

**Universidad Panamericana Sede Guadalajara**

---

**From the Selected Works of Francisco Rodriguez Nepote**

---

Summer June 21, 2020

**CROSS-BORDER INSOLVENCY - Recognition  
of foreign proceeding under the Mexican  
Bankruptcy Law.pdf**

Francisco Rodriguez Nepote, *Universidad Panamericana Sede Guadalajara*



Available at: <https://works.bepress.com/francisco-rodriguez-nepote/3/>

## CROSS-BORDER INSOLVENCY:

Recognition of foreign proceeding under the Mexican Bankruptcy Law

Francisco José Rodríguez Nepote

Mexico, June 2020.

© Copyright.

PREFACE	
1.- BANKRUPTCY PROCEEDING IN MEXICO	1
1.1.- PARTIES	2
1.2.- CASE COMMENCEMENT	4
1.3.- CASE CLOSING	4
2.- ADOPTING THE MODEL LAW	5
2.1.- THE OPENING OF A CASE UNDER THE MEXICAN LAW AS A CONSEQUENCE OF THE RECOGNITION OF A FOREIGN PROCEEDING AGAINST A DEBTOR THAT HAS AN ESTABLISHMENT IN MEXICO	5
2.2.- THE FOREIGN PROCEEDING RECOGNITION THROUGH AN ANCILLARY PROCEEDING	9
2.3.-LIMITATIONS ON THE STANDING AND AUTHORIZATIONS TO THE FOREIGN REPRESENTATIVE	10
2.4.- EFFECTS UPON RECOGNITION OF A FOREIGN MAIN PROCEEDING	12
2.5.- MODIFICATION OR TERMINATION OF THE RECOGNITION	17
BIBLIOGRAPHY	
APPENDIX: COMPARISON TABLE BETWEEN THE MODEL LAW AND THE MEXICAN BANKRUPTCY LAW	

## PREFACE

Cross-border insolvency deals with proceedings that have points of contact in two or more states. Multiple problems of private international law derive from cross-border insolvency.

The UNCITRAL Model Law on Cross-Border Insolvency (Model Law) adopted in 1997 deals only with the tip of the iceberg.

In effect, the Model Law focuses on only four elements or problems that could arise from a typical private international law problem. These four elements are access to national courts for representatives and creditors of foreign proceedings, recognition of certain orders (not all orders) that a foreign court may issue, relief to assist a foreign proceeding, and cooperation and coordination of parallel proceedings.

Mexico adopted the Model Law under Title Twelve of its *Ley de Concursos Mercantiles* (LCM), with certain exceptions and particularities.

The purpose of this work is to analyze only the exceptions and particularities, leaving out what remains the same. The appendix of this work contains a comparison table between the Model Law and the LCM.

The resources of this work include legal texts, UNCITRAL works, and a limited number of cases and jurisprudence in Mexico.

An unofficial English translation of the LCM can be accessed at <https://www.banxico.org.mx/regulations-and-supervision/d/%7B6E0E4550-39A8-A4CA-37C9-1B259619EA7C%7D.pdf>, as amended in 2014. The last amendment of 2019 introduced the bankruptcy proceeding of debtors of mixed economies (majority estate-owner companies), and the 2020 amendment only addresses the name change of a governmental agency that participates in some bankruptcy cases.

I have completed a work related to the reorganization plan under the LCM, which is available free at [www.rodriqueznepote.com](http://www.rodriqueznepote.com).

## 1.- BANKRUPTCY PROCEEDINGS IN MEXICO

Mexico, a federal state, gained its independence from Spain in 1821. Pre-independence law was still binding in Mexico after its independence, in particular, the commercial law contained in the Ordinances of Bilbao. The first Commercial Code promulgated in 1854 was based on the Commercial Code of Spain of 1829, which, at the same time, was based on the Commercial Code of France of 1807.

After the Commercial Code of 1854, there followed the codes of 1884 and 1889. The bankruptcy matter contained in the Commercial Code was superseded when a special law was promulgated in 1934, the *Ley de Quiebras y Suspensión de Pagos*.

In Mexico, insolvency is handled according to whether the debtor is a merchant or not. The creditors of a common insolvent debtor must concur in the same proceeding, which is termed a *Concurso* or concourse. If it is a concurring of a non-merchant debtor, a civil debtor, the concourse is civil and it is known as a civil concourse. Civil insolvency proceedings are governed by local law, not federal.

When the debtor is a merchant, the concurring will not be civil but, rather, a commercial or mercantile concourse, and that is precisely the name of our law (LCM).

The previous Bankruptcy Law, from 1934 to 2000, distinguished hard bankruptcy and soft bankruptcy. Hard bankruptcy was triggered when a debtor ceased his payments, whereas soft bankruptcy was triggered when a debtor was not in a suspension of payments. Therefore, our previous bankruptcy law was named *Ley de Quiebras y Suspensión de Pagos*, that is, the Bankruptcy (hard, cessation of payments) and Suspension of Payments (soft, suspension of payments) Law. According to the previous law, the debtor was authorized to conclude the bankruptcy, both hard and soft, through a reorganization plan. However, under soft bankruptcy (suspension of payments), the debtor did not lose possession of the company.

The current law (LCM) unifies hard bankruptcy and soft bankruptcy in a single procedure: a mercantile concourse. Now, the bankruptcy is not triggered by a cessation or suspension of payments, but rather by a general default. The soft bankruptcy was substituted by the reorganization stage (*etapa de conciliación*) and

the hard bankruptcy by the liquidation stage (*etapa de quiebra*). However, as in the previous law, both stages may be concluded through a reorganization plan, and one of the main differences between the stages remained the same: in the liquidation stage, the debtor is removed, whereas, in the reorganization stage, the debtor maintains possession.

<i>LEY DE QUIEBRAS Y SUSPENSIÓN DE PAGOS</i>		<i>LEY DE CONCURSOS MERCANTILES</i>	
<i>Quiebra</i> (hard bankruptcy)	Triggered by the cessation of payments	<i>Etapa de quiebra:</i> liquidation stage (hard bankruptcy)	Triggered by general default
	The procedure may conclude with a reorganization plan.		The procedure may conclude with a reorganization plan.
	The debtor is removed.		The debtor is removed.
<i>Suspensión de pagos</i> (soft bankruptcy)	Triggered by the suspension of payments	<i>Etapa de conciliación:</i> reorganization stage (soft bankruptcy).	Triggered by general default
	The procedure may conclude with a reorganization plan.		The procedure may conclude with a reorganization plan.
	The debtor in possession		The debtor in possession

### 1.1.- PARTIES

#### *Debtor*

The debtor may be a natural personal, national, or foreign. The general rule is that only merchant debtors can be adjudicated in bankruptcy. Nevertheless, there are cases where the adjudication of a debtor extends to another debtor, irrespective of being a merchant or not (unlimited liabilities company). In addition, bankruptcies may occur without debtors, as in the case of bankruptcies of the deceased debtor and of the entrusted estate in a commercial trust, provided that a deceased debtor is no longer a person and a trust is a contract, not a legal entity. Legal entities may

also be adjudicated in bankruptcy if they are incorporated under Mexican commercial laws. Finally, branches of foreign companies may also be adjudicated in bankruptcy.

