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Classification and Priorities of Claims under Mexico's Law of Commercial Insolvency ¹ - ²

Introduction

Article 3 of the Act of Commercial Insolvency (the "Act") provides in pertinent part: "...The goal of a bankruptcy is the sale of the debtor's business, its units of production or its assets and the distribution of the proceeds of the sale to the debtor's creditors." Similarly, the legislative history indicates that "... the goal of a bankruptcy shall be, if the debtor fails to negotiate an agreement with its creditors for the payment of their claims during the Reorganization phase, to preserve the value of the debtor's business through an orderly liquidation so that the proceeds of such liquidation are distributed in the order dictated between the debtor and its creditors." ³ Further, "[a]s with reorganization cases, the goal of liquidation cases is to preserve the value of the debtor's business for distribution, based on the respective rights of the different types of creditors and the debtor (who in Mexico retains some rights)." ⁴

The bankruptcy process must provide for the orderly liquidation of the debtor's assets, the correct valuation and classification of the creditors' claims and the orderly distribution of the debtor's assets to creditors of the estate. This requires considering the classification and priorities of claims dictated by the Act. The legislative history states that the Act "...maintains, as the basis, the order and priorities established by the current Act, and adopts minimal changes necessary to make the new provisions adequate." ⁵

The purpose of this paper is to describe the priority scheme established in the Act and identify apparently contradictory provisions in the Act, specifying the applicable sections.

Applicable Provisions

Chapter II, entitled "Classification of Claims" of Title 7 of the Act, ⁶ governs the classification and priorities of claims that must be followed for the general distribution of the debtor's assets upon the declaration of a business bankruptcy as follows:

1. Article 217

– The creditors will be ranked pursuant to the following degrees, depending on the nature of their credits:

- I. Super-privileged creditors;
- II. Creditors with a collateral;
- III. Creditors with the lien of an involuntary lien; and
- IV. Regular creditors. ⁷

2. Article 218

– Super-privileged creditors are those who will be paid first in the following order:

- I. The Merchant's burial expenses, if the business reorganization judgment is issued after his death; and
- II. Creditors for expenses incurred in connection with the illness that caused the Merchant's death, if the business reorganization judgment is issued after his death. ⁸

3. Article 219

– Creditors with collateral, provided that such mortgage or pledge is validly created under the applicable Acts ("secured creditors"), are the following:

I. Mortgagees; and

II. Pledgees.

The debts accrued to creditors with collateral will be repaid out of the proceeds of the collateral, but are subject to the creditors referred to in Article 217, Sections III and IV, of the Act, and if there are competing creditors in the same collateral in the order determined pursuant to the applicable Acts in connection with the registration date.⁹

4. Article 220– Creditors with a lien are those who, according to the Commercial Code of the applicable Acts, have a lien or a retention right. Creditors with a lien will collect in the same terms as the creditors with a collateral or depending on the date of their credits, if not subject to recordation, unless several of them have an interest on a specific thing, in which case the distribution will be made pro rate without distinction as to dates, unless another Act provides otherwise (lien creditors).¹⁰

1. Article 221

– Any labor–related credits other than those mentioned in Article 224, Section I, and the tax liabilities will be paid after the singularly privileged credits and the credits with a collateral have been repaid, but before the credits with a lien.

If the tax liabilities are guaranteed with a collateral, the provisions of Article 219 of this Act shall apply for the purposes of their payment, up to the amount of their collateral, and any balance shall be paid in the terms of the first paragraph of this Article.¹¹

2. Article 222

– All other creditors not covered in Article 218–221 and 224 of the Act will collect on a pro rata basis without distinction as to dates.¹²

3. Article 223

– No payments shall be made to creditors if the creditors of prior ranking have not been paid, in the terms of the preference established for the same.¹³

4. Article 224

– The following are credits against the Estate and shall be paid in the indicated order and before any of the credits to which Article 217 of this Act refers:

