Mayer Brown LLP presents

Recent Trends in Brazilian and Mexican Debt Restructuring

March 4, 2009

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Recent Trends in Brazilian and Mexican Debt Restructuring

Agenda
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Time	Topic	Presenters
3:00 p.m.	Introduction	Doug Doetsch – Mayer Brown Peter Darrow – Mayer Brown
3:10 p.m.	Latin American Restructuring – Participants and Characteristics	Gabriel Bresler – FTI Consulting
3:35 p.m.	Debt Restructuring in Brazil – What is different this time?	Ron Herscovici – Souza, Cescon Avedissian, Barrieu e Flesch Jim Patti – Mayer Brown
4:10 p.m.	Mexican Insolvencies and Restructurings – Lessons Learned	Michell Nader – Jauregui, Navarrete & Nader David Duffee – Mayer Brown
4:45 p.m.	Break	
5:00 p.m.	Chapter 15 of the United States Bankruptcy Code: Ancillary and Other Cross-Border Proceedings	Robert Stoll – Mayer Brown
5: 15 p.m.	Latin American Restructuring – Derivative Issues	Jamila Piracci – Mayer Brown
5:30 p.m.	Predictions on Recoveries in the Current Round of Restructurings	Gabriel Bresler – FTI Consulting Ron Herscovici – Souza, Cescon Avedissian, Barrieu e Flesch Michell Nader – Jauregui, Navarrete & Nader
6:00 p.m.	Reception	

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Gabriel Bresler – FTI Consulting, Senior Managing Director

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Gabriel Bresler is a senior managing director in FTI's Corporate Finance practice and is based in Boston. Gabriel specializes in providing strategic and financial planning, process improvement, merger integration planning and effectuation, cost allocation studies, troubled company evaluation and restructurings, interim management services, mergers and acquisitions, business valuations, and dispute advisory assistance. With more than 20 years experience, Mr. Bresler has provided advice to a wide-range of clients in the telecommunications and media, energy, distribution, and manufacturing industries.

Gabriel's company advisory work has included leading the development and implementation of operational plans, process improvement, financial management planning, product road-mapping and customer segmentation. He has served as financial advisor to various parties in transactions, including due diligence on behalf of financing sources, identification of acquisition targets, analysis of financial and operational synergies in potential mergers, and preparation and negotiation of bids and acquisition agreements for both distressed and healthy investments.

Gabriel has led and managed a broad array of cases for clients in formal bankruptcy proceedings and out-of-court restructurings (both creditors and debtors), leading the efforts of company and creditor groups in the development of value-maximization strategies. Related services have included development and review of business plans, management of operations and network closures, valuations, competitive benchmarking, distressed asset and business marketing and sales, renegotiation of credit facilities, and development and implementation of cash management programs.

Peter V. Darrow – Mayer Brown, New York Partner

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Peter Darrow is a partner in the New York Office of Mayer Brown LLP. Peter is co-head of the firm's Latin American and Caribbean practice, and specializes in representing issuers and underwriters in securities offerings by companies in the region in the international capital markets, and in advising companies and financial institutions in the region in connection with liability management transactions and debt restructuring. Peter has represented borrowers, lenders creditor committees and financial advisors in numerous debt restructurings in Latin America and the Caribbean.

Peter graduated from Columbia College in 1972, and received a B. Phil from Trinity College, Oxford, in 1974. He graduated from Michigan Law School in 1978, where he was a member of the Law Review.

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Douglas A. Doetsch – Mayer Brown, Chicago Partner

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Douglas Doetsch serves as co-head of the firm's Latin American and Caribbean practice and leads the Chicago office's banking and finance practice. He advises clients on acquisition and other leveraged lending transactions, structured credit transactions, and project financings, particularly in Latin America and other emerging markets. He is also a leader in cross-border securitization transactions, especially future cash flow securitizations.

In his cross-border work, Doug regularly advises on emerging market debt restructuring and debt exchange offers. In addition, his transactional work involves asset and stock acquisitions, real estate investments, and cross-border joint ventures. Doug also advises emerging market companies on Euro-securities offerings and US equity offerings.

Doug has earned wide recognition for his work in emerging markets since joining the firm in 1988. According to *Chambers Latin America* 2009, he has an "unparalleled ability to quickly close complex transactions and make it seem like a walk in the park." *Chambers USA* 2007 calls him "'a simply great attorney' who wins praise for his emerging markets expertise. There can be few lawyers who have the depth of experience that he can boast in South and Central America."

In 1986, Doug received his JD from Columbia University Law School. Doug also graduated from Kalamazoo College where he received his BA, *magna cum laude*, in 1979.

David K. Duffee – Mayer Brown, New York Partner

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David Duffee advises financial institutions on US and cross-border financings, with a particular focus on secured transactions and acquisitions. His finance work also includes international project finance and sovereign and private-sector debt restructuring, including debtor-in-possession financings and work-outs.

Major clients in David's practice are investment banks, commercial banks, hedge funds, finance companies, insurance companies and governmental entities. David also provides transactional counsel to corporate borrowers and to financial advisors.

David attended Columbia University School of Law and received his JD in 1984. He also attended St. Olaf College for his BA, *magna cum laude*, in 1981.

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Ronald Herscovici – Souza, Cescon Avedissian, Barrieu e Flesch, Partner São Paulo
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Ronald Herscovici is involved in the following practice areas: Capital Markets and Securitization, Project Finance and Banking and Structured Finance.

Mr. Herscovici received his LLB at the University of São Paulo Law School (USP) in 1994 and his LLM at the Cornell University Law School in 1996.

