# IN LIGHT OF TV AZTECA: QUESTIONS AND ANSWERS ON THE DECLARATION OF CONCURSO MERCANTIL

## A PRACTICAL GUIDE FOR CREDITORS, COMPANIES AND STAKEHOLDERS

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As reported by various media outlets, TV Azteca was formally declared in concurso mercantil. But what does a concurso mercantil judgment actually mean, and what are its practical effects?

In the previous edition, we addressed the commencement of insolvency proceedings, their main consequences and certain measures that creditors or relevant stakeholders should consider when a company with which they have a relationship file for concurso mercantil.

In this edition, we present a compilation of the most frequently asked questions that arise once a company is formally declared in concurso mercantil, from the perspective of the debtor company, its creditors, shareholders, board members, employees, suppliers, customers and other interested third parties.

**What does it mean for a company to be declared in concurso mercantil?**

First, it does not automatically mean that the company will go into bankruptcy liquidation.

A declaration of concurso mercantil means that a judge has determined that the company is in a situation of generalized default of its payment obligations, that is, insolvency, illiquidity, or both, under the terms of the Mexican Insolvency Law.

As of that judgment, a judicial stage known as conciliation formally begins. Its main purpose is to preserve a viable company, organize its liabilities and seek the execution of an agreement with its recognized creditors. The idea is not to liquidate the company, but to create an orderly framework for it to restructure its obligations and, where appropriate, continue operating.

**What stage follows the judgment?**

After the concurso mercantil judgment, the Federal Institute of Insolvency Specialists appoints a conciliator. Subsequently, an excerpt of the judgment must be published in the Federal Official Gazette, in one of the newspapers with the largest circulation in the locality where the proceeding is being conducted and, where applicable, registered with the corresponding public registries.

These publications are relevant because they make the company's insolvency status publicly known and serve as the starting point for various procedural deadlines, including the conciliation stage and the claims recognition process.

**Who is the conciliator and what are its functions?**

The conciliator is a specialist appointed within the insolvency proceeding. Its role is not to automatically replace the company's management, but rather to oversee its operations, review its accounting, financial and legal information, and serve as a liaison between the debtor, the creditors and the judge.

The conciliator's main functions include analyzing the company's situation, participating in the oversight of its management, preparing the lists of recognized claims and seeking the execution of an agreement between the company and its recognized creditors.

During its appointment, the conciliator must also submit reports to the judge, which allows the proceedings to rely on more organized information regarding the company's financial, accounting and legal situation.

**What is claims recognition and why is it important?**

Claims recognition is the stage in which it is determined who the debtor's creditors are, how much they are owed, and with what rank and priority they will participate in the concurso mercantil proceeding.

This stage is critical because it is not enough for a creditor to have a contract, invoice, promissory note, judgment, guarantee or any other document supporting its claim. In order to formally participate in the concurso mercantil, vote on an agreement and, where applicable, receive payments according to the applicable legal order, the creditor's claim must be recognized within the proceeding.

**When should a creditor request recognition of its claim?**

The Mexican Insolvency Law provides three moments to request claims recognition: (i) within 20 calendar days following the publication of the concurso mercantil judgment in the Federal Official Gazette; (ii) within the period to file objections to the provisional list of claims; and (iii) within the period to file an appeal against the judgment of recognition, ranking and priority of claims.

After this last opportunity, no new claims may be submitted for recognition. Therefore, it is important to monitor the proceedings and not wait for the conciliator to include the claim ex officio.

**What should a claim recognition request include?**

The request should allow the conciliator and the judge to clearly identify who the creditor is, the origin of the claim, the amount being claimed and the treatment it should receive within the concurso mercantil.

It is also necessary to analyze whether the claim has any security interest, privilege or special characteristic, as this may affect its rank, priority and treatment within the proceeding.

**What happens if the conciliator does not recognize my claim or recognizes it for a lower amount?**

The conciliator prepares a provisional list of claims based on the debtor's accounting records, the available information and the requests submitted by creditors.

If a claim was omitted, recognized for a lower amount, incorrectly classified or recognized with a different rank or priority than the one that should apply, the creditor may file objections within the applicable legal period.

After analyzing the objections, the conciliator submits a final list to the judge, who then issues the judgment of recognition, ranking and priority of claims. That judgment may also be challenged through the corresponding appeal.

**What are the effects of the judgment of recognition, ranking and priority of claims?**

The judgment of recognition, ranking and priority of claims determines which creditors are formally recognized within the concurso mercantil, for what amount and with what payment priority.

This ruling is relevant because it determines who may participate as recognized creditors, the economic weight their claim will have in the negotiation of the agreement and their position vis-à-vis other creditors.

For that reason, claim recognition should not be viewed by creditors as a mere administrative formality, but rather as a strategic stage of the concurso mercantil.

**Can the company continue operating?**

Yes. Generally, the company continues operating during the conciliation stage.

Concurso mercantil does not seek to automatically paralyze the debtor's business activities. On the contrary, one of its purposes is to preserve the company where it is viable. However, operations become subject to certain rules, restrictions and oversight, particularly with respect to extraordinary transactions, the disposition of relevant assets, non-ordinary payments and acts that may affect the insolvency estate or the creditors.

**What role do the company's officers and managers play?**

In principle, the company's officers and managers continue to be in charge of the ordinary operation of the business. However, they must act under the oversight of the conciliator and provide the information required for the conciliator to perform its functions.