- I. Those listed in Article 123, paragraph A, Section XXIII, of the Constitution and its regulating provisions, taking into consideration the wages for the two years preceding the Merchant's business reorganization declaration;
- II. Those assumed by the Merchant to manage the Estate, with the conciliator's¹⁴ or receiver's authorization or those assumed by the conciliator, if any;
- III. Those assumed to attend to the regular expenses for the protection of the properties of the Estate, their repair, preservation and management;
- IV. Those resulting from judicial or extrajudicial proceedings in benefit of the Estate; and
- V. The Inspector's, conciliator's and receiver's fees and the expenses incurred by any of them, provided that they were strictly necessary for their performance and are duly supported pursuant to the provisions issued by the Institute.¹⁵

1. Article 225

– The privilege to which the preceding Article refers cannot be made good against creditors with a collateral or lien, and only the following have a privilege:

- I. The creditors for the items referred to in Article 24, paragraph A, Section XXIII, of the Constitution and its regulating provisions, taking into consideration the wages of the two years preceding the Merchant's business reorganization declaration;
- II. The expenses incurred in connection with any litigation filed to defend or recover any properties which were the subject of a secured claim or lien as described in Articles 219 and 220, respectively; and;
- III. Such expenses as may be necessary for the repair, preservation and sale of the same. ¹⁶

1. Article 226

– If the total amount of administrative expenses (Art. 225, § 1), exceeds the value of all of the assets of the Estate, which are not subject to a secured claim or lien, the excess expenses will be distributed among such secured and lien creditors according to the formula specified in Article 227. ¹⁷

2. Article 227

– In order to determine the amount that each creditor must contribute towards the administrative expenses, the value of all of the assets of the Estate which are not subject to a secured claim will be deducted from the total amount of administrative expenses. The resulting amount shall be multiplied by the ratio that the value of the creditors' collateral has to the sum of the values of all of the assets of the Estate, which are subject to a secured claim. ¹⁸

3. Article 228

– When a general partnership is declared a debtor in bankruptcy, the general partners' creditors, whose claims predate the formation of the general partnership, shall share with the creditors of the partnership, according to classification and priority of their claims. ¹⁹

Creditors of the general partners whose claims arise after the formation of the debtor partnership will be satisfied from the surplus estate, if any, remaining after the partnership's debts have been satisfied according to the provisions of the Act.

Analysis

I. Principles

The legislative framework recognizes, among others, three governing principles: comprehensiveness, collectivity and equality. ²⁰

The comprehensiveness principle is intended to indicate that all of the debtor's assets are committed to the satisfaction of all of the creditors' claims; hence, the debtor's bankruptcy estate is deemed to be a unit that must be liquidated and distributed among claimants.

The principle of collectivity provides that all the creditors of the estate become subject to a single bankruptcy proceeding and, hence, its results, in which they participate with a common goal: to preserve the integrity of the bankruptcy estate and receive a pro-rata distribution from the liquidation.

The principle of equality is intended to indicate that the administration of any bankruptcy case must follow the rule that all creditors within a particular class, regardless of their status, must receive the same treatment as other creditors within the same class. The legislative history clarifies that "equality is not achieved by providing the same treatment to different classes of creditors, but rather recognizing the differences among the designated classes of claims and interests and, above all, avoiding fraud and favoritism."

The three principles adopted under the Act are reflected in the process of distribution of the estate, to the extent that all of the debtor's assets (comprehensiveness) are liquidated, to satisfy the claims of all the creditors of the estate

(collectivity), in the order and proportion corresponding to each classified claim or interest based on the nature of such claim or interest (equality). ²¹ This last aspect, "satisfaction of classified claims in the order established based on the nature of the claims" requires both establishing a priority scheme and marshaling the assets of the estate.

