

MEXICO'S INTERNATIONAL BANKRUPTCY PROVISIONS

Translated by Josefina Fernandez McEvoy

Markowitz & Fernandez

811 West Seventh Street, Suite 1100

Los Angeles, CA 90017

Tel: (213) 362-0350 / Fax: (213) 362-0359

E-mail: jfm@markowitz-fernandez.com

CONTENTS

Chapter I. *General Provisions*

- Article 278. Scope of application
- Article 279. Definitions
- Article 280. International obligations of this State
- Article 281. Competent authority
- Article 282. Authorization to act in a foreign State
- Article 283. Public policy exception
- Article 284. Additional assistance under other laws
- Article 285. Interpretation

Chapter II. *Access Of Foreign Representatives And Creditors To The Courts*

- Article 286. Right of direct access
- Article 287. Limited jurisdiction
- Article 288. Application by a foreign representative to commence a proceeding under Title XII
- Article 289. Participation of a foreign representative in any insolvency proceeding
- Article 290. Access of foreign creditors to a proceeding under Title XII
- Article 291. Notification to foreign creditors of a proceeding under Title XII

Chapter III. *Recognition Of Foreign Proceeding And Relief*

- Article 292. Application for recognition of a foreign proceeding
- Article 293. Application for recognition if the debtor has an establishment in Mexico
- Article 294. Application for recognition if the debtor does not have an establishment in Mexico
- Article 295. Presumptions concerning recognition
- Article 296. Decision to recognize a foreign proceeding
- Article 297. Subsequent information
- Article 298. Relief that may be granted upon application for recognition of a foreign proceeding
- Article 299. Effects of recognition of a foreign main proceeding
- Article 300. Relief that may be granted upon recognition of a foreign proceeding
- Article 301. Protection of creditors and other interested persons
- Article 302. Actions to avoid acts detrimental to creditors
- Article 303. Intervention by a foreign representative

Chapter IV. *Cooperation With Foreign Courts And Foreign Representatives*

- Article 304. Cooperation and direct communication with foreign courts or foreign representatives
- Article 305. Form of cooperation

Chapter V. *Concurrent Proceedings*

- Article 306. Commencement of a proceeding under Title XII after recognition of a foreign main proceeding
- Article 307. Coordination of a proceeding under Title XII and a foreign proceeding
- Article 308. Coordination of more than one foreign proceeding
- Article 309. Presumption of insolvency based on recognition of a foreign main proceeding
- Article 310. Rule of payment in concurrent proceedings

Chapter I. *General provisions*

Article 278. [Scope of application.]¹ The provisions of this Title shall apply to cases in which:

- I. A Foreign Court or a Foreign Representative requests assistance in the Mexican Republic in connection with a foreign proceeding;
- II. Assistance is sought in a foreign State in connection with a proceeding under this Law;²
- III. A Foreign Proceeding and a proceeding under this Law in respect of the same Debtor are taking place concurrently; or
- 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.

Article 279. [Definitions.] For the purposes of this Title:

- I. Foreign Proceeding means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law related to the reorganization, liquidation or insolvency of a Debtor³ and in which proceeding the assets and affairs of the Debtor are subject to the control or supervision of the Foreign Court, for the purpose of its reorganization or liquidation;
- II. Foreign Main Proceeding means a Foreign Proceeding taking place in the State where the Debtor has the center of its main interests;
- III. Foreign Non-main proceeding means a Foreign Proceeding taking place in a State where the Debtor has an establishment within the meaning of paragraph VI of this article;
- 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;
- V. Foreign Court means a judicial or other authority competent to control or supervise a Foreign Proceeding; and
- VI. Establishment means any place of operations where the Debtor carries out a non-transitory economic activity with human means and goods or services.

Article 280. [International obligations of this State.] The provisions of this Title apply only when no treaties to which Mexico is a party govern, unless there is no reciprocity.