Michell Nader – Jauregui, Navarrete & Nader, Partner
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Mr. Nader's practice focuses on Banking, Finance, Debt and Equity Restructurings, Insolvency and Mergers & Acquisitions. Mr. Nader has worked in a number of the largest restructurings and insolvencies in Mexico generally representing creditors and occasionally has represented debtors in complex cases. He has also participated in Mexican insolvencies with US insolvency and bankruptcy ramifications. He is currently working in four Mexican cases involving derivatives and in other workouts representing bondholders and lenders.

Mr. Nader is the author or co-author of various articles and chapters of specialized books and magazines, including the Mexican Banking Impasse Resolved at Last, published by Euromoney Publications PLC; Ins and Outs of Mergers and Acquisitions in Mexico; The Future of Mexican Financial Services Including Money Laundering Regulations, published by The U.S. - Mexico Law Institute; Debt Restructuring in Mexico, published by Mayer Brown.

In 1979, Mr. Nader received his law degree from the Universidad Iberoamericana in Mexico, *summa cum laude*, and in 1980, he obtained a Master of Comparative Law from Georgetown University.

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James P. Patti – Mayer Brown, Chicago Partner

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James Patti represents clients involved with complex, cutting-edge financing transactions in emerging markets that range from Brazil and Peru to Russia, Turkey, Kazakhstan and Nigeria. His work emphasizes structured finance, including cross-border securitizations and structured loans, with a strong focus on future cash flow and export-related securitization transactions. He also assists global clients with project/infrastructure finance and general lending (secured and unsecured) transactions, as well as with unregistered securities offerings, debt restructurings and acquisitions financings.

Approximately half of the emerging market transactions that Jim handles focus on Latin America. He is proficient in Spanish, and *Chambers Global* 2006 notes that he "handles a large proportion of Latin American work." According to *Chambers USA* 2008, "clients emphasized his 'international work, and particularly his emerging markets experience' as 'highly beneficial assets in any deal.'" Most recently in *Chambers Latin America* 2009, he "earns plaudits for 'highly detailed approach and technical expertise.'" In addition to his presence in the US, Jim spends time working from the firm's London office. His practice there facilitates his ability to assist emerging market clients in Central and Eastern Europe, Turkey and Africa.

James received his JD from the University of Chicago in 1994. James also graduated from Georgetown University, where he received his BS, *magna cum laude*, in 1989.

Jamila A. Piracci – Mayer Brown, Chicago Associate

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Jamila Piracci practices in the derivatives area. She has represented banks, investment funds and corporations in a variety of derivatives transactions, with coverage that includes credit, equity, commodity, currency and interest rate products.

In the area of structured finance, Jamila has handled credit derivatives documentation for synthetic CDOs and CLOs and interest rate swap documentation for securitizations. She also provides clients with technical analysis and guidance with respect to documentation, regulatory and market developments for a range of derivatives products and has significant experience developing derivatives templates.

Jamila attended Cornell University Law School, where she received her JD in 2000. Jamila also received her MBA from Cornell University, Johnson School of Management in 1999. In 1995, Jamila received her AB from Harvard University, *cum laude*.

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J. Robert Stoll – Mayer Brown, New York/Chicago Partner
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Robert Stoll focuses his respected law practice on three primary areas, including creditor's rights, workouts and bankruptcies. He represents large institutional creditors in Chapter 7 and Chapter 11 cases and supervises and directs loan work-outs and bankruptcies.

Notable among cases that Robert has recently handled, individually or as agent for lending bank groups, are complex Chapter 11 bankruptcy cases involving lending institutions such as Bank of Montreal, Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, and Bank One, NA. In addition, he acted as lead counsel for lender groups in the recent workout and/or Chapter 11 cases of Tokheim (ABN AMRO), Loewen Group International, Inc., Adelphia Communications Corp., Teleglobe Communications, Inc. (Bank of Montreal); TSR Wireless LLC (Bank One); KCS Energy, Enron Corporation (Canadian Imperial Bank of Commerce); and Benedek Broadcasting, Globenet and 360 Americas, International Wireless, Kenetech, Metrocall and AHERF (Toronto-Dominion Bank).

Bob earned his JD from Columbia University Law School in 1975 and received his BA, *magna cum laude*, in 1972 from Haverford College.

TAB 3

Previous Cycle of Latin American Restructurings
Participants, Characteristics of Restructurings & Recoveries

Participants

- Initially dominated by Financial Institutions but over time opportunity players (e.g., hedge funds) tended to drive the deals to closing
- Bondholders had a role in certain situations but not to the same extent as the current round of restructurings

Restructuring Forum

- Little use of court processes in Brazil and Mexico; use of APEs in Argentina

Deal Length

- 12+ months

Typical Deal Structure

- 7 year deal, 2 years principal grace amortizing loan
- Minor equity participation - Original controlling shareholder group maintained voting and economic control. Sometimes sale of the assets to third parties (e.g., Media and Telecom)

Recoveries

- While a par recovery would be an overstatement, there are many instances of a full recovery – commodity based companies, Globopar etc.

Current Latin American Restructuring Landscape
Participants, Characteristics of Restructurings & Recoveries

Participants

- Massive devaluation has resulted in numerous “toxic” derivatives resulting in otherwise solvent companies with an inability to fund the margin calls (Aracruz, Comercial Mexicana, Sadia, Gruma, Vitro, etc.). This has resulted in derivative counterparties being at the table in the current round of restructurings
- However, as today’s economic realities are reflected in the results of Latin American companies, the big players are going to be bondholders given the rash of significant bond placements in 2006 / 2007 / early 2008
- The opportunity players are sitting on the sidelines as they are protecting their own liquidity and many believe that the economy will only get worse (why buy now when you buy it cheaper in 6 months or when the uncertainty in the market place is reduced?)
- How financial institutions play in this round of restructurings is uncertain. Do you sell out or take cash and get rid of a problem (when the market is already penalizing your market cap) or do you restructure with the hope of creating long term value?