II. Property of the Estate

Pursuant to the provisions of Article 2964 of the Federal Civil Code, ²² [t]he debtor's assets must be used to satisfy its liabilities, except certain exempted property. ²³ The debtor's estate is comprised of all property not exempted and the creditors hold what is commonly known as a "hypothetical unperfected lien" ²⁴ on the assets of the debtor's estate. ²⁵ Article 4, Section V, of the Act contains a similar provision which states: "For the purposes of this Act, the debtor's estate is comprised of all the debtor's assets and rights, with the exception of those expressly excluded under this Act, against which Recognized Claimants and others with rights thereon, can enforce their claims." ²⁶ The contemplated exceptions are set forth in Articles 169, Section II, and 179, respectively, which specify: "The order for relief shall: [d]irect the debtor, its administrators, managers and dependents to deliver to the trustee the possession and administration of any property and rights comprising the estate, with the exception of exempted property." ²⁷ Further, "...[t]he debtor shall retain and administer its exempted ²⁸ assets and rights." ²⁹

Thus, the general liabilities of the debtor are automatically protected by a hypothetical unperfected lien in the debtor's assets. However, it is possible that by the mutual agreement of the parties to a contract some assets are already covered by a mortgage or pledge, or other form of security interest in specific property, commonly known as a "security interest." ³⁰ A valid security interest entitles its holder to preferential payment of its claims to the extent of the value of the collateral, as in the case of a mortgage or deed of trust ³¹ or a security interest in personal property. ³² In addition, pursuant to certain express statutory protections, certain "privileged" claims are entitled to priority in distribution over holders of hypothetical unperfected liens. ³³ Thus, the priority scheme under the Act modifies the principle of equality to benefit holders of privileged claims (e.g. wage, tax and administrative expense claims), which are given priority over holders of general unsecured claims. ³⁴

Accordingly, notwithstanding that in principle the totality of the debtor's assets should be distributed equally to satisfy the totality of the debtor's financial obligations, the fact that the Act expressly recognizes or confers to specified creditors based on the nature of their claims, priorities that must be honored, it is necessary to classify the claims against the estate and define their priority in distribution.

III. Allowance, Classification and Priority of Claims

The Act establishes a process for the classification of claims or interests, ³⁵ which does not include the claims or interests of creditors who fail to file a claim or participate in the bankruptcy case. The classifications are based on the nature of such claims to facilitate the order or preference for their payment in relation to other members of the same class and to other designated classes.

On the other hand, the priority of claims ³⁶ is determined in relation first to (a) the various classes of creditor based on their priority status (see discussions of Articles 217–226 above) to the extent to which their claims are recognized, and (b) among members of the same class of claims based on the date in which (i) a particular creditor's claim arose, or (ii) a legal formality required to give rise to a claim was satisfied. ³⁷

In all cases it must be considered whether or not the assets which have been earmarked for distribution are subject to a secured claim, lien or statutory privilege.

Pursuant to Articles 128, 130 and 132 of the Act, in addition to its allowability and amount, the priority in which property is distributed among the creditors of the estate is determined by the court's order entered by the judge after she considers the definitive list of claims submitted by the conciliator and the documentary evidence annexed to the list.

IV. Types of Claims

The Act identifies as creditors of the estate those creditors who must collect their claims out of the estate, according to their priority status.³⁸ For purposes of distribution, the Act distinguishes different types of creditors which may be classified as: (1) the debtors' pre-petition creditors identified in Article 217;³⁹ (2) the post-petition creditors of the estate identified in Article 224,⁴⁰ which shall be paid in the order specified in Article 224, and ahead of the creditors identified in Article 217; and (3) labor costs other than those specified in Article 224, Section I, and tax claims set forth in Article 221.⁴¹

V. Priority of Creditors of the Debtor

The pre-petition claims of the creditors of the debtor must be paid in the order set forth in Article 217.⁴² Thus, Section I grants first priority to the burial and medical expenses of an individual debtor, recognizing the need of an individual debtor experiencing a financial crisis to receive the necessary care and services in such terminal circumstances.⁴³ The Act does not place a dollar limit on the amount of these types of claims, but the author would suggest that the bankruptcy judges should exercise their discretion and limit the allowed amount of these types of claims to permit the recognition of other claims.

