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CORPORATE
INSOLVENCY
REGIME



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El estudio de insolvencia

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As in most the legal systems throughout the world, Colombia has two mechanisms that allow reaching these objectives:

- **Reorganization:** It aims, through an agreed arrangement, to protect viable companies, normalizing their commercial and credit relationships through the operational and administrative restructuring of their assets and liabilities.
- **Legal liquidation:** It seeks a prompt and orderly liquidation, aiming to make an optimal use of the debtor's assets.

Upon Law 1116 becoming effective from 2007 and as of late 2018, 4,027 insolvency processes were reported in Colombia, of which 2,402 were organization processes and only 1,625 liquidation processes.

How long does a corporate insolvency process take?

In theory, a reorganization process should not take more than six months, eight months for a liquidation process, provided there are no circumstances that force extending this period, including aspects involving resources, incidents, annulments, and others. However, in practice this process takes close to two years.

The judge will establish the applicable fees and expenses, based on the following criteria.

Law 1116 was created based on the guidelines issued by the United Nations Commission of International Trade Law.

What is corporate insolvency?

This is a process whose purpose is to protect legal companies — both national companies and branch offices of foreign companies — performing activities in Colombia, should they have economic problems and face difficulties to meet their obligations towards their creditors.

This regime provides guarantees for the effective payment

of the creditor debts, focusing on the protection of companies towards normalizing their commercial and credit relationships.

What should I know about the corporate insolvency regime?

It was established in Colombia by Law 1116 of 2006, as part of an initiative to protect loans and protect the companies in their condition as an economic unity and job creators.

How are fees established?

Promoter

Category of the entity being reorganized	Per assets range*	Limit
A	Over USD \$12,420,000.00	Not to exceed USD \$121,440.00
B	Over USD \$2,760,000.00 and up to USD \$12,420,000.00	Not to exceed USD \$66,240.00
C	Up to USD \$2,760,000.00	Not to exceed USD \$33,120.00

Liquidator

Category of the entity being reorganized	Per assets range*	Limit
A	Over USD \$12,420,000.00	Not to exceed USD \$248,400.00
B	Over USD \$2,760,000.00 and up to USD \$12,420,000.00	Not to exceed USD \$248,400.00
C	Up to USD \$2,760,000.00	Not to exceed USD \$124,200.00

* In the original source the numbers are presented in Colombian mandatory minimum salary per month (SMLV by its acronym in Spanish). One SMLV is equivalent to approximately USD 276, depending on the official exchange rate.



Who is covered by this regime?

- Legal entities and individual traders doing businesses in the national territory.
- Branch offices of foreign companies.
- Independent trusts performing corporate activities.

Who is excluded from this regime?

- Health Promoting Entities Administrators of the Social Security Subsidized Regime in Health, and Providers of Health Services.
- Stock and agricultural exchanges.
- Institutions surveilled by the Financial Superintendence of Colombia. The above does not include companies that only issue stocks subject to control by such Superintendence.
- Entities surveilled by the Solidarity Economy Superintendence performing financial, savings, and loan activities.
- Public capital companies, industrial and commercial state companies, and public companies from any territorial level.

- Public law entities, territorial institutions and decentralized entities.
- Public utility companies.
- Non-commercial natural persons.
- Any other legal entities subject to special regime for business recovery, liquidation, or administrative intervention for their management or liquidation.

Which is the competent authority for insolvency proceedings?

The purpose of these processes is settling the debtor's pending payments. The Superintendence of Companies acts as the judge in processes involving companies, one-person companies, and branch offices of foreign companies. As a preemptive measure, in the case of debtors, also natural commercial persons. In the rest of the cases the competent authority will be the civil court where the debtor is domiciled.

A promoter is the natural person participating in the negotiation, analysis, diagnosis, and preparation of the reorganization agreements and in the issuance or publication

of financial, administrative, accounting, or legal information regarding the entities being reorganized.

A liquidator is the natural person acting as the administrator and legal representative of the company being liquidated.

Which are the credit priorities?

In general, creditors in Colombia may demand the sale of all the debtor's assets until the debt is paid in full, provided they are sufficient. Otherwise, payment shall be made proportionally should there be no special circumstances according to the priority rules that indicate the order and the manner in which each of them should be paid.

What exceptions are there regarding credit priority?

- **Administration expenses:** Obligations arising after the insolvency proceedings start, and are typically related to the usual business expenses.

- **Legally postponed credits:**

Credits paid once all other loans have been paid.

- **Payment of small debts:**

The judge may authorize their early payment regardless their relevance or type of obligation, provided they do not exceed 5% of the debtor's external liabilities altogether.

- **Exceptions in the Secured Transactions Law:**

No additional claim shall be accepted or continued after the starting date of the reorganization proceedings, nor any other debt collection process against the debtor, should they relate to assets required for their economic activity, provided they have been identified in the information attached to the process initiation request as being necessary for their economic activity.

Any other enforcement of a security right related to goods not required for the debtor's economic activity may be continued or started based on the guaranteed creditor's approval.