### *Creditor*

Any creditor may file an involuntary petition in bankruptcy. Once the case opens, the remaining creditors may appear before the bankruptcy proceeding.

### *Court*

The competent court has personal jurisdiction within the territory where the debtor's domicile is located. Domicile, for purposes of the LCM, is:

Article 4.- For purposes of this Law, the following shall be understood as:

I. ... ..

III. Domicile, as the corporate domicile or, lacking this, the place where the main administration of the company takes place. In the case of branches of foreign companies, it shall be the location of their main establishment in the Mexican Republic. In the case of individual debtors, it shall be the main establishment of the debtor's company or, in the absence thereof, his personal domicile;

The LCM does not provide a definition of the concept main establishment for purposes of section III of article 4, and there is no lead upon which we may conclude that the main establishment is the same as establishment for purposes of article 2 subparagraph (f) of the Model Law.

### *Insolvency administrators*

Insolvency administrators are appointed depending on the stage of the bankruptcy procedure. For the prebankruptcy procedure, a visitor will be appointed to visit the debtor's domicile to analyze his accounting records and report to the court whether the debtor's enterprise is in general default. This report is regarded as an expert witness testimony.

If the case commences in the reorganization stage, a reorganization officer will be appointed. The reorganization officer will assist the court in the task of allowing claims and conciliate the debtor's creditors to reach a reorganization plan.

If the case commences in the liquidation stage, or if the reorganization stage is converted to the liquidation stage, a liquidation officer is appointed. The liquidation officer has the same tasks as the reorganization officer (including reaching a reorganization plan) in addition to the task relating to reducing to cash the debtor's estate for the payment of the creditors (if no reorganization plan is approved or a unanimous agreement reached).

The insolvency administrators are registered before and appointed by the IFECOM (*Instituto Federal de Especialistas en Concursos Mercantiles*, or Federal Institute in Mercantile Concourses Experts), the Institute. The Institute pertains to the Judiciary Council of the Federal Judicial Branch.

## 1.2.-CASE COMMENCEMENT

Cases may commence through a voluntary or involuntary petition. Involuntary petitions are actual lawsuits that the creditor (as plaintiff) files against the debtor (as a defendant). Involuntary petitions can be filed by a single creditor, by the fiscal attorney, or by a foreign representative.

If the case commences through a voluntary petition, the bankruptcy may be opened either in the reorganization stage or directly in the liquidation stage. If the case commences through an involuntary petition, the bankruptcy necessarily opens in the reorganization stage, unless the debtor agrees to commencement in the liquidation stage.

## 1.3.- CASE CLOSING

After the claims are definitively allowed, the case may be closed under the following conditions 1) by the approval of the reorganization plan, either in the reorganization or liquidation stage; 2) by a unanimous agreement in the liquidation stage; 3) by payment of the creditors, or 4) a lack of sufficient assets.

## **2.- ADOPTING THE MODEL LAW: THE MEXICAN WAY**

### **2.1.- THE OPENING OF A CASE UNDER THE MEXICAN LAW AS A CONSEQUENCE OF THE RECOGNITION OF A FOREIGN PROCEEDING AGAINST A DEBTOR THAT HAS AN ESTABLISHMENT IN MEXICO**

#### **a.- The debtor has an establishment in Mexico**

If the debtor has an establishment in Mexico, upon recognition of the foreign proceeding, whether main or non-main, a case under the LCM will commence in the reorganization stage. Article 293 of the Mexican Bankruptcy Law states:

Article 293.- When the recognition of a foreign procedure is requested in respect of a debtor that has an Establishment in Mexico, the provisions of Chapter IV of Title One of this Law must be observed, including those relative to the imposition of injunctive reliefs and precautionary measures.

The judgment that article 43 of this statute refers to shall also include the declaration that the Procedure or Foreign Procedure in question is recognized.

The bankruptcy proceeding shall be governed by the provisions of this Law.

Hence, the petitioner must fulfill not only the requirements for the recognition of a foreign proceeding but also the requirements to adjudicate a debtor in bankruptcy under the LCM; that is, he must prove that the debtor is in general default. The conclusive, but not binding, evidence that proves the general default is the visitor's report, which is regulated in Chapter IV of Title One of the LCM. Then, upon the filing of the petition for recognition of a foreign proceeding against a debtor that has an establishment in Mexico, the court will request the Institute to appoint a visitor, as is mandated by section III of article 296, that remits to article 293 of the LCM:

Article 292. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.

An application for recognition shall be accompanied by:

I. A certified copy by the foreign court of the decision commencing the foreign proceeding and appointing the foreign representative;

II. A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

III. In the absence of evidence referred to in sections I and II, any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

The court must require a Spanish translation of documents supplied in support of the application for recognition.

Likewise, the petitioner must designate the debtor's domicile for purposes of service of process. The procedure shall be conducted as an ancillary proceeding between the Foreign Representative and the debtor, with the intervention, as applicable, of the visitor, the reorganization officer, or the liquidation officer.

Article 296. Subject to article 281, a foreign proceeding shall be recognized if:

I. ... ..

III. The application meets the requirements of articles 292, 293 and 294; and

The petition for recognition will be conducted through an ancillary proceeding, which is a mini-trial between the foreign representative, acting as plaintiff, and the debtor, acting as defendant. If the petition is granted, the debtor is adjudicated in bankruptcy under the LCM, and the foreign proceeding is recognized. Both the adjudication and the recognition are ruled in terms of article 43 of the LCM, which regulates the contents of a regular adjudication in bankruptcy ruling. Article 43 states:

Article 43.- The adjudication in bankruptcy shall include:

I. Name, corporate denomination or name and Domicile of the debtor, and, as applicable, the complete name and domiciles of the unlimitedly liable partners;

II. The date when it is issued;

III. The basis for the judgment in terms of what is established in article 10 of this law, as well as, as applicable, a list of the creditors identified by the visitor in the debtor's accounting. ... ;

IV. The order to the Institute to appoint the reorganization officer through the random mechanism previously established, along with the determination that, in the meantime, the debtor and his administrators, managers, and employees shall have the obligations that the law attributes to the depositaries;

V. The declaration of the opening of the reorganization stage, unless the opening of the liquidation stage was requested;

VI. The order to the debtor to immediately put the following at the disposal of the reorganization officer: the books, registries, and any other documents pertaining to his company, ...;

VII. The mandate to the debtor to allow the reorganization officer and the creditor's intervenor to perform the activities inherent to their positions;

VIII. The order to the debtor to suspend the payment of the debts contracted before the date when the adjudication of bankruptcy takes effect. The former, except for those debts necessary for the ordinary operation of the company, including any claim necessary to keep the ordinary operation of the company and the necessary liquidity during the bankruptcy proceeding, regarding which the debtor must inform the court within the seventy-two hours following their payment;

IX. The order to stay all attachments or seizures the properties of the debtor during the bankruptcy proceeding, with the exceptions provided in article 65;

X. The retroactivity date;

XI. The order to the reorganization officer to publish an extract of the judgment in terms of article 45 of this Law;

XII. The order to the reorganization officer to register the resolution in the public registry of commerce that corresponds to the Domicile of the debtor and in all the locations where he has an agency, branch, or goods subject to registration in a public registry;

XIII. The order to the reorganization officer to commence the procedure for claims' allowance;

XIV. The notice to the creditors, so that those who consider it convenient may submit the proof of their claims, and

XV. The order to issue, at the expense of the requestor, a certified copy of the resolution.

Why does the LCM require that the recognition of a foreign proceeding against a debtor that has an establishment in Mexico be accompanied by adjudication in bankruptcy under the Mexican law of the debtor?

