

PRIORITY OF CLAIMS IN A CONCURSO MERCANTIL PROCEEDINGS: WHO GETS PAID FIRST?

DECEMBER 2025

Executive Summary

- The Mexican Insolvency Law (Ley de Concursos Mercantiles) establishes a strict order of priority for payments that is based not on when a creditor files its claim, but on the nature of the credit. Workers enjoy the highest priority, followed by secured creditors, and finally unsecured and subordinated creditors.
- Understanding this hierarchy enables parties to anticipate recovery scenarios, design negotiation strategies, and identify opportunities to acquire assets within the insolvency process with greater legal and financial certainty.

When a company enters into a concurso mercantil, the focus is not only on assessing its viability and attempting to restructure its debt during the conciliation stage. One of the most important questions for all stakeholders is: In what order will recognized creditors be paid?

The Mexican Insolvency Law provides a precise structure to determine which creditors have priority over others. This hierarchy is not arbitrary; it is designed to protect labor rights, ensure the orderly continuation of the proceeding, and guarantee fairness among different classes of creditors.

Below is a clear guide explaining who gets paid first, why, and what types of claims fall into each category.

1. Administrative Claims: Ensuring Continuity of the Proceeding

These are the costs required for the company to continue operating at a minimal level and for the judicial proceeding to function properly.

Examples include:

- Past-due wages and statutory severance protected by the Mexican Constitution (up to one year prior to the insolvency declaration).
- Wages generated during the concurso.
- Rent, utilities, and essential services.
- Fees of the court-appointed specialist (Conciliator or Receiver/Liquidator).
- Preservation costs of assets.
- Court-authorized financing to provide liquidity (similar to DIP Financing).

These claims are paid first because they allow the proceeding to exist and progress.

2. Specially Privileged Creditors: Exceptional Cases

These are very specific situations, more common when the debtor is an individual.

Examples include:

- Last illness or funeral expenses of the merchant.

3. Secured Creditors:

If a creditor holds a mortgage or pledge, its right is tied to a specific asset.

Typical examples:

- Banks holding mortgages over real estate or industrial plants.
- Pledges over machinery or inventory.
- Factoring arrangements with individualized collateral.

This group is paid from the value of the collateral; if that amount is insufficient, the deficiency becomes an unsecured claim.

4. Non-Constitutional Labor Claims and Tax Claims

After paying the constitutionally preferred labor amounts, the remaining labor claims and all tax liabilities fall into this category.

Examples include:

- Portions of severance or benefits not covered under constitutional preference.
- Obligations owed to SAT, IMSS, Infonavit (Tax Authorities), ISR/IVA, and related tax accessories. If a tax claim is secured, it is first satisfied from that collateral.

5. Specially Preferred Creditors: Legal Rights Over Certain Goods

The law recognizes certain privileges that do not require a mortgage or pledge.

Examples include:

- Carriers with rights over goods for unpaid freight.
- Repairers or depositaries with rights of retention.
- Lessors with privileges over fruits or improvements in specific circumstances.

They are paid before unsecured creditors.

6. Unsecured Creditors:

These creditors do not benefit from collateral or special privileges.

Examples:

- Suppliers without collateral.
- Lessors without real security.

- Customers or contractors with outstanding balances.
- Judgments without security.

This group is paid pro rata, meaning proportionally from what remains after higher-priority creditors have been paid.

7. Subordinated Creditors: The Last in Line

These include creditors who have contractually agreed to be paid only after unsecured creditors, or those whom the law places at the end due to their relationship with the company.

Examples:

- Loans from shareholders or related parties.
- Mezzanine or junior debt with subordination clauses.

From the above, the way the Mexican Insolvency Law (Ley de Concursos Mercantiles) organizes the payment of claims is not arbitrary. It is based on principles of labor protection, legal certainty, and fairness among creditors. Key elements to understanding how this hierarchy operate include the following:

- The timing of a creditor's filing does not affect its position in the priority order. During the conciliation stage, there are three procedural opportunities to file a proof of claim, but payment priority is determined by the nature of the claim—not by the date it is submitted.
- Priority is strict and sequential. Each category must be fully satisfied before moving on to the next; there are no jumps or exceptions.
- Constitutionally preferred labor claims stand at the top of the hierarchy. They are paid before any other creditor, including those holding mortgages or pledges.
- Secured creditors are paid only up to the value of the collateral. Any deficiency becomes an unsecured claim.
- Unsecured creditors are paid proportionally, meaning the remaining funds are distributed among them on a pro rata basis.

In an insolvency proceeding, understanding the priority system is essential, as it allows parties to anticipate financial outcomes and legal risks within the concurso mercantil. This information is particularly useful for:

- Estimating the realistic likelihood of recovering a claim.
- Designing negotiation strategies with the Conciliator, the Receiver, or other creditors.
- Identifying opportunities to acquire assets within the insolvency process.
- Evaluating financial, tax, and legal implications before participating as a creditor or purchaser.

Alejandro Escamilla
Associate
alejandro.escamilla@s-s.mx