Claims on account of medical and burial expenses are granted general priority, inasmuch as the Act does not specify that they must be paid from the liquidation of a particular asset. Therefore, these types of claims must be paid from the proceeds of the liquidation of unencumbered assets not subject to any lien claims such as labor or tax claims. Nonetheless, if the unencumbered assets of the estate are insufficient to satisfy the first priority claims for medical and burial expenses of the debtor, such claims may be paid from the proceeds of the liquidation of assets subject to the claims of secured creditors or lien creditors pursuant to the provisions of Articles 217, 219, 220 and 223 of the Act, which provide that junior claims shall not be paid unless and until claims entitled to a higher priority in distribution are satisfied.

The Act does not specify the share to be contributed by the secured creditors and/or the lien creditors to satisfy the first priority medical and burial expense claims. However, the formula stated in Article 227 should be applied. Thus, for instance, the court could subtract the value of all the unencumbered assets of the estate from the total amount of the medical and burial expense claims. The remaining deficiency shall then be multiplied by the amount that the value of the particular secured creditor's lien represents in proportion to the value of all the encumbered assets of the estate.

If there are insufficient funds to satisfy both the medical expense claims and the burial expense claims, then the latter shall have priority over the medical expenses. If there are various claims filed for burial and medical expenses, then all claims shall receive a pro-rata share of the available distribution pursuant to Article 218.⁴⁴

Section II addresses secured creditors. This class of creditors includes only creditors holding a valid and enforceable deed of trust, mortgage or lien on real estate ("creditos hipotecarios"), and creditors holding a valid and enforceable security interest in personal property of the debtor (creditos de garantia prendaria).⁴⁵

These creditors have secured status based on the nature of their claims, to the extent that when the obligation giving rise to a claim arises it creates rights in rem in favor of the creditor with respect to a particular asset of the debtor or collateral. This right against the *res*, rather than the person, guarantees the satisfaction of the creditor's secured claim to the extent of the value of the *res* subject to the creditor's lien, and the priority of the secured creditor's claim with respect to the collateral. If the amount of the creditor's allowed secured claim is greater than the value of the collateral, the remaining deficiency will be treated as a general unsecured claim against the estate. Conversely, if the value of the collateral exceeds the amount of the secured creditor's allowed claim, after the claim is satisfied the remaining surplus becomes part of the unsecured creditors' pot.

If more than one creditor have liens on the same collateral, the priority of their respective claims will be determined based on the date in which each lien was recorded.⁴⁶

Section III addresses lien creditors.⁴⁷ This class includes creditors protected by a lien recognized by statute (a lien) or that have a right of retention under Mexico's Federal Commercial Code.⁴⁸

A lien under the Commercial Code is effectively a statutory lien expressly fixed against property of the debtor, whether voluntary or involuntary, to effect the payment of the debtor's obligation to a particular creditor with priority over other non-privileged creditors. ⁴⁹ —

A right of retention enables the creditor in possession of a particular asset of the debtor to refuse to turn over the asset to the debtor until he satisfies the obligation. The right of retention does not imply that the creditor will retain the asset in satisfaction of the creditor's claim, or to dispose of the asset and apply the proceeds to satisfy the obligation, without court approval. Further, this right of retention does not survive the debtor's bankruptcy, but rather is transformed into a lien with respect to the asset subject to the right of retention before the bankruptcy proceedings commenced. ⁵⁰ Examples of lien claims include a broker's commission and expenses (Art. 306 of Comm. Code), a seller's right to goods sold (Art. 386 of Comm. Code), and claims relating to commerce and navigation business transacted with respect to ships and merchandise transported by ships (Arts. 80–89 of Admiralty Act).