There is no unanimous or binding consensus about the foundations of article 293 of the LCM. A high federal court of the First Circuit considered that it is the 'equal

treatment between creditors' principle.<sup>1</sup> The court stated that a Mexican bankruptcy procedure must be opened upon the recognition of a foreign proceeding against a debtor that has an establishment in Mexico so that Mexican creditors will be protected – and not only the foreign creditors. This is the case because if the debtor has an establishment in Mexico, the court concluded, it is obvious that he will also have Mexican creditors. A high federal court of the Third Circuit reached the same conclusion.<sup>2</sup> In summary, for some high federal courts, within the concept of establishment, there are local creditors from the place where the establishment is located. However, we may object such a conclusion upon the argument that the conducting of non-transitory economic activity in a certain place does not presuppose the existence of creditors located in such a place. On the other hand, the fact that a debtor has creditors located in a certain place does not necessarily follow that the debtor carries out a non-transitory economic activity with human means and goods or services in that place.

The effects of the recognition of the foreign proceeding and the adjudication in bankruptcy under the LCM, are limited to the establishment located in Mexico, pursuant to article 306 of the LCM, which states the following:

Article 306. The effects of the recognition of a Principal Foreign Procedure and the adjudication in bankruptcy of a foreign debtor, in respect of the establishment that he has in the Mexican Republic, and the effects of the recognition of a Principal Foreign Procedure, in respect of a debtor that only has goods within the Mexican Republic, shall be restricted to the assets of the debtor that are located in the Republic and, to the extent necessary to implement cooperation and coordination under articles 304 and 305 of this Law, to other assets of the debtor that, under the Mexican law, should be administered in that proceeding.

Though article 306 refers to a “foreign debtor”, that must be considered a legislator’s *lapsus*, provided that the Model Law makes no distinction between foreign or national debtors, nor the LCM in its Title Twelve. In effect, the Model Law and Title Twelve of the LCM only address: 1) foreign states, 2) foreign courts, 3) foreign proceedings, 4) foreign creditors, 5) foreign law, 6) foreign representatives, 7) asset located in foreign countries, and 8) foreign language.

---

<sup>1</sup> *Tesis aislada I.110.C.176 C, Localizable en el Semanario Judicial de la Federación, Novena Época, Tomo XXVI de mes de octubre de 2007, página 3210, IUS (171137), proveniente del Décimo Primer Tribunal Colegiado en Materia Civil del Primer Circuito al resolver el amparo en revisión 361/2004.*

<sup>2</sup> *Amparo en revisión 305/2017, Segundo Tribunal Colegiado en Materia Civil del Tercer Circuito.*

Likewise, while article 306 refers to a foreign main proceeding, such provisions apply *a fortiori* in cases of non-main proceedings.

b.- The debtor does not have an establishment in Mexico

If the debtor does not have an establishment in Mexico, upon the recognition of a foreign proceeding, no case under the LCM will be opened, because, according to the federal high court, if there is no establishment, there are no Mexican creditors. This proceeding will be conducted through an ancillary proceeding, without the necessity to summon the visitor. Article 294 of the LCM states the following:

Article 294.- If the debtor does not have an Establishment in the Mexican Republic, the procedure shall be processed between the Foreign Representative and the Merchant.

The procedure shall be conducted pursuant to the provisions that are included in Title Ten of this Law for the ancillary proceedings. The petitioner that files for the recognition must indicate the domicile of the debtor for purposes of the service of process.

## 2.2.- THE FOREIGN PROCEEDING RECOGNITION THROUGH AN ANCILLARY PROCEEDING

The recognition of a foreign proceeding must be conducted through an ancillary proceeding and not at the earliest possible time, as the Model Law suggests (article 17 paragraph 3). Article 292 of the LCM states the following:

Article 292.- ... ..

... ..

... The procedure shall be conducted as an ancillary proceeding between the Foreign Representative and the debtor, with the intervention, as applicable, of the visitor, the reorganization officer, or the liquidation officer.

The proceeding starts with the filing of the petition for recognition. Such a petition must be drafted as an ancillary lawsuit, in other words, narrating the relevant facts and submitting proofs. The petition must be filed before a competent court. The LCM does not expressly provide which court is competent for purposes of

recognition of foreign proceedings. Thus, we must use the rule for determining the competence for the bankruptcy procedure, which is determined by the debtor's domicile, pursuant to article 17 of the LCM, which states the following:

Article 17.- The District Judge with jurisdiction in the place where the Debtor has his domicile is competent for the bankruptcy proceeding of said debtor ...

This could be a problem when a foreign proceeding recognition is filed against a debtor that only has assets in Mexico. However, the law is clear by stating that, within the petition, the petitioner must indicate the debtor's domicile, where he will be served.

The petition, once filed before the court, might be dismissed upon the court's own motion, pursuant to article 57 of the Federal Code of Civil Procedure, which states that no court shall admit petitions notoriously unsound. Such grounds of unsoundness might be the court's lack of personal jurisdiction. If no ground for dismissal is detected by the court, the petition will be admitted, and the debtor will be served. The debtor must answer the petition as in a regular lawsuit, affirming or denying the facts alleged by the petitioner and by submitting evidence. Such proof will be submitted in a hearing. If the recognition is filed against a debtor that has an establishment in Mexico, the visit will take place, and the court must wait to receive the visitor's report. After the hearing and, if applicable, after the visit takes place, the court will rule whether the recognition is granted.

### 2.3.- LIMITATIONS ON THE STANDING AND AUTHORIZATIONS TO THE FOREIGN REPRESENTATIVE

The Model Law suggests the direct participation of the foreign representative. Mexico did not follow such a suggestion; the participation of the foreign representative under the LCM is not direct. The foreign representative must act through the visitor, the reorganization officer, or liquidation officer, when applicable.

Provisional relief referred to in article 19 of the Model Law would be granted in Mexico, not upon a direct request of the foreign representative, but upon request of the visitor, the reorganization officer, or the liquidation officer, all of whom act upon the request of the foreign representative. Article 298 of the LCM states the following:

Article 298. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the visitor, the reorganization officer or the liquidation officer, who shall act upon request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:

The same happens when in the case of discretionary relief referred to in article 21 of the Model Law. In Mexico, the foreign representative must act through the Mexican insolvency officers. Article 300 of the LCM states the following:

Article 300.- Upon recognition of a foreign proceeding, where necessary to protect the assets of the debtor or the interests of the creditors, the Foreign Representative may request the visitor, the reorganization officer or the liquidation officer to request the court to grant any appropriate relief, including:

... ..