Restructuring Forum

- Given the size of the bondholder positions, we expect that the court processes in Brazil and Mexico will be heavily used in this round of restructurings, if for nothing else to implement restructurings on bondholders.

Current Latin American Restructuring Landscape
Participants, Characteristics of Restructurings & Recoveries

"Wild Cards"

Shareholders Risk Appetite

- Latin American shareholders have historically taken the position "what goes down will always eventually go back up"
    - **This resulted in restructurings that bought time and, in many instances, were viewed as "setting up the creditors for round 2"**
- However, in today's environment for many industries, it is very difficult to predict how long the current downturn will last – this results in unprecedented uncertainty
    - **Will the economy "correct" itself in 2 years or 5 years?**
- Shareholders are then going to have the difficult task of concluding on a sustainable debt that they are willing to "bet the company on"

Government Bailouts

- Latin American Governments have been quick to provide short-term financing to shore up liquidity. However, what happens when the bailout itself needs to be restructured in order for a reasonable "answer" to occur – is there a new influential player at the table?
    - **Shorter term, highly collateralized debt may complicate the restructuring**

TAB 4

Souza, Cescon Avedissian, Barrieu e Flesch
Advogados

Debt Restructuring in Brazil

What is different this time?

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	Last Round (2001-2003)	Current Round
Debtors' Capital Structure	Concentrated control	Publicly-traded companies and higher corporate governance standards
Stakeholders	Fewer shareholders, banks and strategic suppliers	More shareholders, suppliers and other investors; employees.
Legal Framework	Rigid and inefficient judicial recovery laws	Laws favor creditors' participation and focus on debtor's economic and financial feasibility
Restructuring Process	Diminished role of the creditors in the process	Diminished role of the judge in the process

Background: 2001-2003

- **USD debt + BRL devaluation**
- **Individual claim negotiations**
  - **Few concentrated creditors**
  - **AES, GVT*, BCP, VESPER, Eletropaulo, Embratel etc**
- **Judicial restructuring process (*Concordata*)**
  - **Granted by court whenever all statutory requirements are met**
  - **Creditors did not vote to approve the plan**
  - **No analysis of the debtor's financial and economic feasibility**
  - **Plan: 2 years; at least 1/3 of unsecured claims paid in the 1st year**
  - **Not applied to labor, tax and secured claims**
  - **Many debtors under *Concordata* became bankrupt (liquidation)**

What is different now?

- Excessive indebtedness (BRL/USD) + economic downturn + liquidity shortage

- Larger and more complex creditor base

- Individual claim negotiations (expected to be limited to derivatives)
  - Unpredictability + Undue burden / Misleading dealings / Suitability
  - Aracruz, Sadia, Votorantim, etc

- New Bankruptcy Law (*Recuperação Judicial*)
  - Focus on debtor's economic and financial feasibility
  - Tailor-made reorganization plan subject to creditors' approval
  - Debtor-in-possession process; 180-day stay period

New Restructuring and Bankruptcy Law

- Classes of claims

- Labor claims (votes on a headcount basis only)
- Secured claims (votes on a $ basis)
- Unsecured claims (votes on a $ basis)

- Claims in foreign currency

- Converted into BRL only to determine the $ basis quorum (rate of the day before vote); continue indexed to foreign currency for all other purposes

- Not allowed to vote in the general meeting

- Debtor's shareholders, managers and their relatives
- Debtor's controlling, controlled and affiliate companies
- Creditors with claims not subject to the restructuring plan

New Restructuring and Bankruptcy Law

- Plan is approved when (1) accepted by each class by majority of claims present on a $ and headcount basis; or (2) only one class rejects a plan accepted by:
  - ✓Majority of total claims ($ basis) present
  - ✓More than 1/3 of votes (headcount or $ basis) of the rejecting class approves the plan

- Claims not subject to restructuring
- Export financing by means of advance on f/x contracts (ACC)
- Claims secured by fiduciary assignment or transfer; leasing
  - ✓ "Essential" assets cannot be repossessed for 180 days

- Debtors to which restructuring does not apply
- Government-owned and mixed-capital companies
- Financial institutions and other similar entities, insurance companies, health plan providers, pension funds

How creditors can be protected?

- **Avoiding Individual Renegotiation Risks**

- Certain transactions may be disregarded when entered into during the "suspicious" period
- Disregard of prepayments or creation of collateral to secure existing debt
- Disregard of debt liquidation in a different way than originally agreed
- Sale of debtor's assets may carry on liabilities or be disregarded
- Obtaining fiduciary assignment or transfer whenever possible

- **Judicial Reorganization Legal Safety Net**

- No liability carried in asset acquisitions, including tax
- No labor liability in asset acquisitions (Parmalat leading case: Ramos vs. Etti, lower court decision)
- Transactions under recovery plan not cancelled in case of liquidation
- No need of unanimous approval for selling going concern (outside of bankruptcy may be disregarded if made without consent of creditors)

Finding opportunities

- DIP Financing
  - DIP Financing is paid before almost all other claims
- Acquisitions under bankruptcy
  - No successor liability
- Advisory
  - Debtor
  - Creditors
- Distressed debt secondary market

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TAB 5

Jáuregui, Navarrete y Nader, S.C.