Article 281. [Competent authority.] The functions referred to in this Title relating to recognition of Foreign Proceedings and cooperation with Foreign Courts shall be performed in accordance with this Law, by the judge,⁴ the Institute or the person designated by the latter.

Article 282. [Authorization to act in a foreign State] The examiner, the conciliator or the liquidating trustee is authorized to act in a foreign State, as permitted by the applicable foreign law, on behalf of an insolvency proceeding that has been commenced in the Mexican Republic pursuant to this Law.

Article 283. [Public policy exception] Nothing in this Title shall be interpreted in a manner contrary to the provisions of Titles I through XI and XIII of this Law, or in any manner that would be contrary to the fundamental principles of law in the Mexican Republic. Consequently, the judge, the Institute the examiner, the conciliator or the liquidating trustee shall refuse to take any action, if the action is contrary to the provisions of said Titles or violates public policy.

Article 284. [Additional assistance under other laws] Nothing in this Title limits the power of the judge, the Institute, the examiner, the conciliator or the liquidating trustee to provide additional assistance to a Foreign Representative under any other Mexican laws.

Article 285. [Interpretation] 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.

Chapter II. *Access of Foreign Representatives and creditors to Mexican courts*

Article 286. [Right of direct access] Subject to the provisions of this Law, a Foreign Representative is entitled to appear directly before the judge in proceedings governed by this Law.

Article 287. [Limited jurisdiction] The sole fact that an application is made, by a Foreign Representative, to a court in the Mexican Republic, pursuant to this Title, 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.

Article 288. [Application by a Foreign Representative to commence a proceeding under Title XII] A Foreign Representative is entitled to apply for the commencement of a proceeding under this Law, if the conditions for commencing such a proceeding are otherwise met.

Article 289. [Participation of a Foreign Representative in any insolvency proceeding] Upon recognition of a Foreign Proceeding, the Foreign Representative is entitled to participate in any insolvency proceeding initiated pursuant to this Law.

Article 290. [Access of foreign creditors to a proceeding under Title XII] Subject to paragraph two below, foreign creditors shall have the same rights as Mexican creditors regarding the commencement of, and participation in, a proceeding under this Law.

Paragraph one of this article shall not affect the ranking of claims in an insolvency proceeding under this Law, except that the claims of foreign creditors shall not be ranked lower than the claims of general unsecured creditors.

Article 291. [Notification to foreign creditors of a proceeding under Title XII] Whenever under this Law notification is to be given to creditors residing in the Mexican Republic, such notification shall also be given to foreign creditors whose domicile is known and that do not have a domicile within the national territory of Mexico. The judge shall order that appropriate steps be taken with a view to notifying any creditor whose domicile is not yet known.

Such notification shall be made to each foreign creditor individually, unless the judge considers that some other form of notification would be more appropriate under the circumstances.

No letters rogatory or other, similar formality is required.

When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

I. Indicate a deadline of forty five calendar days for filing claims and specify the place for their filing;

II. Indicate whether secured creditors need to file their secured claims; and

III. Contain any other information required to be included in such a notification to creditors under the Mexican laws and the orders of the judge.

Chapter III. *Recognition of a Foreign Proceeding and relief*

Article 292. [Application for recognition of a foreign proceeding] A Foreign Representative may apply to the judge for recognition of the Foreign Proceeding in which the Foreign Representative has been appointed. An application for recognition shall be accompanied by:

I. A copy certified 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 paragraph I and II, any other evidence acceptable to the judge 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 judge shall require that documents supplied in a foreign language in support of the application for recognition be accompanied by a translation into Spanish.

Similarly, the documents shall indicate the Domicile⁵ of the Debtor to facilitate service of the application for recognition on the Debtor. The proceeding will take place between the Foreign Representative and the Debtor, with the intervention, depending on the type of case, of the examiner, the conciliator or the liquidating trustee.

Article 293. [Application for recognition if the debtor has an establishment in Mexico] An application for recognition of a foreign proceeding if the Debtor has an Establishment in Mexico, shall be subject to Chapter IV of Title I of this Law, including the provisions relative to granting relief of a provisional nature.