Upon recognition of a foreign proceeding, the foreign representative may request to the visitor, the reorganization officer or liquidation officer, to entrust to the Foreign Representative or another person appointed by the Institute, the distribution of all or part of the debtor's assets located in national territory, provided that the court is satisfied that the interests of creditors domiciled in Mexico are adequately protected.

In fraudulent conveyance actions referred in article 23, paragraph 1 of the Model Law, the foreign representative lacks direct standing; only the Mexican insolvency officers have, upon his request. Article 302 of the LCM states:

Article 302.- Upon recognition of a foreign proceeding, the foreign representative has standing to request the visitor, the reorganization officer or the liquidation officer to begin the recovery of goods that belong to the Estate and to bring fraudulent conveyances actions that Chapter VI of Title Three and articles 192 and 193 of this Law refer to.

Upon recognition, the foreign representative is not automatically authorized to intervene in the proceedings where the debtor is a party (article 24 of the Model Law); he must obtain a further authorization. However, the LCM does not specify the requirements to obtain such authorization. Article 303 states the following:

Article 303.- Upon recognition of a foreign proceeding, the foreign representative might be authorized to intervene in any proceedings referred in articles 83 and 84 of this Law.

## 2.4.- EFFECTS UPON RECOGNITION OF A FOREIGN MAIN PROCEEDING

### a.- No stay of proceedings

The Model Law suggests (article 20, paragraph 1, subparagraph (a)) that upon recognition of a foreign main proceeding, the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations, or liabilities is stayed. Such recommendation was not adopted by Mexico in article 299 of the LCM, to be consistent with article 84, which states:

Article 84.- The actions brought and the trials followed by the debtor, and those brought and followed against him, which are pending at the time of the adjudication in bankruptcy that has patrimonial content shall not be added on to the record of the bankruptcy, but shall be followed by the debtor under the surveillance of the reorganization officer. Therefore, the debtor must inform the reorganization officer of the existence of the procedure, the day following when he has knowledge of the reorganization officer's designation.

... ..

After the adjudication in bankruptcy, other procedures against the debtor, that has patrimonial content, might be started separately, which shall be processed before the competent authorities under the surveillance of the reorganization officer, without these trials being added on to bankruptcy record.

### b.- Limitations in the stay of executions

The Model Law suggests (art. 20, paragraph 1, subparagraph (b)) that upon recognition of a foreign main proceeding, execution against the debtor's assets is stayed. Such recommendation was adopted by Mexico in section I article 299 of the LCM, with certain limitations:

Article 299. Upon recognition of a foreign proceeding that is a foreign main proceeding:

I. Execution against the debtor's assets is stayed; and

II. The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

The scope, and the modification or termination, of the stay and suspension referred to in paragraph first of this article are subject to what is set forth in Chapter I Title Third of this law, regarding the stay of the enforcement procedures during the reorganization stage.

Chapter I, Title Third of the LCM, refers to the stay of enforcement procedures against the debtor. The general rule, pursuant to section IX of article 43 and first paragraph of article 65 of the LCM, states that all enforcement procedures, seizures, or attachments against the debtor are stayed upon the adjudication in bankruptcy:

Article 43.- The adjudication in bankruptcy shall include:

I. ....

IX. The order to stay all attachments or seizures the properties of the debtor during the bankruptcy proceeding, with the exceptions provided in article 65;

Article 65.- From the adjudication of bankruptcy and until the reorganization stage ends, no attachment or enforcement mandate against the debtor's properties may be executed.

Although article 65 is located in a chapter that governs the reorganization stage, article 176 states that, subject to some exceptions, the effects of the adjudication in bankruptcy in the reorganization stage will be the same for the liquidation stage. Therefore, all enforcement procedures, seizures or attachments against the debtor are stayed upon the adjudication in bankruptcy in the liquidation stage.

The exceptions to the general rule of the stay of enforcement procedures against the debtor are certain types of labor claims, tax claims in certain cases, and certain types of secured claims.

#### i.- Labor claims

Enforcement executions that arise from certain labor claims do not fall within the general stay. The second paragraph of article 65 of the LCM contains such exception:

Article 65.- ... ..

When the attachment or enforcement order derives from a labor claim, the stay shall not take effects in respect of what is set forth in subsection XXIII, of section A, of article 123 of the Mexican Constitution and its regulatory provisions, considering the salaries of the two years before the adjudication of bankruptcy; when the attachment or execution order derives from a tax claim, it must apply the prescriptions of article 69 of this law.

Article 123, section A, subsection XXIII of the Mexican Constitution, states:

XXIII. Claims of workers for wages or salaries earned during the preceding year and for indemnifications shall have preference over any other claims in cases of bankruptcy or civil concourse;

Thus, the provisional, automatic, or discretionary relief regarding staying execution against the debtor's assets will not be applicable if the execution derives from a labor claim consisting of claims of workers for wages or salaries earned during the preceding year and for indemnifications. It must be noted that article 65 of the LCM amplifies from one to two years the provisions of subsection XXIII, of section A, of article 123 of the Mexican Constitution.

## ii.- Tax claims

The Public Treasury is not compelled to submit evidence to have its tax credits allowed in the bankruptcy proceeding pursuant to article 149 of the Federal Tax Code (FTC):

Article 149.- ... ..

... ..

In no case will the federal treasury enter into universal proceedings. When bankruptcy, suspension of payments, or civil concourse proceedings are initiated, the judge hearing the matter must give notice to the tax authorities so that, if applicable, they may enforce the tax credits in their favor through the administrative enforcement proceedings.

The second paragraph of article 65 refers to article 69 of the LCM, which states the following:

Article 69.- Upon the adjudication in bankruptcy, the fiscal claims shall continue causing the updates, penalties, and ancillaries that correspond pursuant to the applicable provisions.

If a reorganization plan were to be reached in terms of Title Five of this Law, the penalties and ancillaries caused during the reorganization stage shall be cancelled.

The adjudication in bankruptcy shall not be motive to interrupt the payment of the debtor's fiscal contributions or social security contributions, for they are necessary for the ordinary operation of the company.

Upon the adjudication in bankruptcy in the reorganization stage and up to the termination of the reorganization stage, the administrative procedures of the enforcement of the fiscal claims shall be suspended. The competent fiscal authorities may continue with the performance of the necessary actions for the determination and attachment of the fiscal claims attributable to the Merchant.

Enforcement procedures derived from tax claims are stayed by the adjudication in bankruptcy only during the reorganization stage. If the case commenced in the liquidation stage or the case was converted from the reorganization stage to the liquidation stage, there is no stay. Article 144 of the FTC states as follows:

Article 144.- ... ..

The enforcement of the act that determines a tax credit will also be suspended when the competent courts notify the tax authorities of a bankruptcy adjudication issued in accordance with the law and provided that the corresponding petition has been previously notified to said authorities.