Mexican Insolvencies and Restructurings – Lessons Learned

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1. Insolvency proceeding
   - Concurso (length)
   - Bankruptcy
2. Concurso petitions
   - Voluntary
   - Involuntary
   - Prepack (recent amendment to the law/distinction with cases like old Durango & Iusacell
3. Inspection visit (precedents)

4. Declaration of concurso
   - Insolvency determination (voluntary/involuntary)
     - Case of Comercial Mexicana
     - Effects
       - Suspension of payments (other than for ordinary course of business)
       - Currency conversion
       - Stay of foreclosure / attachment proceedings
       - Segregation of assets

5. Conciliator

6. Claim recognition process

- Trade claims
- Financial claims
  - Loans
  - Bonds
  - Derivatives
- Debtor challenges
  - Mexican law
  - Collection cases
  - Insolvency cases

7. Cross-border strategies

8. Emergence from Concurso

- Restructuring Agreement
  - Requirements
  - Voting & vetoes (Mexican law vs. Trust indentures)
  - Corporate governance
  - Haircuts/tax matters
  - Securities issues
- Bankruptcy

JNN
JAUREGUI
NAVARRETE
Y NADER

January, 2009

RESTRUCTURING, BANKRUPTCY AND WORKOUTS PRACTICE

Our Banking and Finance Practice Group includes 9 partners and 23 associates, who regularly advise some of the leading financial institutions in the world, including commercial banks, investment banks, finance companies, insurance companies, leasing companies, asset-based lenders, pension fund vehicles and other institutional investors, in connection with their Mexican business. The group also includes 8 pre-graduate associates specializing in base research and regulatory filings in the field.

Not a single firm in Mexico has as much or comparable accumulated knowledge and expertise in the field of restructuring, bankruptcy and workouts. The Group's attorneys have represented secured and unsecured lenders in over US$20 billion of restructurings and workouts (not counting our representation of the United States Treasury Department in the 1995 US$20 billion emergency finance package to Mexico). Also, the Firm has quite successfully represented some of its long-standing institutional clients as borrowers in workouts and in both consensual and contested reorganizations. The restructuring, bankruptcy and workouts practice of the Firm developed in the late seventies, significantly expanded in the early eighties as a consequence of the Mexican financial crisis and has since then remained a constant. We have been involved in every aspect of restructurings and workouts including strategic positioning and strategic alliances, structuring, coordination, documentation, asset divestitures, leveraged buyouts, debt repurchases, debt swaps, debt-to-equity swaps and refinancings through means ranging from take-out lenders, private equity, public offerings of commercial paper, notes and bonds and financial and leveraged leases. Sample representative work includes:

The Firm generally represents banks including bank syndicates, bondholders and creditors' committees and only occasionally represents debtors. In addition to our Mexican workout and insolvency expertise, over the years we have acquired an expertise in cross border insolvency issues primarily working with US counsels which allows us to work in conjunction with them in the Mexican aspects of matters relating to section 302 and Chapter 15 of the US Bankruptcy Code and

Section 3(a)(10) of the 1933 US Securities Act. We have participated in most of the few Mexican pre-pack insolvencies and have worked intensively with US counsels in doing exchange offers of registered securities in the United States under the 310 exemption of the US Bankruptcy Code.

In the last 10 years, we have worked in a large number of insolvencies and restructurings which include representation of the following parties:

- We are currently representing Barclays Bank PLC as creditor of Controladora Comercial Mexicana, S.A.B. de C.V. under the terminated derivative transactions.

- We are currently representing BNP Paribas as creditor in the restructuring of Gruma, S.A.B. de C.V.

- We are currently representing a foreign lender in the restructuring/collection of two loan facilities for a total of US$330 million with a Mexican retailer.

- We are currently representing a SOFOM in the collection of US$ 200 million loans to a Mexican consumer finance lender.

- Represented the original Steering Committee of institutional creditors of Altos Hornos de México, the largest Mexican steel manufacturer, in connection with the insolvency of AHMSA and currently representing the largest group of creditors in the insolvency and potential workout of AHMSA's US$1.8 billion of outstanding indebtedness.

- Represented The Export-Import Bank, Black River and Toronto Dominion Bank in the Sicartsa and Sicartsa affiliates refinancing of their debt and paid-out all of their existing creditors (including Ex-Im Bank and Whitewater EMCF LLC (a Black River subsidiary)) as part of the acquisition of Sicartsa by Arcelor Mittal for an enterprise value of $1.43 billion.

- Represented the unsecured bank creditors of Grupo Minero México, S.A. de C.V. in the debt restructuring in excess of US$1.4 billion.

- Represented Bank of America in the pre-packed insolvency restructuring of the US$500 million of Grupo Durango, S.A.B. de C.V.

- Represented Grupo Iusacell Celular, S.A. de C.V., in the restructure of its U.S. $415 million indebtedness.

- Represented Grupo Iusacell, S.A.B. de C.V., in the restructure of its U.S. $350 million indebtedness.

- Represented GECC in the insolvency proceedings of Covarra with total debt in excess of US$100 million.

- Represented Bank of America in the workout of Fertinal with total debt in excess of US$100 million.

- Represented ABN-AMRO as Administrative Agent in the restructuring of the Avantel, S.A. secured debt.

- Represented Lehman Brothers in the workout of Bufete Industrial's US$100 million of outstanding Eurobond debt.

- Represented The Royal Bank of Scotland in the restructuring of a credit facility in favor of Grupo Collado, S.A. de C.V. involving a master revolving credit agreement for the discount of cross-border bills of exchange.

Other notable engagements include the following:

- Representation of the United States Treasury Department in the 1995 US$20 billion emergency refinancing package to the United Mexican States.

- Representation of Kidder Peabody and General Electric Capital Corporation as arranger and lender in the combined Situr/Allegro workout, involving the leveraged purchase by Allegro of approximately US$100 million 7th MAC Bonds issued by Situr subsidiaries, and the redemption thereof in exchange for the cancellation of Allegro indebtedness for the purchase of three hotel properties in Mexico.

- Advise Grupo Xacur on its pre-litigation negotiations with creditors and the initial stages of its suspension of payments in excess of US$350 million.

- Representation of Pliana Holdings in the restructuring of US$86 million of senior and subordinated debt and in the litigation preceding the restructuring.

- Representation of Grupo Corelmex and Alcomex in their 6-year suspensions of payments litigation in excess of US$50 million and their settlement with creditor banks and suppliers.

