a deep financial crisis is for the company to reach a restructuring of its debt in out-of-court discussions with its main stakeholders, *concurso* proceedings being available notwithstanding. Federal courts will be closed until April 20, 2020 due to the COVID-19 crisis, and parties will not be able to file for *concurso* until such date. We encourage our clients and friends to keep close communication with their own clients, creditors, debtors and suppliers to try to work out structured solutions in case of potential insolvency.

¹ See <https://www.ifecom.cjf.gob.mx/applications/asp/reporte.aspx?op=1&fiSemIni=1&fiSemFin=41&fiSemestreC=1&fiAnioC=2000>

We at Von Wobeser y Sierra, S.C. (“VWys”) remain at your service to provide legal advice and aid you in restructuring credits, developing contingency plans or advising you in insolvency proceedings, either in or out-of-court.

VWys has been involved in the most relevant cases of bankruptcy and restructuring proceedings in Mexico in the past decade, representing insolvent debtors as well as creditors involved in complex disputes. In 2019, Global Restructuring Review ranked VWys amongst the top 100 restructuring firms worldwide, being one of the few Latin-American firms in such ranking.

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