The order granting recognition shall include, in addition to the requirements set forth in Article 43 of Title I, a declaration granting the application for recognition of the Foreign Proceeding or Proceedings.

The insolvency proceeding shall be governed by this Law.

Article 294. [Application for recognition if the Debtor does not have an establishment in Mexico]
If the Debtor does not have an Establishment in Republic, the proceeding will be take place between the Foreign Representative and the Debtor.

An action must be brought and the trial will take place in accordance with the provisions of Title X of this Law. The person applying for recognition shall provide the domicile of the Debtor for purposes of effectuating service.

Article 295. [Presumptions concerning recognition] If the decision or certificate referred to in paragraph I of Article 291 of this Law indicates that the Foreign Proceeding is a proceeding within the meaning of paragraph I of Article 279 and that the Foreign Representative is a person or body within the meaning of paragraph IV of article 279, the judge is entitled to so presume.

The judge is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.

In the absence of proof to the contrary, the Debtor's place of incorporation, or habitual residence in the case of an individual, is presumed to be the center of the Debtor's main interests.

Article 296. [Decision to recognize a foreign proceeding] Subject to Article 281 of this Law a Foreign Proceeding shall be recognized if:

- I. The Foreign Proceeding is a proceeding within the meaning of paragraph I of Article 279;
- II. The Foreign Representative applying for recognition is a person or body within the meaning of paragraph IV of Article 279;
- III. The application meets the requirements of Articles 292, 293 and 294 of this Law, depending on the type of case; and
- IV. The application has been submitted to the appropriate court.

The Foreign Proceeding shall be recognized:

- I. As a Foreign Main Proceeding, if it is taking place in the State where the Debtor has the center of its main interests; or
- II. As a Foreign Non-main Proceeding, if the Debtor has an establishment in the foreign State within the meaning of paragraph VI of Article 279.

Article 297. [Subsequent information] From the time of filing the application for recognition of the Foreign Proceeding, the Foreign Representative shall inform the judge promptly of:

- I. Any substantial change in the status of the recognized Foreign Proceeding or the status of the Foreign Representative's appointment; and
- II. Any other Foreign Proceeding regarding the same Debtor that becomes known to the Foreign Representative.

Article 298. [Relief that may be granted upon application for recognition of a foreign proceeding] From the time of filing an application for recognition until the application is decided upon, the judge may, at the request of the examiner, the conciliator or the liquidating trustee, who shall act on behalf of the Foreign Representative and 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:

- I. Suspend execution against the Debtor's assets;
- II. Entrusting the administration or realization of all or part of the Debtor's assets located within Mexican territory to the Foreign Representative or another person designated by the Institute, 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;
- III. Any relief referred to in paragraph III, IV and VI of paragraph one of Article 300 of this Law.

Implementation of the provisional relief referred to in this article, shall be subject to the applicable provisions concerning relief of a provisional nature of this Law.

Unless extended pursuant to paragraph V of Article 300 of this Law, the relief granted under this article terminates when the application for recognition is decided upon.

The judge may refuse to grant relief under this article if such relief would interfere with the administration of a Foreign Main Proceeding.

If the Debtor has an establishment within the Mexican Republic, to request the relief referred to in this article, it is necessary to require the recognition of the Foreign Proceeding.

Article 299. [Effects of recognition of a foreign main proceeding] Upon recognition of a Foreign Main Proceeding:

- I. Execution against the Debtor's assets is suspended; and
- II. The right to transfer, encumber or otherwise dispose of any assets of the Debtor is suspended.

The scope, the modification and the termination of the suspension referred to in paragraph I of this article are subject to Chapter I of Title III of this Law, with respect to the suspension of execution proceedings during the period of Conciliation.