- We acted as counsel for bank syndicates in certain private sector restructurings involving principally Continental Bank, Mellon Bank and Chemical Bank, which arose as a consequence of the 1982 Peso devaluation and stand out as some of the largest and most visible in Mexican history. These include the restructurings of Mextrac/Tracsa (US$375 million), Desc (US$300 million), Eaton de México (US$230 million), Mezquital del Oro (US$200 million), Grupo Industrial Saltillo/Islo-Cifunsa (second restructuring) (US$109 million), Fabrimar/Empresas Lanzagorta (US$72 million), Materiales Industrializados (Y78 million), Alfa-Frahopa – US$52 million, Distribuidora de Equipos de Construcción (US$47 million), Resistol (second restructuring) (US$45 million), Alfa-Dinamica (US$40 million), and such others as Armco Mexicana, Astra Chemicals, Gamesa, Kennamex, Metalsa, Pigmentos y Oxidos, Rodacarga, Sunbeam Mexicana and Tequila Cuervo.

- Also during the eighties, we represented individual lenders in major workouts such as those of Alfa, Cerveceria Moctezuma, Visa and Vitro.

- Advise to a large number of foreign lenders during the different restructuring stages of the Mexican public sector debt.

Should you have any questions in connection with the Banking and Finance Practice Group of Jáuregui, Navarrete y Nader, please contact Michell Nader S. at (52)(55) 5267-4507 (mnader@jnn.com.mx) in Mexico City.

Mexican Insolvency Process

By Michell Nader S. and Javier Arreola E.

This paper provides a general overview of the Mexican Business Insolvency Law (*Ley de Concursos Mercantiles*) ("Insolvency Law") and addresses certain relevant matters of and recent amendments to the process.

On May 12, 2000, the Insolvency Law replaced the previous Law of Bankruptcies and Suspension of Payments (*Ley de Quiebras y de Suspensión de Pagos)*[1]. Under the Insolvency Law, there exists a single insolvency proceeding, called "Concurso Mercantil"; which proceeding is controlled by Federal District Courts (*Juzgados de Distrito)*("Insolvency Courts") with jurisdiction in the domicile of the debtor.

The stated main purpose of the Insolvency Law is to protect the public interest by regulating insolvency proceedings to facilitate the preservation of companies that are insolvent or at risk of insolvency but viable, and their creditors.

[1] Cases pending under the Law of Bankruptcies and Suspension of Payments will be decided pursuant to that law.

I. Stages

Concurso Mercantil consists of two stages, each of them supervised by a member of the Federal Institute of Specialists in Business Insolvency (*Instituto Federal de Especialistas de Concursos Mercantiles)* ("IFECOM")[2]. The first stage of *Concurso Mercantil* is the "Conciliation" stage. The purpose of the Conciliation stage is to encourage a binding reorganization agreement among the debtor and its creditors (the "Restructuring Agreement") and thus to avoid the debtor's bankruptcy. The Conciliation stage should not exceed 185 calendar days unless extended for up to two additional consecutive periods of 90 calendar days each; provided that **(i)** the first extension be approved by the conciliator and creditors representing at least two-thirds of the total recognized claim amount; **(ii)** the second extension be approved by the debtor and creditors representing at least 90% of the total recognized claim amount; and **(iii)** in no event can the Conciliation stage last for more than 365 calendar days.

This stage may be initiated when the relevant petition is filed before the Insolvency Court by: **(i)** the debtor; or **(ii)** any creditor or the District Attorney (*Ministerio Público*). If it meets the initial filing requirements or any deficiency is promptly cured, the Insolvency Court "admits" the petition and sets a hearing, usually not later than 10 days as from the filing date, to determine whether the request for insolvency protection should be granted or not.

Upon admitting the petition, the Insolvency Court must send a copy to the IFECOM, for the IFECOM to appoint an examiner (*visitador)*. The examiner will access and review the debtor's accounting books, records and financial statements, as well as any other document or electronic data containing financial and accounting information of the company. The examiner may also conduct interviews with the debtor's executive and managing officers and administrative staff, including debtor's external financial, accounting or legal advisors.

The examiner will determine whether the debtor has generally defaulted in paying its obligation by failing to pay two or more of its creditors and if the following standards are met: **(i)** if the petition was filed by the debtor: **(A)** that payment obligations overdue for at least 30 days account for more than 35% of debtor's payment obligations, or **(B)** debtor has insufficient liquid assets[3] to meet at least 80% of its overdue payment

[2] The IFECOM is supervised by the Federal Judicial Council under a multi-disciplinary board of directors that includes the IFECOM's director and four other members also appointed by the Federal Judicial Council.

[3] The following are the assets that must be taken into consideration: **(i)** Cash on hand and demand deposits; **(ii)** Term deposits and investments maturing in no more than ninety calendar days following the date on which the demand for business reorganization declaration is admitted; **(iii)** Customers and accounts receivable maturing in no more than ninety

obligations; and **(ii)** if the petition was filed by a creditor or any other entity different from the debtor: standards (i)(A) and (i)(B) above must be met.

The examiner must report to the Insolvency Court whether the debtor is deemed insolvent based on the standards referred in the proceeding paragraph. If the Insolvency Court, based on the examiner's report, resolves that the debtor is insolvent, it will issue an insolvency declaration ("Insolvency Declaration") (*Sentencia de Concurso*), which Declaration is subject to appeal.