... ..

The tax authorities will continue with the administrative procedure of enforcement to obtain the payment of the tax credit when in the bankruptcy procedure a reorganization plan has been approved containing the payment of the tax credits, but they were not paid within the following five days to the execution of the said plan or when the payment has not complied with the priority established in this Code. Likewise, the tax authorities may continue with the said procedure when the liquidation stage begins in the bankruptcy procedure under the terms of the bankruptcy law.

Bankruptcy proceedings in Mexico have only two stages: reorganization or liquidation stage. Tax claims executions are stayed during the reorganization stage of a bankruptcy proceeding opened under the LCM. Hence, this stay will not be applicable in provisional, automatic, or discretionary relief granted upon application or recognition of a foreign proceeding.

### iii.- Secured claims

Mexico recognizes only two types of secured claims for purposes of bankruptcy proceedings: mortgage and pledge. The secured creditor can start and continue the execution of his security if the property is not linked to the operation of the enterprise (art. 75) if the security is securing futures, derivate, repo, or similar agreements (art. 105) and if the reorganization plan does not contain a provision of full payment in cash (art. 160).

### c.- Fraudulent conveyances actions under the Mexican Bankruptcy Law

Article 302 of the LCM adopts, not in its entirety, the suggestion contained in article 23, paragraph 1 of the Model Law. The fraudulent actions that the Mexican insolvency officers might bring upon request of the foreign representative are only those referred to in Chapter VI of Title Three and articles 192 and 193 of the LCM.

Chapter VI of Title Third refers to fraudulent conveyances committed before or within the relation back period and after the adjudication in bankruptcy. The adjudication in bankruptcy relates back in time. The time of adjudication and the time of its relation back is known as the suspect period. To have a suspect period, there needs to be an adjudication in bankruptcy. In summary, the fraudulent conveyance actions referred to in Chapter VI of Title Third of the LCM are closely linked to the adjudication in bankruptcy, as well as those actions referred to in 192 and 193.

The problem arises when a foreign proceeding is recognized but the debtor is not adjudicated in bankruptcy in Mexico.

The Model Law (article 23, paragraph 2) suggests a limitation that when the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law of enacting State, should be

administered in the foreign non-main proceeding. Mexico did not follow that suggestion.

## 2.5.- MODIFICATION OR TERMINATION OF THE RECOGNITION

The Model Law (article 17, paragraph 4) suggests the effects of the recognition can be modified or terminated if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist. Mexico did not follow that suggestion. The recognition of a foreign proceeding can be challenged. However, this challenge is only permitted for arguments relating to an error in law or in weighing facts and pieces of evidence that the court analyzed at the time of issuing the ruling, not upon pieces of evidence, proofs, or facts that took place after the resolution.

## BIBLIOGRAPHY

United Nations Commission on International Trade Law. (2014). *UNCITRAL: Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*. New York: United Nations.

United Nations Commission on International Trade Law. (2013). *UNCITRAL: Model Law on Cross-Border Insolvency: The Judicial Perspective*. New York: United Nations.

United Nations Commission on International Trade Law. (2005). *UNCITRAL: Legislative guide on Insolvency Law*. New York: United Nations.

APPENDIX

MODEL LAW	MEXICAN BANKRUPTCY LAW
<p>Article 1. <i>Scope of application</i></p> <p>1. This Law applies where:</p> <p>(a) Assistance is sought in this State by a foreign court or a foreign representative in connection with a foreign proceeding; or</p> <p>(b) Assistance is sought in a foreign State in connection with a proceeding under [identify laws of the enacting State relating to insolvency]; or</p> <p>(c) A foreign proceeding and a proceeding under [identify laws of the enacting State relating to insolvency] in respect of the same debtor are taking place concurrently; or</p> <p>(d) Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under [identify laws of the enacting State relating to insolvency].</p> <p><del>2. This Law does not apply to a proceeding concerning [designate any types of entities, such as banks or insurance companies, that are subject to a special insolvency regime in this State and that this State wishes to exclude from this Law].</del></p>	<p>Article 278. This title applies where:</p> <p>I. Assistance is sought in the Mexican Republic by a foreign court or a foreign representative in connection with a foreign proceeding;</p> <p>II. Assistance is sought in a foreign State in connection with a proceeding under this Law; or</p> <p>III. A foreign proceeding and a proceeding under this Law in respect of the same debtor are taking place concurrently; or</p> <p>IV. Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under this Law.</p>
<p>Article 2. <i>Definitions</i></p> <p>For the purposes of this Law:</p> <p>(a) “Foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the</p>	<p>Article 279.-</p> <p>For the purposes of this Law:</p> <p>I. “Foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the</p>

<p>debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;</p> <p>(b) “Foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;</p> <p>(c) “Foreign non-main proceeding” means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article;</p> <p>(d) “Foreign representative” means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;</p> <p>(e) “Foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;</p> <p>(f) “Establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.</p>	<p>debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;</p> <p>II. “Foreign main proceeding” means a foreign proceeding taking place in the State where the debtor has the centre of its main interests;</p> <p>III. “Foreign non-main proceeding” means a foreign proceeding, taking place in a State where the debtor has an establishment within the meaning of section VI of this article;</p> <p>IV. “Foreign representative” means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;</p> <p>V. “Foreign court” means a judicial or other authority competent to control or supervise a foreign proceeding;</p> <p>VI. “Establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.</p>
<p>Article 3. <i>International obligations of this State</i></p> <p>To the extent that this Law conflicts with an obligation of this State arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.</p>	<p>Article 280.-</p> <p>The provisions of this Title shall be applied when international treaties signed by Mexico do not stipulate other provisions, unless there is no international reciprocity in place.</p>
<p>Article 4. <i>[Competent court or authority]</i></p> <p>The functions referred to in this Law relating to recognition of foreign</p>	<p>Article 281.</p> <p>The functions referred to in this Law relating to recognition of foreign</p>

<p>proceedings and cooperation with foreign courts shall be performed by <i>[specify the court, courts, authority or authorities competent to perform those functions in the enacting State]</i>.</p>	<p>proceedings and cooperation with foreign courts shall be performed by the Judge, the Institute or the person that the Institute appoints, pursuant to this Law.</p>
<p>Article 5. <i>Authorization of [insert the title of the person or body administering reorganization or liquidation under the law of the enacting State] to act in a foreign State.</i></p> <p>A <i>[insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State]</i> is authorized to act in a foreign State on behalf of a proceeding under <i>[identify laws of the enacting State relating to insolvency]</i>, as permitted by the applicable foreign law.</p>	<p>Article 282.-</p> <p>The visitor, reorganization officer or liquidation officer are authorized to act in a foreign State on behalf of a proceeding opened in the Mexican Republic under this Law, as permitted by the applicable foreign law.</p>
<p>Article 6. <i>Public policy exception</i></p> <p>Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State.</p>	<p>Article 283.-</p> <p>None of what is set forth in this Title may be interpreted in a sense that is contrary to what is set forth in Titles I to XI and XIII of this Law, or in any other way that is contrary to fundamental principles of Law that rule in the Mexican Republic. Consequently, the judge, the Insolvency Institute, the visitor, the reorganization officer, or the liquidation officer shall refuse to adopt a measure when it is contrary to what is set forth in such Titles or when it may violate the aforementioned principles.</p>
<p>Article 7. <i>Additional assistance under other laws.</i></p> <p>Nothing in this Law limits the power of a court or a <i>[insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State]</i> to provide additional assistance to a foreign representative under other laws of this State.</p>	<p>Article 284.</p> <p>Nothing in this Title limits the power of a court or the Insolvency Institute, the Visitor, the reorganization officer or the liquidation officer to provide additional assistance to a foreign representative under other laws of Mexico.</p>
<p>Article 8. <i>Interpretation</i></p>	<p>Article 285.</p>