Article 300. [Relief that may be granted upon recognition of a foreign proceeding] Upon recognition of a Foreign Proceeding, where necessary to protect the assets of the Debtor or the interests of the creditors, the judge may, at the request of the examiner, the conciliator or the liquidating trustee acting on behalf of the Foreign Representative, grant any appropriate relief, including:

- I. Suspending execution against the Debtor's assets to the extent that execution has not been suspended pursuant to paragraph I of article 298 of this Law;
- 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;
- III. The taking of evidence or the delivery of information concerning the Debtor's assets, affairs, rights, obligations or liabilities;
- IV. Entrusting to the Foreign Representative, the examiner, the conciliator or the liquidating trustee, the administration or realization of all or part of the Debtor's assets located within the national territory;
- V. Extending the relief granted under paragraph I of Article 298; and
- VI. Granting any additional relief that may be available to the examiner, the conciliator or the liquidating trustee under the laws of Mexico.

Upon recognition of a Foreign Proceeding, the Foreign Representative may entreat the examiner, the conciliator or the liquidating trustee to recommend to the judge to entrust the distribution of the Debtor's assets located within the national territory, to the Foreign Representative or another person designated by the Institute, as long as the judge is satisfied that the interests of creditors domiciled in Mexico are adequately protected.

In granting relief under this article to a representative of a Foreign Non-main Proceeding, the judge must be satisfied that the relief granted relates to assets that, under the Mexican laws, should be administered in the Foreign Non-main Proceeding or concerns information required in that Foreign Non-main Proceeding.

Article 301. [Protection of creditors and other interested persons] In granting or denying relief under articles 298 through 300 of this Law, or in modifying or terminating relief based on the third paragraph of this article, the judge must be satisfied that the interests of creditors and other interested persons, including the Debtor, are adequately protected.

The judge may subject relief granted under article 298 or 300 to conditions he considers appropriate.

At the request of the Foreign Representative or a person affected by relief granted under article 298 or 300, or on his own motion, the judge may modify or terminate such relief.

Such decision will be made at a hearing attended by the examiner, the conciliator or the liquidating trustee if one has been appointed in the case.

Article 302. [Actions to avoid acts detrimental to creditors] Upon recognition of a Foreign Proceeding, the Foreign Representative is entitled to request to the examiner, the conciliator or the liquidating trustee to initiate actions to recover property of the Estate and to avoid acts carried out or presumed to have been carried out with intent to defraud creditors as set forth in Chapter VI of Title 3 of this Law and articles 192 and 193 of this Law.

Article 303. [Intervention by a foreign representative] Upon recognition of a Foreign Proceeding, the Foreign Representative may intervene in any proceedings referred to in articles 83 and 84 of this Law.

Chapter IV. Cooperation with Foreign Courts and Foreign Representatives

Article 304. [Cooperation and direct communication with foreign courts or foreign representatives]

In matters referred to in article 278 of this Law, the judge, the examiner, the conciliator or the liquidating trustee, shall cooperate, in the exercise of their functions and to the maximum extent possible, with Foreign Courts and foreign representatives.

The judge, the examiner, the conciliator or the liquidating trustee, is entitled, in the exercise of his functions, to communicate directly with Foreign Courts or Foreign Representatives without the need for rogatory letters or other similar formalities.

Article 305. [Forms of cooperation] The cooperation referred to in article 304 may be implemented by any appropriate means, including:

- I. Appointment of a person or body to act at the direction of the judge, the examiner, the conciliator or the liquidating trustee;
- II. Communication of information by any means considered appropriate by the judge, the examiner, the conciliator or the liquidating trustee;
- III. Coordination of the administration and supervision of the Debtor's assets and affairs;
- IV. Approval or implementation by courts of agreements concerning the coordination of proceedings; and
- V. Coordination of concurrent proceedings regarding the same Debtor.

Chapter V. Concurrent proceedings

Article 306. [Commencement of a proceeding under Title XII after recognition of a foreign main proceeding] The effects of recognition of a Foreign Main Proceeding and the commencement of an insolvency proceeding regarding a foreign Debtor, having an establishment in the Mexican Republic and the effect of recognition of a Foreign Main Proceeding, regarding a Debtor with assets only in the Mexican Republic, shall be restricted to the Debtor's establishment located in the Mexican Republic and, to the extent necessary to implement cooperation and coordination contemplated in articles 304 and 305 of this Law, to other assets of the Debtor that, under the Mexican laws, should be administered in that proceeding.