This entails greater documentary and financial discipline. Management must report on litigation, relevant contracts, extraordinary transactions, liabilities, assets, cash flows and any other information necessary for the conciliator and the judge to evaluate the company's situation and the progress of the conciliation.

**What happens to the company's employees?**

The concurso mercantil judgment should not interrupt the payment of the company's ordinary labor obligations. Employees also benefit from special protection recognized by the Mexican Constitution and the Mexican Insolvency Law.

In general terms, labor claims enjoy priority under the applicable constitutional and legal framework. In addition, the conciliator must include labor claims in the claims recognition lists, meaning that employees are not in the same position as ordinary commercial creditors.

**How long does the conciliation stage last?**

The conciliation stage has an initial duration of 185 calendar days, counted from the corresponding publication of the concurso mercantil judgment in the Federal Official Gazette.

This period may be extended up to two times, for 90 calendar days each, provided that the requirements set forth in the Mexican Insolvency Law are met. Under no circumstances may the conciliation stage and its extensions exceed 365 calendar days.

If no agreement is approved within that period, the judge must declare the debtor in bankruptcy liquidation.

**What happens to pending payments owed by the company before the declaration of concurso mercantil?**

In general terms, claims arising before the concurso mercantil judgment become subject to the insolvency proceeding and must be recognized within the concurso mercantil.

This means that, except for the exceptions provided by law, the company may not freely pay pre-filing claims as if they were ordinary post-filing obligations. The purpose is to avoid selective payments that alter the treatment of creditors and to protect the debtor's estate.

**Can creditors continue filing claims or enforcing guarantees?**

The declaration of concurso mercantil does not mean that all patrimonial proceedings are consolidated into the insolvency proceeding. In general terms, ongoing proceedings may continue under the oversight of the conciliator, and separate proceedings may also be initiated.

However, there is a relevant restriction: from the date the concurso mercantil judgment is issued and until the conciliation stage ends, no attachment or enforcement order may be executed against the debtor's assets and rights, except for the exceptions provided by law.

This is central to understanding concurso mercantil: a creditor may defend its rights, but individual enforcement is limited in order to allow the company to preserve its operations and seek an orderly solution with its creditors.

**What should a creditor do when its debtor enters concurso mercantil?**

A creditor should act quickly and in an orderly manner. Among other actions, it is advisable to:

- actively monitor the proceeding;
- review the concurso mercantil judgment and the corresponding publications;
- correctly identify the debtor legal entity;
- review contracts, purchase orders, invoices, promissory notes, guarantees, bonds, pledges, mortgages or any other supporting document;
- quantify the claim, including principal, interest, accessories and guarantees;
- analyze whether the claim has any preference, security interest or special treatment;
- timely prepare the claim recognition request;
- assess whether there are ongoing contracts, pending obligations or essential commercial relationships;
- analyze whether coordination with other creditors may be convenient; and
- define a negotiation strategy in connection with the potential restructuring agreement.

The worst decision for a creditor is to assume that the proceeding will be resolved without participation. In concurso mercantil, inaction may result in the loss of procedural opportunities or in a less favorable economic position.

**What happens to ongoing contracts?**

Not all contracts are automatically terminated by the declaration of concurso mercantil. Generally, the provisions governing obligations and contracts continue to apply, as well as the terms agreed by the parties, subject to the exceptions provided under the Mexican Insolvency Law. Therefore, this answer will depend on the circumstances of each case.

For contractual counterparties, this analysis is especially important because a rushed decision, for example, terminating a contract without reviewing its insolvency effects— may create additional risks.

**How is an agreement reached and what happens if it is approved?**

The insolvency agreement is the instrument through which the company and its recognized creditors agree on the restructuring of the liabilities subject to the concurso mercantil.

For the agreement to be effective, it must be executed by the debtor and by recognized creditors representing more than 50% of the sum of the amount recognized in favor of all common and subordinated creditors, as well as the amount recognized in favor of secured creditors or creditors with special privilege that execute the agreement.

In addition, the judge must verify that the proposal meets the legal requirements and does not contravene public policy provisions.

Once judicially approved, the agreement becomes binding under the terms set forth in the Mexican Insolvency Law and terminates the concurso mercantil proceeding. From that moment on, the agreement and the judgment approving it become the documents governing the debtor's obligations with respect to the recognized claims.

**What happens if no agreement is reached?**

If no agreement is approved within the conciliation period and, where applicable, its extensions, the judge must declare the debtor in bankruptcy liquidation.

Bankruptcy liquidation follows a different logic: the primary objective is no longer to preserve the company through an agreement, but rather to proceed with the orderly liquidation of the assets and rights comprising the estate, in accordance with the rules of the Mexican Insolvency Law.

**Final remarks**

The declaration of concurso mercantil should not be understood as the automatic end of a company, but rather as the opening of a judicial stage aimed at organizing an insolvency situation, preserving value and creating conditions for a potential restructuring.

For the debtor company, it represents an opportunity to negotiate with its creditors in an orderly manner and preserve its operations where viable.

For creditors and counterparties, it represents a warning sign that requires acting quickly, properly documenting their rights and participating strategically in the proceeding.

The TV Azteca case once again highlights the importance of understanding concurso mercantil not only as a judicial proceeding, but as a business reorganization tool with relevant effects for the entire ecosystem of creditors, suppliers, employees, shareholders and related third parties.

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