

## **THE MEXICAN ADMINISTRATOR FOR INSOLVENCY PROCEDURES**

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In August 2000, Mexico's congress approved the new Insolvency Law that is based on the domestic experience of the former law and takes into consideration the recommendations of the World Bank and the international experiences regarding these matters

The primary task of this new Law is to preserve the rights of the actors involved in an insolvency procedure, based on the judicial principles of the Constitution. The main features of this new law are:

- It pursues to preserve the social and economic value of the enterprises
- It enforces timely and transparent insolvency procedures
- It enforces efficient insolvency mechanisms and rules in accordance with the UNCITRAL model
- It also considers that the insolvency procedure is not only a judiciary issue but it involves all the economic and social factors as well
- It places the insolvency procedure under a Federal jurisdiction
- It makes very clear that the judicial matters of the insolvency procedure are under the Judge responsibility and that for non-judicial matters the Judge will be supported by the Federal Institute of Specialists on Mercantile Procedures, IFECOM

The new Insolvency Law states, very clearly, that the rector of the insolvency processes is the Judge in charge of the insolvency procedure supported by the staff of an Institute which is responsible for administrating the insolvency mechanisms, for all non-judicial matters and procedures. Letting the Judge be judge and to concentrate on the legal affectations regarding each case

The Federal Institute of Specialists on Mercantile Procedures, IFECOM, is technically and operatively autonomous besides being a multidisciplinary institution of the Judiciary Conference which shares, with the Judges, the same concern: to make the insolvency proceedings a mechanism that works quickly, efficiently and fairly preserving the rights of all the parties involved

The IFECOM is ruled by a General Director and a board of 4 members, it is also conformed, by a think-tank of experts that are committed themselves with the objectives of the Institute as well as the professional, ethical and transparent actions and work that are the norm of this institution

The mission of the IFECOM states clearly its main purpose:

" To maximize the social value of the enterprises and to support all the extra-judicial preventive processes, the judicial, as well as the rights of the involved actors, promoting a vanguard insolvency culture based on the Law and on the international standards with a multidisciplinary management vision, and also promoting the ethics an excellence in the professional performance of its personnel and the appointed Specialists"

The Federal Institute of Specialists on Mercantile Procedures, IFECOM, has developed a strategy that is integrated in two main issues:

- a) Multidisciplinary professional support and mechanisms for non-judicial matters for the judges, creditors and debtors

- b) A preventive approach based on the development and promotion of an Insolvency Culture which is focused on anticipating the insolvency process by helping all the parties involved with the professional support of its multidisciplinary staff and the appointed Specialists, trustees

To fulfill the first issue, about Support, the IFECOM is accountable for creating, maintaining and supporting a team of independent professionals to act as specialists on insolvency procedures, trustees. In order to do so, the IFECOM has developed a Specialists System, which has a close control over the administration of those specialists. The administration includes the selection of appropriate professionals, the regulation and supervision of their performance and fees and to keep them updated on matters related to the insolvency procedures

This multidisciplinary group of independent professional specialists on insolvency procedures and mechanisms will release Judges from having to deal with non-legal issues.

The specialist, with the supervision and support of the IFECOM, will deal with all matters relating to the commercial activity such as: administration, finance, accounting, economics or restructuring choices, creating a framework that will support the Judge with the proper, fair and professional advise in all non judicial matters, allowing him to perform his judicial duties

The specialists, trustees, perform their duties in the following phases, that for practical reasons are summarized as follows:

- The first stage is to determine if the insolvency procedure proceeds. In this stage the Specialist, Auditor, will audit the debtor's data, assets and other pertinent information that will provide the judge, in a standard form, all the information regarding the financial status of the debtor
- The second stage starts once the judge has declared the insolvency procedure. In this phase the Specialist, Conciliator, will professionally support the judge, and will be impartial towards the debtor and the creditors and will try to achieve an agreement that will be beneficial for all the involved parties. He will always act to preserve the value of the assets that might lead to extra-judicial agreements between creditors and debtor
- In the third phase, when the bankruptcy has been declared. The Specialist, Official Receiver, will support the parties involved in performing his best to preserve and maximize the value of the assets for the benefit of all the involved parties

With this strategy, the IFECOM provides support to all the actors involved in an insolvency procedure; judges, creditors and debtors. These new reforming insolvency mechanisms, the New Law, the Judge and the IFECOM, will ensure the predictability of the insolvency procedure. Creditors and debtors will have the certainty that the trial will be carried out with transparency and decisions will be predictable

The IFECOM has, also, developed a set of General Rules, which are the main performance policies for the specialists' interaction with the Court and the actors involved in an insolvency process. The General Rules define the duties, liabilities and fees of the specialists on insolvency procedures

With a clear definition of the duties, benefits, responsibilities and dates that will be applicable to all the parties, the IFECOM contributes with the Judge to achieve the requirement of certainty in the insolvency procedures

Regarding the second issue, Prevention, the IFECOM has developed a series of working programs designated to prevent the judicial trail of the insolvency process.

The Specialists System, in one of its chapters, deals with the support to merchants, creditors and the public in general with preventive projects that cover different fields. Those projects aim to help the parties to anticipate problems.

First, a registered specialist can participate as a direct support or as an adviser to the interested party

Second, the IFECOM is preparing a series of seminars that are designed for individuals and organizations interested in the prevention of problems that might lead to insolvency

The Research and Developing program will provide, the different parties, with information regarding the insolvency prediction, better ways to handle the insolvency processes, new techniques, reports and forms to facilitate the handling of information to all the involved parties

The Statistics program deals with the developing of timely, accurate and meaningful information regarding: insolvency processes, the former law processes, economy sectors, economic variables and in general the information related to business that might help to prevent insolvency

IFECOM is determined to make all the information public, therefore transparent, accurate and professional

The Insolvency Culture program: this is perhaps the most sensitive program, and it is our main challenge. This program deals with the diffusion of all matters related to insolvency and it involves, not only the parties involved in an insolvency process but all the institutions, associations, universities that are related to the judicial, economic and social matters of the country. In other words this program deals with the public in general.

The main objective of the Insolvency Culture program is to educate society and to take the insolvency stigma off.

Trough good communication, proper education, professional specialists and hard work, we, the IFECOM has started the development of this new Insolvency Culture that will use the preventive measures to anticipate insolvency. Society in general must understand that insolvency is not only judicial related but that should be approached with a multi-disciplinary vision. This vision should take into consideration that with the proper tools and mechanisms the problem can be prevented, that there are extra-judicial alternatives that might be used in the benefit of the creditors and debtors to preserve the value of the assets in benefit of all the involved parties

As of today the mere existence of the New Law and the IFECOM has decreased the number of insolvency claims, in relation to the number of demands handled by the former law. If the IFECOM can help to reduce the number of judicial processes, the IFECOM will be helping the Judges, and the creditors and debtors as well

Understanding the insolvency procedure with this vision, the IFECOM vision, will help the Insolvency Culture to be assimilated by society, so trust will also be developed.