Article 307. [Coordination of a proceeding under Title XII and a foreign proceeding] Where a Foreign Proceeding and a proceeding under this Law are taking place concurrently regarding the same Debtor, the judge shall cooperate and coordinate his decisions with the other proceeding, in accordance with articles 304 and 305 hereof, and the following shall apply:

- I. When the proceeding in Mexico is taking place at the time the application for recognition of the Foreign Proceeding is filed:

a) Any relief granted under article 298 or 300 hereof must be consistent with the proceeding pending in Mexico;

and

(b) If the Foreign Proceeding is recognized in Mexico as a Foreign Main Proceeding, article 306 of this Law does not apply;

II. When the proceeding in Mexico commences after recognition, or after the filing of the application for recognition of the Foreign Proceeding:

a) Any relief in effect under article 298 or 300 shall be reviewed by the judge and shall be modified or terminated

if inconsistent with the proceeding in Mexico; and

b) If the Foreign Proceeding is recognized as a Foreign Main Proceeding, the stay or suspension referred to in paragraph I of article 298 shall be modified or terminated pursuant to paragraph II of Article 298 if inconsistent with the proceeding initiated in Mexico; and

III. In granting, extending or modifying relief granted to a representative of a Foreign Non-main Proceeding, the judge must be satisfied that the relief relates to assets that under Mexican laws, should be administered in the Foreign Non-main Proceeding, or concerns information required in that proceeding.

Article 308. [Coordination of more than one foreign proceeding] In cases contemplated in article 298 hereof, in respect of more than one Foreign Proceeding regarding the same Debtor, the judge shall seek cooperation and coordination under articles 304 and 305 of this Law, and the following shall apply:

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 latter;

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 judge and shall be modified or terminated if inconsistent with the Foreign Main Proceeding;

III. If, after recognition of a Foreign Non-main Proceeding, another Foreign Non-main Proceeding is recognized, the judge shall grant, modify or terminate any relief for the purpose of facilitating coordination of the proceedings.

Article 309. [Presumption of insolvency based on recognition of a foreign main proceeding] In the absence of evidence to the contrary, recognition of a Foreign Main Proceeding presumes, that the Debtor is generally not paying its debts for the purpose of commencing a proceeding under this Law.

Article 310. [Rule of payment in concurrent proceedings] Without prejudice to priority claims, secured claims or rights *in rem*, a creditor who has received partial payment with respect to its claim in a proceeding pending in a foreign State, pursuant to a law relating to insolvency, 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.

(Footnotes)

¹Title XII does not have a table of contents, and its articles are identified by numbers only without the use of headings. The author has added a table of contents and headings to the text, for the readers' convenience.

²The word "Law," which appears at various places in Title XII and other text, is used to refer to the entire Commercial Insolvency Law.

³The Law uses the Spanish word "comerciante" to refer to a bankruptcy debtor. By reference to Mexico's Code of Commerce, a natural or legal person, including a branch of a foreign company, engaged in trading, commerce or any business activities whose debts have been incurred for commercial or business purposes, may be a debtor under the Law. The Law expressly excludes insurance companies, surety companies and unincorporated governmental enterprises as eligible debtors. The Law also provides that "small debtors" may voluntarily avail themselves of its protections.

⁴Title XII excludes any reference to the court and in its stead designates "the judge" to handle matters related to insolvency proceedings.

⁵Article 4, paragraph III of the Law, defines Domicile as the debtor's place of incorporation, or principal place of business. If the debtor is a branch of a foreign company, its domicile is the place where the branch has its principal establishment in the Mexican Republic. If the debtor is an individual engaged in business, his domicile is his company's principal place of business and, if service cannot be effected therein, then his permanent residence.