A copy of the Insolvency Declaration must be sent by the Insolvency Court to the IFECOM, for the IFECOM to appoint a conciliator (*conciliador*), at which point the conciliation phase will begin. The Insolvency Declaration must establish that the company is in general default of its payment obligations, and must include a provisional list of creditors identified in its accounting records, indicating the amount owed to each of them. The Insolvency Declaration will also order the conciliator to register the Insolvency Declaration with the applicable Public Registry of Commerce (*Registro Público de Comercio*), and publish an abstract of its contents in the Federal Official Gazette (*Diario Oficial de la Federación*) and in a newspaper, and begin the process of recognizing creditors. Only those creditors that are deemed to be recognized creditors (and which may be different from and in addition to those identified in the provisional list) by virtue of the Mexican Court's decision acknowledging, ratings and prioritizing the creditors' claims will be able to participate in the *Concurso Mercantil* proceeding.

During the conciliation stage: (i) no payments by the debtor are allow except for those strictly necessary to continue operation of the company; and (ii) the debtor's assets may not be attached or sold, unless otherwise authorized by the Insolvency Court.

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calendar days following the admission date of the demand for declaration of business reorganization; and **(iv)** Any securities for which purchase and sale transactions are regularly carried out in the relevant markets, that can be realized within a maximum thirty-banking-day term, and whose value as of the demand filing date is known.

For the Restructuring Agreement to be valid, it must be approved by the debtor and more than 50% of **(i)** the recognized claims of all unsecured recognized creditors, and **(ii)** the recognized secured or preferential creditors. However, a simple majority of recognized creditors (regardless of the amount of their claims) can veto any Restructuring Agreement. In order for the Insolvency Courts to approve any Restructuring Agreement it will also have to determine if such agreement **(a)** treats all creditors within the same class equally; **(b)** does not contravene public policy; and **(c)** meets all requirements under the Insolvency Law. If a Restructuring Agreement is reached and approved by the Insolvency Court, the *Concurso Mercantil* proceeding ends.

The second stage of *Concurso Mercantil* is the "liquidation" stage, which takes effect if at the end of the Conciliation stage a Restructuring Agreement is not approved by the debtor and its creditors. The ultimate goal of this stage is to sell the assets of the debtor to pay the creditors. The liquidation stage commences with the bankruptcy declaration of the debtor by the Insolvency Court. During this stage, for a Restructuring Agreement to be valid and binding it must be approved by the debtor, all of the recognized creditors, and the Insolvency Court.

The bankruptcy declaration judgment may only be rendered upon: **(i)** request by a debtor subject to *Concurso Mercantil*; **(ii)** expiration of the term of the conciliation stage (original 185 days) and up to two 90-day extensions thereof without a restructuring plan approved at the Insolvency Court, or **(iii)** request by the conciliator (*conciliador*) requesting such declaration even before the term referred to in (ii) above has expired.

The Insolvency Law provides for: **(i)** a one-year term to approve a restructuring plan; **(ii)** certain measures to protect the assets of the debtor; and **(iii)** certain creditor's rights to control and oversee the process, such as **(y)** the appointment of an intervener (*interventor*) by recognized creditors comprising 10 % or more of all recognized claims, who will represents creditors' interests in the process, oversee the receivers performance and supervise any acts carried out by the debtor; and **(z)** together with the debtor, the removal and appointment of the receiver (*síndico*)[4].

[4] During the bankruptcy phase, the administration of assets is turned over to a receiver (*síndico*), who may adopt measures seeking to safeguard the debtor assets for the benefit of creditors and ensure that debtor take no actions outside the ordinary course of business. The receiver may also elect to continue or discontinue debtors business pending final liquidation, upon which he or she is empowered to sell debtors business as a single enterprise or as a separate business in the least amount of time possible.

II. Credit Rankings

Pursuant to the Insolvency Law, priority of claims may be classified in the following manner:

a) debts for wages and other monetary benefits in favor of employees of the debtor accruing during the 2 years prior to the declaration of Business Reorganization;

b) expenses incurred in the management, preservation, custody and sale of the estate;

c) expenses of the Insolvency Court or out-of-court proceedings relating to the estate;

d) fees of the examiner, conciliator and receiver, and expenses in which they have incurred during the proceeding;

e) burial expenses of the debtor if he/she died before the declaration of Business Reorganization and expenses incurred during the sickness, which caused the death of the debtor, if applicable;

f) secured claims;

g) labor claims excluding those described in (a) above and debts in favor of tax authorities;[5]

h) debts in favor of creditors who have the right to withhold debtor's assets or other special privileges under Mexican law; **i)** unsecured claims; and **j)** residual (common and preferred stock).

[5] It should be noted that labor courts, based on the Federal Labor Law, may resolve that even under a *Concurso Mercantil* scenario all labor claims should have the priority set forth in the Federal Labor Law (i.e. a first priority). On the other hand, however, pursuant to the transitory articles of the Insolvency Law, the priority contemplated by the Insolvency Court should prevail. Unfortunately there are not enough court precedents to date, in order to ascertain if the provisions of the Federal Labor Law could prevail in this regard.

III. Secured Creditors vs. Unsecured Creditors

Under the Insolvency Law, secured creditors have certain protections and preferential rights not afforded to unsecured creditors, among others:

(a) Secured creditors rank with a better priority than unsecured creditors for payment of their claims (see point (II) above);

(b) Secured claims shall be kept in the currency they are denominated in and shall continue to accrue interest up to the value of the assets they are secured with. Unsecured claims, on the other hand, stop accruing interest as of the date of the Insolvency Declaration and the outstanding amount of those claims denominated in Mexican pesos shall be converted to UDIS[6] (unsecured claims denominated in a foreign currency shall be converted first to Mexican pesos and then to UDIS);

(c) Any Restructuring Agreement must be approved, among other, by the secured creditors; and

(d) Conceivably, secured creditors may initiate or continue a foreclosure proceeding on their collateral after the declaration of *Concurso Mercantil* of the debtor, and have the right to be repaid out of the proceeds thereof, without considering unsecured creditors.