Unless otherwise provided by applicable Act, creditors holding liens with respect to the same asset will be paid out of the proceeds from the liquidation of the asset on a pro rata basis, without regards for the date in which each claim arose. Notwithstanding this new priority and distribution scheme, Article 220 of the Act also provides an alternative method to establish the priority of creditors holding a lien over the same asset. ⁵¹ Thus, (a) if the creditors were required to file evidence of their interest in the asset, their priority will be determined based on the date of recordation, (b) otherwise, priority will be determined based on the date the obligation arose. It is possible that this second method for establishing the priority of liens is a holdover from the old Bankruptcy and Suspension of Payments Act regarding the perfection and priority of security interests in personal property. The legislative history of Article 220 suggests that the drafter inadvertently failed to modify the text of the statute to eliminate the old method contained in the Bankruptcy and Suspension of Payments Act.

As with secured claims, if the amount of the creditor's allowed lien is greater than the value of the collateral, the remaining deficiency will be treated as a general unsecured claim against the estate. ⁵² Conversely, if the value of the collateral exceeds the amount of the creditor's allowed claim, after the claim is satisfied the remaining surplus becomes part of the unsecured creditors' pot.

Section IV addresses general unsecured creditors. The Act identifies these creditors by a process of exclusion. Thus, creditors not included in any of the foregoing classes are unsecured creditors. ⁵³ The allowed claims of unsecured creditors will be paid out of the proceeds from unencumbered assets on a pro rata basis after satisfaction of any higher priority claims.

VI. Creditors of the Estate

Article 224 of the Act provides that the claims of the creditors "of the estate" shall be paid before the claims of the creditors "of the debtor" in the following order:

First, as provided in the Federal Constitution, Title XXIII, Section A, Article 123, wages and salaries, including vacation and sick leave, earned during the two years preceding the order for relief. ⁵⁴ These claims shall be satisfied from the proceeds of assets of the estate not subject to a secured claim or lien. ⁵⁵ However, if such unencumbered assets of the estate are insufficient to satisfy these labor claims, then and notwithstanding the priority scheme discussed above, the Act provides that the shortfall shall be satisfied, pro rata, from the proceeds of assets subject to other creditors' security interests or liens ⁵⁶ as set forth in Article 227 of the Act. ⁵⁷ —

Second, administrative expenses incurred by the debtor with the approval of the conciliator, and by the conciliator or trustee if one has been appointed will be paid out of the proceeds from assets or assets not subject to security interests or lien on a pro rata basis. ⁵⁸ —

Third, the actual and necessary expenses of preserving the estate, including the expenses associated with preserving or disposing of property subject to an allowed secured claim or lien. ⁵⁹ —

Fourth, any fee imposed by the court for the filing of a case, motions or proceedings and expenses assessed by the court with respect to the handling of the case, other costs incurred for the benefit of the estate and litigation costs incurred to defend or recover assets subject to an allowed secured claim.⁶⁰ The court and administrative costs will be paid from unencumbered assets, while the costs of preserving or recovering property for the benefit of a secured creditor will be paid out of the collateral.⁶¹

Fifth, the pre-petition fees and the actual and necessary costs incurred by the examiner, and the post-petition fees and actual and necessary costs incurred the conciliator and the trustee for services rendered to the estate.⁶² The compensation of the officers of the estate and reimbursement of their costs will be paid from the proceeds of unencumbered assets to the extent such assets are sufficient to satisfy these administrative claims.⁶³

VII. Wage and Tax Claims under Article 221(1)

Article 221 of the Act identifies a third class of creditors, including (a) wage claimants that are different from the wage claimants specified in Article 224–I, and (b) unsecured tax claimants including any deficiency from a secured tax claim. The Act provides that these claims will be paid after the payment of allowed "singularly" privileged claims, and allowed secured claims, but before lien claimants.⁶⁴ Accordingly, the Act contemplates that these unsecured priority claims will be paid ahead of all other unsecured claims including lien claimants.⁶⁵

