

Mexico

Appointments

It is not necessary to appoint an IP to all types of proceedings. The law contains special regulation for three cases that are considered *special procedures*: the banking institutions' insolvency, the financial institutions' (*auxiliares del crédito*) insolvency, and the merchants granted with a public service concession's insolvency. Regarding the first two cases (banks and financial institutions), the law establishes that the roles reserved to the IPs will be performed by any person or corporation appointed by the financial authorities: Institute for the Protection of Bank Savings (Instituto para la Protección del Ahorro Bancario) or the National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores). The Merchant and a group of recognised creditors representing at least 75 per cent of the aggregate recognized amount, may jointly appoint some natural person or legal entity not listed in the institute's register as an IP, to act as conciliator or trustee; insurance institutions and mutual companies, bonding institutions, reinsurance institutions and rebonding institutions are governed by their special laws, which do not always include an IP.

In Mexico there are three different types of IPs, namely auditor (*visitador*), mediator (*conciliador*) and trustee or receiver (*síndico*). Each one is appointed to a specific assignment depending on the particular stage of that insolvency procedure.

Qualifications

To apply for registration as an IP, a number of general requirements must be satisfied:

1. Minimum of five years' experience in business administration, financial advisory services, legal or accounting activities.
2. Not to hold any job, position or office in the public administration or the Federal, State or Municipal Legislative or Judicial Branch.
3. Be honest.
4. Comply with the selection procedures applied by the Institutes, as well as the updating procedures determined by the Institute.
5. In addition there are other special criteria to be satisfied if the IP is performing a specialised function and acts as an auditor, mediator or trustee.

The general requirements are established by law, while the specific qualifications for each specialty are determined by policy of the institute (Official Gazette of July 12th, 2000).

Selection

IPs are randomly appointed by the Instituto Federal de Especialistas de Concursos Mercantiles (IFECOM) from the IPs registered for the required specialty. Their authorized operation radius includes the city in which the insolvency trial is being held and whose register category matches that of the failed merchant.

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Creditors can challenge the IPs appointment and get another IP selected but only if he or she can prove to a federal judge that the challenged specialist shouldn't have been appointed according to the insolvency law. On the other hand, the merchant and the recognised creditors representing at least one half of the aggregate recognized amount, may request the institute, through the judge, to replace the conciliator or the trustee with another that they propose (with cause) from among those registered with the institute.

Supervision

The IFECOM is responsible for supervising the IPs performance on an assignment.

Creditors have the right to challenge in a federal court any decision taken by the IPs. If the claim may result in liability for the specialist, it will normally cause a request for investigation from the court to the supervisor (IFECOM). Creditors may also claim for administrative liability of the specialist or request special investigation to IFECOM.

Remuneration

Auditors are remunerated based on a time-spent basis, while mediators and trustees collect a percentage of the sum of the recognized debts (mediator) or the value of the sold assets (trustee), according to the general criteria issued by IFECOM.

The court approves the amount to be paid, according to the IPs justified claim and IFECOM's opinion (both the creditors and the debtor have the right to issue an opinion about this). If the creditors are not satisfied with the approved remuneration they may present a dissenting opinion to the court (before the court's decision is taken) or file a writ (against the court's resolution).

Regulation

Regulations of IPs are by IFECOM. It is an office pertaining to the Federal Judicial Branch, empowered with technical and operating autonomy, accountable for the registration, appointment and supervision of the IPs. Even though IFECOM pertains to the federal judiciary, it is independent from the court.

IFECOM and its IPs have provided very valuable services to the proper development of the insolvency procedures, because they have ensured that all the actions reserved for the institute's or the IP's performance are accomplished in strict accordance to the law.