IV. Substantive Consolidation

Substantive consolidation does not apply under a *Concurso Mercantil* proceeding in Mexico. Pursuant to the Insolvency Law, the business reorganization proceedings of two or more subsidiaries or of a subsidiary and its parent company shall be handled by the same judge but processed under a separate docket (i.e. such proceedings would not be consolidated). Lenders to a subsidiary would only be able to access assets of another subsidiary or of its parent company if the payment obligations of the insolvent subsidiary are guaranteed by any such other affiliate.

V. Recent Amendments (*Pre-Package*)

On December 27, 2007, the Insolvency Law was amended, among others to: (i) provide for a simplified proceeding that allows the court to issue an insolvency declaration based on the approval of a Restructuring Agreement by creditors holding 40% of the outstanding indebtedness of the insolvent company and thus eliminating the

[6] UDIS is a notional Peso unit indexed by Mexican inflation.

requirement for an examiners' assessment of the books and accounting records of the company before the judge can declare the company in *Concurso Mercantil;*(ii) allows a Restructuring Agreement to be approved during the liquidation stage (as described in Section I of this memorandum).

Should you have any questions in connection with the foregoing please do not hesitate to let us know.

TAB 6

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Chapter 15 of the United States Bankruptcy Code: Ancillary and Other Cross-Border Proceedings

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Overview

- Purpose
  - Adoption of the Model Law on Cross-Border Insolvency
  - Replaces Previous Bankruptcy Code Section 304
- Objectives
  - Cooperation between courts of the US and foreign countries
  - Greater legal certainty for trade and investment
  - Fair and efficient administration of cross-border insolvencies that protect the interests of all stakeholders
  - Protection and maximization of the value of the foreign debtor's assets
  - Facilitation of the rescue of financially troubled businesses
- Limitations of Chapter 15
  - Does Not Address Substantive Law – Ancillary In Nature
  - No Avoiding Powers
  - Cannot grant relief that is "manifestly contrary to the public policy of the United States" or inconsistent with an obligation of the US arising out of an international treaty or agreement with a foreign country

Plenary vs. Ancillary Proceedings

- Plenary Proceedings
  - Plenary proceedings are full domestic bankruptcy proceedings (e.g., Chapter 11, Chapter 7) that provide a debtor with all the rights, protection, and responsibilities provided by the Bankruptcy Code
  - They also provide the bankruptcy court with jurisdiction to reach all of the debtor's assets wherever located, even if outside the US
- Ancillary Proceedings
  - Ancillary proceedings are not full domestic proceedings, but rather are limited proceedings which have the narrow purpose of assisting a foreign proceeding (e.g., Chapter 15). They provide limited relief where a US bankruptcy court can enter appropriate orders that facilitate the insolvency proceeding pending in a foreign court, and aid the foreign court in administrating the debtor's assets
  - An ancillary proceeding does not create a "bankruptcy estate," nor does it result in a reorganization or liquidation
  - An ancillary proceeding provides jurisdiction over property only within the territorial jurisdiction of the US

Plenary vs. Ancillary Proceedings (cont'd.)

- Filing for Plenary Relief After Recognition of a Foreign Proceeding
- Concurrent Proceedings
  - Where multiple proceedings involving the same foreign debtor are pending in the US simultaneously, Chapter 15 instructs bankruptcy judges to reconcile the relief in the pending proceedings

Requirements For Obtaining Relief Under Chapter 15

- "Foreign Proceeding" and Authorized "Foreign Representative"
  - "Main" and "Nonmain" Proceedings
    - Foreign Main Proceeding – a proceeding pending in a country where the debtor has the "center of its main interests"
    - Foreign Nonmain Proceeding – a proceeding pending in a country where the debtor has an "establishment," defined as "any place of operations where the debtor carries out a nontransitory economic activity"
  - *Bear Stearns* - the Bankruptcy Court in the Southern District of New York refused to recognize proceedings pending in the Cayman Islands as either a foreign main or foreign nonmain proceeding, denying those entities Chapter 15 protection in the US. The decision sent a clear message that US Bankruptcy courts will not "rubber-stamp" requests despite the absence of any objections to requested relief. Bad news for offshore hedge funds.

Requirements For Obtaining Relief Under Chapter 15 (cont'd.)

- Who is Eligible for Chapter 15 Recognition?
- Who is Not Eligible for Chapter 15 Recognition?

Recognition of Foreign Proceeding and Available Relief

- Filing of “Petition of Recognition” and Accompanying Documents
- Order Granting Recognition
- Interim Relief

Recognition of Foreign Proceeding and Available Relief (cont'd.)

- Relief Upon Recognition of Foreign Proceeding
  - "Main" vs. "Nonmain" Proceedings
    - Foreign Main Proceedings. Upon recognition of a foreign main proceeding, certain provisions of the Bankruptcy Code automatically come into force, including:
      - Automatic stay enjoining creditor collection efforts on assets located in the U.S. (§362)
      - Right of any entity asserting interest in debtor's U.S. assets to adequate protection of that interest (§ 361)
      - Debtor's ability to use, sell or lease its U.S. property outside ordinary course of business (§ 363)
    - Discretionary Assistance for Main and Nonmain Proceedings: Bankruptcy Court may, but is not required to, grant a broad range of provisional and other relief designed to preserve the foreign debtor's assets or otherwise provide assistance to a pending foreign proceeding. "Additional Assistance" (§1507) and "Appropriate Relief" (§1521).

Guiding Principles of Chapter 15

- Comity
- Treatment of Foreign Creditors
- Cooperation with Foreign Courts and Foreign Representatives

Conclusion

TAB 7

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Latin American Restructuring Issues

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March 2009

Latin American Companies with Substantial Derivatives Obligations

- Controladora Comercial Mexicana, S.A.B. de C.V.
- Vitro, S.A.B. de C.V.
- Grupo Industrial Saltillo, S.A.B. de C.V.
- Aracruz Celulose S.A.
- Corporación Durango, S.A.B. de C.V.
- GRUMA, S.A.B. de C.V.
- Sadia S.A.

