

THE COMMENCEMENT OF INSOLVENCY PROCEEDINGS IN MEXICO: RECENT INSIGHTS FROM THE TV AZTECA CASE

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Executive Summary:

- The filing for insolvency proceedings (*concurso mercantile*) does not imply that such proceedings have been declared, nor does it automatically trigger a stay of creditor actions; however, it does mark the beginning of a process that may significantly redefine creditors' legal and economic positions.
- A formal declaration of insolvency (*concurso mercantile*) activates a structured legal framework, including the stay of individual enforcement actions, the appointment of a conciliator, and a formal process for the recognition of claims.
- The early stages of the process are critical: timely and strategic action can materially impact the protection of rights and the recovery prospects of creditors.

As is publicly known, TV Azteca, S.A.B. de C.V. recently filed before a Mexican federal court its declaration of insolvency (*concurso mercantile*).

Beyond the specific case, situations of this nature are particularly relevant for creditors and other stakeholders, as they illustrate what such a filing entails, the stage of the proceeding in which a company stands, and the key practical considerations that should be taken into account from an early stage.

What does filing for Insolvency Proceedings (*concurso mercantile*) mean?

The filing for insolvency proceedings (*concurso mercantile*) constitutes the commencement of a judicial and universal proceeding aimed at determining whether a company is in a state of general default in the payment of its obligations, arising from insolvency, illiquidity, or both.

It is important to note that the mere filing of the petition does not imply the declaration of insolvency, nor does it automatically entail the suspension of payments or the stay of actions by creditors.

However, the court may order precautionary measures at this stage in order to preserve the company's operations and protect its assets.

At this initial phase, the court reviews the admissibility of the filing and, if appropriate, orders a verification of the company's financial condition, which leads to the so-called "inspection stage".

At what stage of the proceeding is the company?

Following the filing of the petition, the proceedings typically unfold as follows:

- Admission of the filing by the competent court and, in certain cases, the issuance of precautionary measures;
- Appointment of an inspector (*visitador*) by the Federal Institute of Specialists in Insolvency Proceedings (IFECOM), who reviews the company's financial and accounting condition;
- Inspection stage, during which the company's financial and operational status is analyzed;
- Issuance of the inspector's report; and
- Judicial resolution, declaring or denying the

insolvency proceeding (concurso mercantile).

During the inspection stage, the specialist evaluates, among other aspects, the existence of generalized payment defaults in accordance with the parameters set forth in the Mexican Insolvency Law.

Estimated Timing of the Visit Stage

While timing varies depending on the specific circumstances of each case, in practice:

- The inspection stage typically lasts between 2 to 4 months, depending on factors such as the size, complexity, and level of cooperation of the company;
- Once the report is issued, the court generally has a relatively short period to render its decision.

What does it mean for a company to be declared insolvent (concurso mercantile status)?

A formal declaration of insolvency (concurso mercantile status) by a federal court marks the beginning of the conciliation stage, during which the company is granted a legal framework to negotiate the restructuring of its obligations with its creditors.

As a rule, upon such declaration, individual enforcement actions are stayed with respect to pre-existing obligations, and the payment of prior liabilities is restricted, allowing only those necessary for the company's ordinary course of business. This centralizes negotiations within a single proceeding.

At this stage, a conciliator is appointed, whose main functions include supervising the company's management, facilitating negotiations between the company and its creditors, and promoting the execution of a restructuring agreement (convenio concursal) that enables the company's continued operation.

Creditors must also file for recognition of their claims within the proceeding in order to be included in the list of creditors and, subsequently, in the formal recognition judgment, allowing them to participate in the negotiation of the restructuring agreement.

The objective of this stage is to preserve the company as a going concern and, where possible, restore its financial viability, rather than liquidating it.

Estimated Timing of the Conciliation Stage

The conciliation stage may last up to 185 calendar days, with the possibility of two extensions of 90 days each, reaching a maximum duration of up to 365 calendar days, subject to compliance with certain legal requirements.

Is there immediate protection for the Company?

Mexican law allows courts to grant precautionary measures from early stages of the proceeding to preserve the company's operations and prevent actions that could jeopardize its viability.

Such measures may include, among others, restrictions on enforcement actions or limitations on the payment of certain obligations.

However, these measures are not automatic, and their scope will depend on the specific circumstances of each case and the court's determination.

Does the proceeding affect the entire Corporate Group?

Insolvency proceedings generally apply to a specific legal entity, and do not necessarily extend to other entities within the same corporate group.

That said, depending on the group's structure, indirect effects may arise and should be analyzed on a case-by-case basis, particularly with respect to guarantees, operational flows, or intercompany contractual arrangements.

What should creditors and other stakeholders do at this stage?

The early stages of the proceeding are critical in shaping creditors' strategies. Among other considerations, it is advisable to:

- Closely monitor the proceeding, including the admission of the filing, appointment of the inspector, and any subsequent declaration;
- Review contractual documentation and identify the relevant obligor entity, as well as the existence and scope of guarantees;
- Assess legal and economic position, including the nature and amount of the claim;
- Evaluate potential effects of precautionary

measures on contractual relationships;

- Determine whether contracts may be deemed essential or involve ongoing performance obligations;
- Prepare for the claims recognition process; and
- Assess strategic alternatives, including coordination with other creditors.

Early action can be decisive in protecting creditors' and stakeholders' positions.

The filing for insolvency proceedings (concurso mercantile) is merely the beginning of a process that may significantly reshape the position of creditors and other stakeholders.

A proper understanding of these early stages, combined with a timely and informed strategy, is often key to protecting rights and maximizing recovery.

In scenarios involving cross-border elements, these considerations may need to be complemented by an analysis of potential actions and effects in other jurisdictions, which will be addressed in future commentary.

In situations of this nature, an early assessment of the scenario may be critical in defining the most appropriate strategy.

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