<p>In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.</p>	<p>In the interpretation of this Title, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.</p>
<p>Article 9. <i>Right of direct access</i></p> <p>A foreign representative is entitled to apply directly to a court in this State.</p>	<p>Article 286.</p> <p>Subject to what is set forth in this Law, a foreign representative is entitled to apply directly to a court under the proceedings governed by this Law.</p>
<p>Article 10. <i>Limited jurisdiction.</i></p> <p>The sole fact that an application pursuant to this Law is made to a court in this State by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of this State for any purpose other than the application.</p>	<p>Article 287.</p> <p>The sole fact that an application pursuant to this Title is made to a court in Mexico by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Mexican courts for any purpose other than the application.</p>
<p>Article 11. <i>Application by a foreign representative to commence a proceeding under [identify laws of the enacting State relating to insolvency]</i></p> <p>A foreign representative is entitled to apply to commence a proceeding under [identify laws of the enacting State relating to insolvency] if the conditions for commencing such a proceeding are otherwise met.</p>	<p>Article 288.</p> <p>A foreign representative is entitled to apply to commence a proceeding under this Law if the conditions for commencing such a proceeding are otherwise met.</p>
<p>Article 12. <i>Participation of a foreign representative in a proceeding under [identify laws of the enacting State relating to insolvency]</i></p> <p>Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under [identify laws of the enacting State relating to insolvency].</p>	<p>Article 289.</p> <p>Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under this Law.</p>
<p>Article 13. <i>Access of foreign creditors to a proceeding under [identify laws of the enacting State relating to insolvency]</i></p>	<p>Article 289.</p>

<p>1. Subject to paragraph 2 of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under [identify laws of the enacting State relating to insolvency] as creditors in this State.</p> <p>2. Paragraph 1 of this article does not affect the ranking of claims in a proceeding under <i>[identify laws of the enacting State relating to insolvency]</i>, <i>except that the claims of foreign creditors shall not be ranked lower than [identify the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g. claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims]</i>.</p>	<p>Subject to the second paragraph of this article, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Law as national creditors.</p> <p>Paragraph first of this article does not affect the ranking of claims in a proceeding under this Law, except that the claims of foreign creditors shall not be ranked lower than general unsecured creditors.</p>
<p>Article 14. <i>Notification to foreign creditors of a proceeding under [identify laws of the enacting State relating to insolvency]</i></p> <p>1. Whenever under <i>[identify laws of the enacting State relating to insolvency]</i> notification is to be given to creditors in this State, such notification shall also be given to the known creditors that do not have addresses in this State. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.</p> <p>2. Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.</p>	<p>Article 291.</p> <p>Whenever under this Law notification is to be given to creditors in Mexico, such notification shall also be given to the foreign creditors whose domiciles are known and that do not have addresses in the national territory. The court must order that appropriate legal steps be taken with a view to notifying any creditor whose domicile is not yet known.</p> <p>Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.</p>

<p>3. When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:</p> <p>(a) Indicate a reasonable time period for filing claims and specify the place for their filing;</p> <p>(b) Indicate whether secured creditors need to file their secured claims; and</p> <p>(c) Contain any other information required to be included in such a notification to creditors pursuant to the law of this State and the orders of the court.</p>	<p>When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall, in addition:</p> <p>I. Indicate a forty-five natural days period for filing claims and specify the place for their filing;</p> <p>II. Indicate whether secured creditors need to file their secured claims; and</p> <p>III. Contain any other information required to be included in such a notification to creditors pursuant to the Mexican laws and the orders of the court.</p>
<p>Article 15. <i>Application for recognition of a foreign proceeding</i></p> <p>1. A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.</p> <p>2. An application for recognition shall be accompanied by:</p> <p>(a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or</p> <p>(b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or</p> <p>(c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.</p>	<p>Article 292.</p> <p>A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.</p> <p>An application for recognition shall be accompanied by:</p> <p>I. A certified copy by the foreign court of the decision commencing the foreign proceeding and appointing the foreign representative;</p> <p>II. A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or</p> <p>III. In the absence of evidence referred to in sections I and II, any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.</p>

<p>3. An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.</p> <p>4. The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.</p>	<p>An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.</p> <p>The court must require a Spanish translation of documents supplied in support of the application for recognition.</p> <p>Likewise, the petitioner must designate the debtor's domicile for purposes of service of process. The procedure shall be conducted as an ancillary proceeding between the Foreign Representative and the debtor, with the intervention, as applicable, of the visitor, the reorganization officer, or the liquidation officer.</p>
	<p>Article 293.- When the recognition of a foreign procedure is requested in respect of a debtor that has an Establishment in Mexico, the provisions of Chapter IV of Title One of this Law must be observed, including those relative to the imposition of injunctive reliefs and precautionary measures.</p> <p>The judgment that article 43 of this statute refers to shall also include the declaration that the Procedure or Foreign Procedure in question is recognized.</p> <p>The bankruptcy proceeding shall be governed by the provisions of this Law.</p>
	<p>Article 294.- If the debtor does not have an Establishment in the Mexican Republic, the procedure shall be processed between the Foreign Representative and the Merchant.</p> <p>The procedure shall be conducted pursuant to the provisions that are included in Title Ten of this Law for the ancillary proceedings. The petitioner that files for the recognition must</p>

	indicate the domicile of the debtor for purposes of the service of process.
<p>Article 16. <i>Presumptions concerning recognition</i></p> <p>1. If the decision or certificate referred to in paragraph 2 of article 15 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2 and that the foreign representative is a person or body within the meaning of subparagraph (d) of article 2, the court is entitled to so presume.</p> <p>2. The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.</p> <p>3. In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the <i>centre</i> of the debtor's main interests.</p>	<p>Article 295.</p> <p>If the decision or certificate referred to in the second paragraph of article 292 indicates that the foreign proceeding is a proceeding within the meaning of section I of article 279 and that the foreign representative is a person or body within the meaning of section IV of article 279, the court is entitled to so presume.</p> <p>The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.</p> <p>In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the <i>centre</i> of the debtor's main interests.</p>
<p>Article 17. <i>Decision to recognize a foreign proceeding</i></p> <p>1. Subject to article 6, a foreign proceeding shall be recognized if:</p> <p>(a) The foreign proceeding is a proceeding within the meaning of subparagraph (a) of article 2;</p> <p>(b) The foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of article 2;</p> <p>(c) The application meets the requirements of paragraph 2 of article 15; and</p>	<p>Article 296.</p> <p>Subject to article 281, a foreign proceeding shall be recognized if:</p> <p>I. The foreign proceeding is a proceeding within the meaning of section I of article 279;</p> <p>II. The foreign representative applying for recognition is a person or body within the meaning of section IV of article 279;</p> <p>III. The application meets the requirements of articles 292, 293 and 294; and</p>