Disputes Involving Derivatives Obligations of Latin American Companies

- Claims made by banks
  - Breach of Contract
- Potential counterparty arguments as to sophistication and authority
- ISDA Master Agreement
  - Non-reliance clauses
  - Use of financial and other advisors
  - NY court tendency to follow contractual terms

Calculation of Termination Value

- 1992 ISDA Master Agreement – one of two payment measures
  - Market Quotation: Out-of-the-money party pays the sum of the Settlement Amount and Unpaid Amounts owing to the Non-defaulting Party, less Unpaid Amounts owing to the Defaulting Party
    - Settlement Amount is based on market quotations from four leading dealers
    - Unpaid Amounts are amounts owed and unpaid by the Early Termination Date, plus interest
  - Loss: Out-of-the-money party pays an amount that the Non-defaulting Party determines to be its total losses and costs in connection with the Agreement or Terminated Transactions, including loss of bargain and costs associated with terminating or reestablishing hedges

Calculation of Termination Value

- 2002 ISDA Master Agreement
  - Close-out Amount: Out-of-the-money party pays the sum of the Close-Out Amount and Unpaid Amounts owing to the Non-defaulting Party, less Unpaid Amounts owing to the Defaulting Party.
  - Close-out Amount may include:
    - Quotations from external or internal sources
    - Relevant market data from external or internal sources
    - Consideration of costs of funding and, when commercially reasonable, costs in connection with terminating or reestablishing a hedge
- Market Trends and Close-out Amount Protocol

Timing Considerations

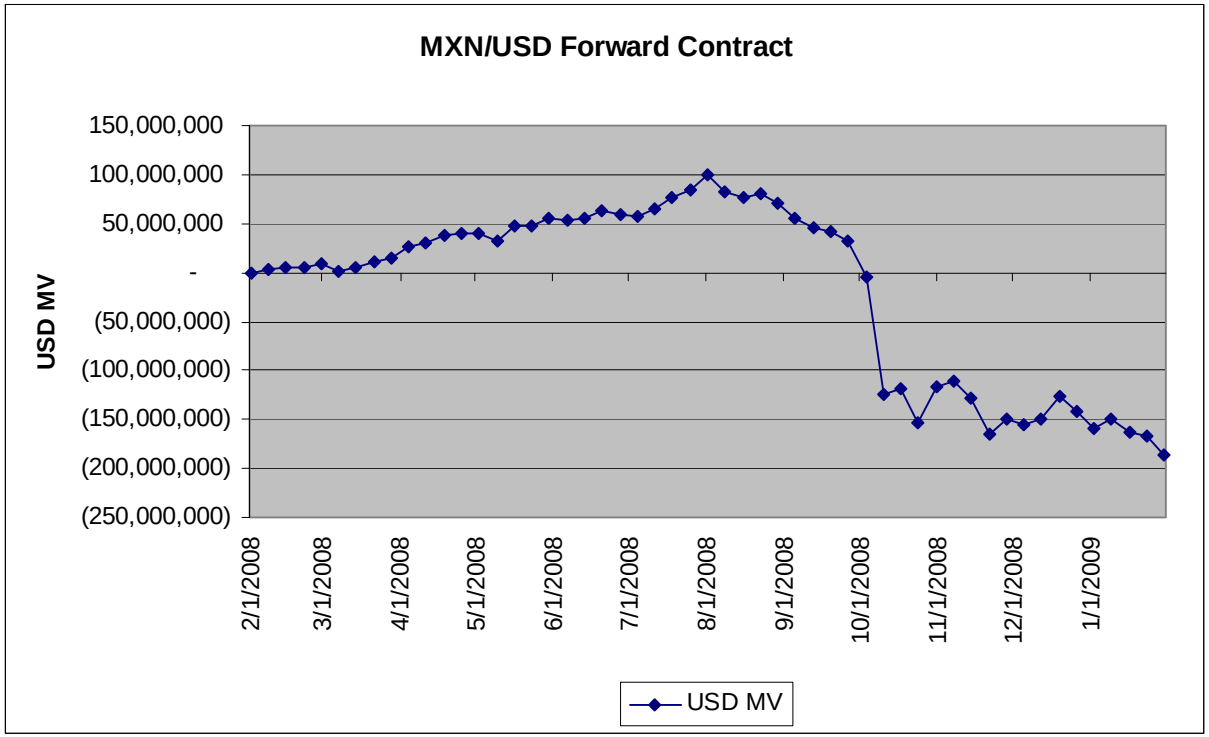
- Designating an Early Termination Date (ETD)
  - Not more than 20 days notice to Defaulting Party
  - Notice effective depending on delivery method
    - In person or courier recommended – effective on date delivered
  - Timing of calculations / market volatility

Timing Considerations

- Request for market quotations under Market Quotation measure to be made on or as soon as reasonably practicable after the relevant Early Termination Date
- Loss to be determined as of the Early Termination Date or as of the earliest date thereafter as is reasonably practicable
- Close-out Amount to be determined as of the Early Termination Date or as of the date after the ETD that would be commercially reasonable
- Calculations and statement of calculation to be provided on or as soon as reasonably practicable following an Early Termination Date.

What a Difference a Day Makes

- One-year MXN/USD currency forward, entered as of 2/1/2008 with notional of 10B MXN:



Practical Considerations

- Challenges
  - Enforcement of a pro-bank judgment in local jurisdictions
  - Negotiations among creditors and valuation issues
- Strategies
  - Holistic approach to credit: know your customer's context
  - Collateral: early and often
  - Non-reliance versus fiduciary role and practical considerations (including reputation and future business opportunities)