VIII. General Distribution Rules

Except as otherwise provided with respect to secured claims and liens, under the Act the claims against the estate must be satisfied before the claims against the debtor and the wage and tax claims specified in Article 221.⁶⁶

After the claims against the estate have been satisfied, the claims against the debtor shall be satisfied according to their classification and priority. Further the holder of any claim or interest that is junior to other unsecured claims or interests cannot receive payment on account of such junior claim.⁶⁷

Claims allowed pursuant to Article 221(1) – labor and tax claims—will be paid after the (i) claims against the estate, (ii) first priority claims, and (iii) secured claims are satisfied, but before liens.⁶⁸

Footnote:

¹ The author of this article is Lic. Maria Esther Sandoval Salgado, former Technical Secretary of Mexico's Federal Institute of Bankruptcy Specialists and now in private practice in Mexico City. Translation and Comments are by Josefina Fernandez McEvoy, Esq. [Back To Text](#)

² The point of view expressed in this article reflects the confusion in the statute and describes the bankruptcy estate as consisting of two groups of creditors (pre-petition creditors of the debtor and post-petition creditors of the estate). This results in complicating the priorities of the two sets of creditors. [Back To Text](#)

³ See "Ley De Concursos Mercantiles," art. 3, D.O., May 12, 2000, available at http://www.shcp.gob.mx/servs/normativ/leyes/1_cm.html (last visited Apr.1, 2002) [hereinafter "Ley De Concursos Mercantile"]; see also Dario U. Oscos Coria, The New Mexican Law on Commercial Insolvency at 5, presented to ABA International Section, Washington, D.C. 14 (April 25–28, 2001) (unpublished manuscript on file with author), available at http://www.iiiglobal.org/country/mexico/mex_insol.pdf (last visited Apr.1, 2001) (discussing legislative history of The New Mexican Law on Commercial Insolvency). [Back To Text](#)

⁴ "Ley De Concursos Mercantiles," supra note 2, art. 3. [Back To Text](#)

⁵ See Coria, supra note 2 and accompanying text. [Back To Text](#)

⁶ See "Ley De Concursos Mercantiles," supra note 2, Title VII. [Back To Text](#)

- ⁷ See Coria, supra note 2, at *14 (explaining different classes of creditors and their order of priority); see also "Ley De Concursos Mercantiles," supra note 2, art. 217, D.O. May 12, 2000 (classifying and prioritizing claims in a business bankruptcy). [Back To Text](#)
- ⁸ See id., art. 218 (prioritizing super creditors). [Back To Text](#)
- ⁹ See Coria, supra note 2, at * 14 (2001) (stating secured creditors enjoy a priority over other creditors to extent of proceeds from security). [Back To Text](#)
- ¹⁰ See "Ley de Concursos Mercantiles," supra note 2, art. 220, D.O., May 12, 2000. [Back To Text](#)
- ¹¹ See id., art. 221. [Back To Text](#)
- ¹² See id., art. 222. [Back To Text](#)
- ¹³ See id., art. 223. [Back To Text](#)
- ¹⁴ The conciliator is not mirrored in the U.S. It refers to an independent third party functioning as the trustee but in conjunction with the debtor remaining in possession. [Back To Text](#)
- ¹⁵ See "Ley de Concursos Mercantiles," supra note 2, art. 224. [Back To Text](#)
- ¹⁶ See id., art. 225. [Back To Text](#)
- ¹⁷ See id., art. 227. [Back To Text](#)
- ¹⁸ See 6A Norton Bankruptcy Law & Practice 2d, Appendix § 152 at 133 (William L. Norton, Jr. et al. eds., 2d ed. 1997 & Supp. 2002) (stating articles 266 & 270 require commercial creditors to collect pro rata only after disbursement of legal expenses to secure, preserve, and administer assets of bankrupt). [Back To Text](#)
- ¹⁹ See id. (authorizing creditors with claims arising prior to formation of partnership to collect as creditors of partnership with equivalent rights of priority). [Back To Text](#)
- ²⁰ See id. at 62 (noting Mexico's bankruptcy system originates from civil law rather than common law). [Back To Text](#)
- ²¹ See In re The V Companies & V-S Architects, Inc., 2002 Bankr. LEXIS 225, *49 (Bankr. N.D. Ohio 2002) (stating policy of equality among creditors is one factor courts consider in determining creditor's rights in chapter 7 bankruptcy to rights they would have under state law upon dismissal). [Back To Text](#)
- ²² See id. at 71 (agreeing that after bankruptcy all assets, with certain exceptions, become part of debtor's estate governed by trustee). [Back To Text](#)
- ²³ See id. at 106 (establishing exceptions for estate of family, non-transferable property, earnings after declaration of bankruptcy, as well as necessities and food assistance for bankrupt's family). [Back To Text](#)
- ²⁴ The Spanish term for "hypothetical unperfected lien" is "garantia comun." See, e.g., Black's Law Dictionary (6th ed. 1997) (defining "perfection of security interest" as "those steps legally required to give a secured party an interest in subject property against debtor's creditors"). [Back To Text](#)
- ²⁵ See 6A Norton Bankruptcy Law & Practice 2d, Appendix § 152 at 130 (William L. Norton, Jr. et al. eds., 2d ed. 1997 & Supp. 2002) (stating claims that are recognized shall be issued judgment). [Back To Text](#)
- ²⁶ See "Ley de Concursos Mercantiles," supra note 2, art. 4, § V, D.O. May 12, 2000. [Back To Text](#)