- **Burdens applicable to insolvency proceedings:**

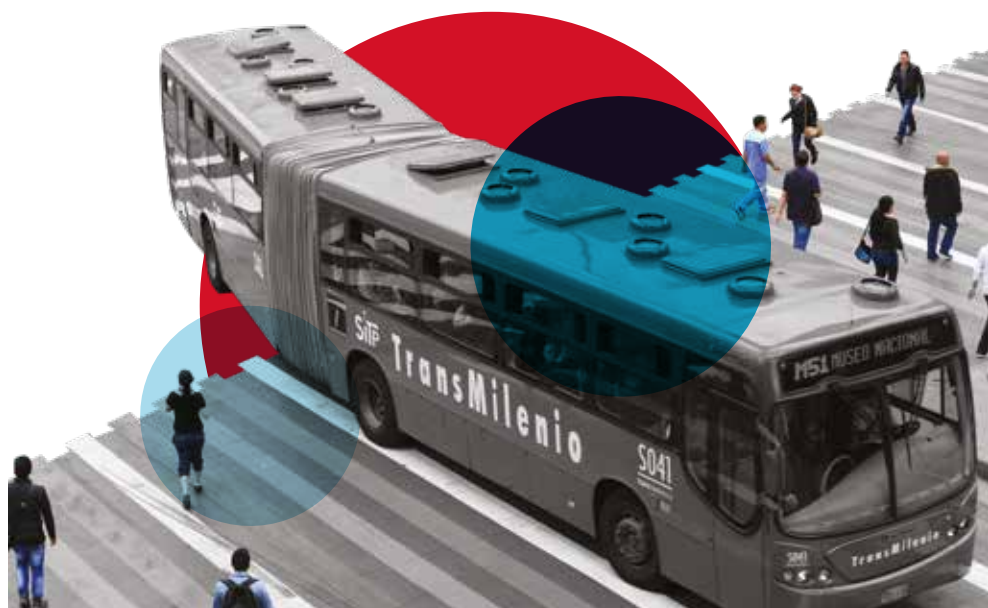
Under the Colombian model, the debtor has the burden of proof and has to demonstrate the debt so that the creditor may be able to challenge it.

In legal liquidations, the creditors have the burden of proof regarding the existence and the value of their obligations before the liquidator, which they should do within the 20 days following the day the notice informing of the opening of the legal liquidation process is issued.

What are the necessary assumptions for the initiation of insolvency proceedings?

The following is required:

- **Payment default:** A 90-days past due trigger applies to defaults involving two or more loans made to two or more creditors, or two claims for performance filed by two or more creditors for payment obligations. The accumulated value of these obligations should at least represent 10% of the debtor's total liabilities



as reflected in the financial statements of the debtor as of the date when the request is filed. This condition applies to both the reorganization process and the legal liquidation process.

- **Imminent default:** Should the debtor demonstrate the existence of circumstances, in the market or inside its organization or structure, affecting or prone to seriously affect the normal compliance with obligations with due date of one year or less. This only applies to legal persons and will not by itself be sufficient to initiate a legal liquidation process.

An insolvency proceeding will be terminated with a reorganization and liquidation agreement, with the effective judicial decision or with the execution of a reorganization agreement.

Who can start insolvency proceedings?

- For payment defaults, the respective debtor or one or several of their defaulted creditors, otherwise officially by the superintendence overseeing the respective debtor or activity.
- In case of an imminent default, this should be requested by the debtor or by a plural number of external creditors not related to the debtor or their partners. This can be done also as a result of the request submitted by the foreign representative of a foreign insolvency proceeding.
- In the case of legal liquidation processes, all of the above can request it, except for the creditors individually since in this case this should be

jointly requested by the debtor and a plural number of creditors holding at least 50% of the external liabilities.

What are the effects of starting a reorganization process?

- In the case of new and ongoing execution processes no claim for performance or collection process against the debtor, may be accepted or continued.
- No restitution processes may be started or continued in relation to real or personal properties used by the debtor to perform their corporate objectives provided the reasons provided is the default on the payment of royalties, rent, or any other consideration corresponding to lease agreements.
- There may be no unilateral contract termination or administrative expiration against the debtor, unless the process declaring termination was started priorly.

What are the effects of starting a legal liquidation process?

- Dissolution of the legal entity.
- Suspension of functions of the corporate body and the legal person's oversight.
- Removal of all administrators.
- Termination of continuing contracts deferred execution contracts, or instant execution agreements, deemed unnecessary protect the assets, as well as the termination of commercial trust agreements or fiduciary mandates involving own assets and required to cover the debtor's - or third party - obligations they may have in their constituent capacities.
- Termination of work contracts with the corresponding indemnification payments to the workers.
- Termination of fiduciary mandates and mercantile trust agreements executed by the debtor to guarantee their own obligations or third party obligations with their own assets.



- Suspension of the prescription time and non applicability of the actions' expiration related to obligations formalized or enforceable against the debtor or their co-debtors and guarantors, among others, prior to the start of the legal liquidation process.
- Enforceability of all the subsequent debtor payment obligations.
- Prohibition to the administrators, associates, and controlling parties regarding availing of assets being part of the debtor's net worth.

How does the exclusion of goods operate?

This is a process that applies to the liquidation initiated by the asset holders which, despite not being property of the debtor, are included in the process. Regarding this, Law 1116 includes a number of assets that, according to the legal norms, cannot be part of the assets being liquidated.



More information
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