<p>(d) The application has been submitted to the court referred to in article 4.</p> <p>2. The foreign proceeding shall be recognized:</p> <p>(a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or</p> <p>(b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of article 2 in the foreign State.</p> <p><del>3. An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.</del></p> <p><del>4. The provisions of articles 15, 16, 17 and 18 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.</del></p>	<p>IV. The application has been submitted to the competent court.</p> <p>The foreign proceeding shall be recognized:</p> <p>I. As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or</p> <p>II. As a foreign non-main proceeding if the debtor has an establishment within the meaning of section VI of article 279 in the foreign State.</p>
<p>Article 18. <i>Subsequent information</i></p> <p>From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:</p> <p>(a) Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and</p> <p>(b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.</p>	<p>Article 297.</p> <p>From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:</p> <p>I. Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and</p> <p>II. Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.</p>
<p>Article 19. <i>Relief that may be granted upon application for recognition of a foreign proceeding</i></p>	<p>Article 298.</p>

<p>1. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:</p> <p>(a) Staying execution against the debtor's assets;</p> <p>(b) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;</p> <p>(c) Any relief mentioned in paragraph 1 (c), (d) and (g) of article 21.</p>	<p>From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the visitor, the reorganization officer or the liquidation officer, who shall act upon request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:</p> <p>I. Staying execution against the debtor's assets;</p> <p>II. For the person appointed by the Institute to be able to appoint the administrator or executor of all or part of the debtor's assets located in national territory, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; said appointment may be upon the Foreign Representative</p> <p>III. Any relief mentioned in sections III, IV and VI of the first paragraph of article 300 of this Law.</p>
<p>2. <i>[Insert provisions (or refer to provisions in force in the enacting State) relating to notice.]</i></p>	<p>In granting provisional measures that this article refers to, the provisions of this statute relative to the precautionary measures must be observed, as applicable.</p>
<p>3. Unless extended under paragraph 1 (f) of article 21, the relief granted under this article terminates when the application for recognition is decided upon.</p>	<p>Unless extended under section V of the first paragraph of article 300, the relief granted under this article terminates when the application for recognition is decided upon.</p>
<p>4. The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.</p>	<p>The court may refuse to grant relief under this article if such relief would interfere with the administration of a foreign main proceeding.</p>

	<p>If the debtor has an establishment within the Mexican Republic, to request the provisional measures that this article refers to, it shall be necessary to submit a recognition of a Foreign Proceeding.</p>
<p>Article 20. <i>Effects of recognition of a foreign main proceeding.</i></p> <p>1. Upon recognition of a foreign proceeding that is a foreign main proceeding:</p> <p><del>(a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;</del></p> <p>(b) Execution against the debtor's assets is stayed; and</p> <p>(c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.</p> <p>2. The scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of this article are subject to <i>[refer to any provisions of law of the enacting State relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph 1 of this article].</i></p> <p><del>3. Paragraph 1 (a) of this article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.</del></p> <p><del>4. Paragraph 1 of this article does not affect the right to request the commencement of a proceeding under <i>fidentity laws of the enacting State</i></del></p>	<p>Article 299.</p> <p>Upon recognition of a foreign proceeding that is a foreign main proceeding:</p> <p>I. Execution against the debtor's assets is stayed; and</p> <p>II. The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.</p> <p>The scope, and the modification or termination, of the stay and suspension referred to in paragraph first of this article are subject to what is set forth in Chapter I Tittle Third of this law, regarding the stay of the enforcement procedures during the reorganization stage.</p>

<p><del>relating to insolvency] or the right to file claims in such a proceeding.</del></p>	
<p>Article 21. <i>Relief that may be granted upon recognition of a foreign proceeding</i></p> <p>1. Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:</p> <p>(a) <del>Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph 1 (a) of article 20;</del></p> <p>(b) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph 1 (b) of article 20;</p> <p>(c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph 1 (c) of article 20;</p> <p>(d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;</p> <p>(e) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court;</p>	<p>Article 300.</p> <p>Upon recognition of a foreign proceeding, where necessary to protect the assets of the debtor or the interests of the creditors, the Foreign Representative may request the visitor, the reorganization officer or the liquidation officer to request the court to grant any appropriate relief, including:</p> <p>I. Staying execution against the debtor's assets to the extent it has not been stayed under section I of article 298 of this Law;</p> <p>II. Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under article 299;</p> <p>III. Providing the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;</p> <p>IV. Entrusting the administration or realization of all or part of the debtor's assets located in national territory to the foreign representative, the visitor, the reorganization officer of the liquidation officer;</p>

<p>(f) Extending relief granted under paragraph 1 of article 19;</p> <p>(g) Granting any additional relief that may be available to <i>[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]</i> under the laws of this State.</p> <p>2. Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are adequately protected.</p> <p>3. In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.</p>	<p>V. Extending relief granted under paragraph first of article 298;</p> <p>VI. Granting any additional relief that may be available to the visitor, the reorganization officer or liquidation officer under the Mexican Law.</p> <p>Upon recognition of a foreign proceeding, the foreign representative may request to the visitor, the reorganization officer or liquidation officer, to entrust to the Foreign Representative or another person appointed by the Institute, the distribution of all or part of the debtor's assets located in national territory, provided that the court is satisfied that the interests of creditors domiciled in Mexico are adequately protected.</p> <p>In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the Mexican Law, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.</p>
<p>Article 22. <i>Protection of creditors and other interested persons.</i></p> <p>1. In granting or denying relief under article 19 or 21, or in modifying or terminating relief under paragraph 3 of this article, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.</p> <p>2. The court may subject relief granted under article 19 or 21 to conditions it considers appropriate.</p>	<p>Article 301.</p> <p>In granting or denying relief under article 298 or 300 of this law, or in modifying or terminating relief under paragraph this of this article, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.</p> <p>The court may subject relief granted under article 298 or 300 to conditions it considers appropriate.</p>