- ²⁷ Compare, "Ley de Concursos Mercantiles," supra note 2, art. 169–II, (requiring debtor to deliver to trustee non-exempt property comprising estate), with 11 U.S.C. § 521 (1994) (requiring debtor, under chapter 7, to surrender to trustee non-exempt property). [Back To Text](#)
- ²⁸ The term "exempted" is being used by the translator, in lieu of "property which is inalienable, or upon which creditors cannot foreclose, or execute a judgment." [Back To Text](#)
- ²⁹ See "Leyes De Concursos Mercantiles," supra note 2, art. 169– II. [Back To Text](#)
- ³⁰ The Spanish term for "security interest" or consensual lien is "garantia real." [Back To Text](#)
- ³¹ The Spanish term for "mortgage" or "deed of trust" is "hipoteca." [Back To Text](#)
- ³² The Spanish term for "security interest in personal property" is "prenda." [Back To Text](#)
- ³³ See Coria, supra note 2, at *14 (discussing priority creditors and privileged creditors). [Back To Text](#)
- ³⁴ See "Ley de Concursos Mercantiles," supra note 2, art. 217 (indicating priority of claims). [Back To Text](#)
- ³⁵ The Spanish for the phrase "classification of claims" is "graduacion de creditos." See Coria, supra note 2 (explaining claims are evaluated both in terms of their validity and their priority). [Back To Text](#)
- ³⁶ The Spanish phrase for "priority of claims" is "prelacion de creditos." [Back To Text](#)
- ³⁷ See "Ley de Concursos Mercantiles," supra note 2, arts. 217–226 (indicating priority of claims). [Back To Text](#)
- ³⁸ See id., art. 4. [Back To Text](#)
- ³⁹ Super-privileged creditors are characterized as pre-petition creditors and include the following: if the debtor is an individual, his burial expenses, if the order for relief is entered after the death of the debtor and the debtor's medical expenses incurred in connection with the illness that caused the death of the debtor, if the order for relief is entered after the death of the debtor. See "Ley de Concursos Mercantiles," supra note 2, art. 218 (indicating priority of claims). Secured creditors are also included as pre-petition creditors. See id., art. 219. Specially privileged creditors are also characterized as pre-petition creditors. See id., art. 220. General unsecured creditors are pre-petition creditors, as well. See id., art. 222. [Back To Text](#)
- ⁴⁰ The post-petition creditors as defined in article 224 are: wage claims for unpaid salaries arising within two years before the date of the entry of the order for relief, administrative expenses incurred by the debtor with the approval of the conciliator or the trustee or by the latter officers of the estate, the expenses of preserving the estate, the court costs incurred for the benefit of the estate, the professional fees of the examiner, conciliator and the trustee and the actual and necessary costs incurred by such officers duly verified by the Federal Institute of Bankruptcy Specialists (the "Institute"). See id., art. 224. [Back To Text](#)
- ⁴¹ See "Ley de Concursos Mercantiles," supra note 2, art. 222 (designating labor-credits other than those mentioned in Article 224, section I, as well as tax liabilities, to be paid after the singularly privileged credits and credits with collateral have been repaid, but before credits with a lien). [Back To Text](#)
- ⁴² See "Ley de Concursos Mercantiles," supra note 2, art. 217; see also Eduardo Martinez, The New Environment of Insolvency in Mexico, 17 Conn. J. Int'l L. 75, 77 (2001) (enumerating hierarchy of recognized creditors). [Back To Text](#)
- ⁴³ See Josefina Fernandez McEvoy, Mexico's New Insolvency Act: Increasing Fairness and Efficiency in Administration of Domestic and Cross Border Cases, 19 Am. Bankr. Inst. J. 16, n.44 (July/Aug. 2000) (noting high priority accorded to medical and funeral expenses). [Back To Text](#)

⁴⁴ See "Ley de Concursos Mercantiles," supra note 2, art. 218. Back To Text

⁴⁵ See "Ley de Concursos Mercantiles," supra note 2, art. 219; see also Anthony M. Vassallo et al., Cross-Border Insolvency and Structural Reform in a Global Economy, 35 Int'l Law 449, 458 (2000) (listing respect for secured creditors' rights as one goal of new statute). Back To Text

⁴⁶ See "Ley de Concursos Mercantiles," supra note 2, art. 219. Back To Text

⁴⁷ An exact translation of the language would be "specially privileged creditors"; however, the explanation of the term is identical to our artisan's liens, material-men's liens and mechanics' liens and for clarity the term "lien creditor" is used in this article. Back To Text

⁴⁸ See "Ley de Concursos Mercantiles," supra note 2, art. 220. Back To Text

⁴⁹ See id.; see also Cód.Com. Back To Text

⁵⁰ See "Ley de Concursos Mercantiles," supra note 2, art. 169–III. Back To Text

⁵¹ See "Ley de Concursos Mercantiles," supra note 2, art. 220. Back To Text

⁵² Bank. of Am. v. Byrd (In re Byrd), 250 B.R. 449, 454 (Bankr. M.D. GA. 2000) (noting some courts treat deficiencies as unsecured). Back To Text

⁵³ "Ley De Concursos Mercantiles," supra note 2, art 222. Back To Text

⁵⁴ See id., art. 224–I. Back To Text

⁵⁵ See id., arts. 224–I, 226. Back To Text

⁵⁶ See id., arts. 225, 226. Back To Text

⁵⁷ See id., art. 227. Back To Text

⁵⁸ See id., art. 224–II. Back To Text

⁵⁹ See "Ley de Concursos Mercantiles," supra note 2, art. 224–III. Back To Text

⁶⁰ See id., art. 224–IV. Back To Text

⁶¹ See id., art. 225. Back To Text

⁶² See "Ley de Concursos Mercantiles," supra note 2, art. 224–V. Back To Text

⁶³ See id., art. 225. Back To Text

⁶⁴ See id., art. 221. Back To Text

⁶⁵ Such provisions state that secured claims are to be paid before lien claims and others provide that they are to be treated the same. Compare id., art. 221(1), with id. art. 225. Has a risk or circular priorities been created? See id., arts. 221, 224, 225. Back To Text

⁶⁶ See id. Back To Text

⁶⁷ See id., arts. 217, 223. Back To Text

⁶⁸ See id., art. 221(1). [Back To Text](#)