<p>3. The court may, at the request of the foreign representative or a person affected by relief granted under article 19 or 21, or at its own motion, modify or terminate such relief.</p>	<p>3. The court may, at the request of the foreign representative or a person affected by relief granted under article 298 or 300, or at its own motion, modify or terminate such relief. This proceeding shall be conducted through ancillary proceeding with participation of the visitor, reorganization officer or liquidation officer if applicable.</p>
<p>Article 23. <i>Actions to avoid acts detrimental to creditors.</i></p> <p>1. Upon recognition of a foreign proceeding, the foreign representative has standing to initiate <i>[refer to the types of actions to avoid or otherwise render ineffective acts detrimental to creditors that are available in this State to a person or body administering a reorganization or liquidation]</i>.</p> <p><del>2. When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding.</del></p>	<p>Article 302.</p> <p>Upon recognition of a foreign proceeding, the foreign representative has standing to request the visitor, the reorganization officer or the liquidation officer to begin the recovery of goods that belong to the Estate and to bring fraudulent conveyances actions that Chapter VI of Title Three and articles 192 and 193 of this Law refer to.</p>
<p>Article 24. <i>Intervention by a foreign representative in proceedings in this State</i></p> <p>Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of this State are met, intervene in any proceedings in which the debtor is a party.</p>	<p>Article 303.</p> <p>Upon recognition of a foreign proceeding, the foreign representative may be authorized to intervene in any proceedings referred in article 83 and 84 of this Law.</p>

<p>Article 25. <i>Cooperation and direct communication between a court of this State and foreign courts or foreign representatives</i></p> <p>1. In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a <i>[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]</i>.</p> <p>2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.</p> <p>Article 26. <i>Cooperation and direct communication between the [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] and foreign courts or foreign representatives</i></p> <p>1. In matters referred to in article 1, a <i>[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]</i> shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.</p> <p>2. The <i>[insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State]</i> is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.</p>	<p>Article 304.</p> <p>In matters referred to in article 278 of this Law, the court, the visitor, the reorganization officer or the liquidation officer shall cooperate, in the exercise of their duties, to the maximum extent possible with foreign courts or foreign representatives.</p> <p>The court, the visitor, the reorganization officer or the liquidation officer are entitled, in the exercise of their duties, to communicate directly without the need for letters rogatory or other formalities, with the foreign courts or representatives.</p>
<p>Article 27. <i>Forms of cooperation</i></p>	<p>Article 305.</p>

<p>Cooperation referred to in articles 25 and 26 may be implemented by any appropriate means, including:</p> <p>(a) Appointment of a person or body to act at the direction of the court;</p> <p>(b) Communication of information by any means considered appropriate by the court;</p> <p>(c) Coordination of the administration and supervision of the debtor's assets and affairs;</p> <p>(d) Approval or implementation by courts of agreements concerning the coordination of proceedings;</p> <p>(e) Coordination of concurrent proceedings regarding the same debtor;</p> <p>(f) <del>[The enacting State may wish to list additional forms or examples of cooperation].</del></p>	<p>Cooperation referred to in article 304 may be implemented by any appropriate means, including:</p> <p>I. Appointment of a person or body to act at the direction of the court, the reorganization officer, the visitor or the liquidation officer.</p> <p>II. Communication of information by any means considered appropriate by the court, the visitor, the reorganization officer or the liquidation officer;</p> <p>III. Coordination of the administration and supervision of the debtor's assets and affairs;</p> <p>IV. Approval or implementation by courts of agreements concerning the coordination of proceedings; and</p> <p>V. Coordination of concurrent proceedings regarding the same debtor.</p>
<p>Article 28. <i>Commencement of a proceeding under [identify laws of the enacting State relating to insolvency] after recognition of a foreign main proceeding.</i></p> <p>After recognition of a foreign main proceeding, a proceeding under [identify laws of the enacting State relating to insolvency] may be commenced only if the debtor has assets in this State; the effects of that proceeding shall be restricted to the assets of the debtor that are located in this State and, to the extent necessary to implement cooperation and coordination under articles 25, 26 and 27, to other assets of the debtor that,</p>	<p>Article 306.</p> <p>The effects of the recognition of a Principal Foreign Procedure and the adjudication in bankruptcy of a foreign debtor, in respect of the establishment that he has in the Mexican Republic, and the effects of the recognition of a Principal Foreign Procedure, in respect of a debtor that only has goods within the Mexican Republic, shall be restricted to the assets of the debtor that are located in the Republic and, to the extent necessary to implement cooperation and coordination under</p>

<p>under the law of this State, should be administered in that proceeding.</p>	<p>articles 304 and 305 of this Law, to other assets of the debtor that, under the Mexican law, should be administered in that proceeding.</p>
<p>Article 29. <i>Coordination of a proceeding under [identify laws of the enacting State relating to insolvency] and a foreign proceeding</i></p> <p>Where a foreign proceeding and a proceeding under <i>[identify laws of the enacting State relating to insolvency]</i> are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:</p> <p>(a) When the proceeding in this State is taking place at the time the application for recognition of the foreign proceeding is filed,</p> <p>(i) Any relief granted under article 19 or 21 must be consistent with the proceeding in this State; and</p> <p>(ii) If the foreign proceeding is recognized in this State as a foreign main proceeding, article 20 does not apply;</p> <p>(b) When the proceeding in this State commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,</p> <p>(i) Any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in this State; and</p> <p>(ii) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph 1 of article 20 shall be modified or terminated pursuant to paragraph 2 of article 20 if</p>	<p>Article 307.</p> <p>Where a foreign proceeding and a proceeding under this Law are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under articles 304 and 305, and the following shall apply:</p> <p>I. When the proceeding in Mexico is taking place at the time the application for recognition of the foreign proceeding is filed,</p> <p>a) Any relief granted under article 298 or 300 must be consistent with the proceeding in Mexico; and</p> <p>b) If the foreign proceeding is recognized in this State as a foreign main proceeding, article 306 does not apply;</p> <p>II. When the proceeding in Mexico commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,</p> <p>a) Any relief in effect under article 298 or 300 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in Mexico; and</p> <p>b) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph first of article 298 shall be modified or terminated pursuant to paragraph second of article 298 if</p>

<p>inconsistent with the proceeding in this State;</p> <p>(c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.</p>	<p>inconsistent with the proceeding in Mexico;</p> <p>III. In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the Mexican Law, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.</p>
<p>Article 30. <i>Coordination of more than one foreign proceeding</i></p> <p>In matters referred to in article 1, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under articles 25, 26 and 27, and the following shall apply:</p> <p>(a) Any relief granted under article 19 or 21 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;</p> <p>(b) If a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 19 or 21 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;</p> <p>(c) If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.</p>	<p>Article 308.</p> <p>In matters referred to in article 298, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under articles 304 and 305, and the following shall apply:</p> <p>I. Any relief granted under article 298 or 300 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;</p> <p>II. If a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under article 298 or 300 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;</p> <p>III. If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.</p>

<p>Article 31. <i>Presumption of insolvency based on recognition of a foreign main proceeding</i></p> <p>In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under <i>[identify laws of the enacting State relating to insolvency]</i>, proof that the debtor is insolvent.</p>	<p>Article 309.</p> <p>In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Law, proof that the debtor is in general default.</p>
<p>Article 32. <i>Rule of payment in concurrent proceedings.</i></p> <p>Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under <i>[identify laws of the enacting State relating to insolvency]</i> regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.</p>	<p>Article 310.</p> <p>Without prejudice to special privileged creditors, secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under this Law regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.</p>