

Opportunities and Obstacles Under New(er) Insolvency Rules in Latin America

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Cross-Border Restructurings

Latin America & Sutmex as a Case study

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Common Issues in Latin American Restructurings

- Local families as long-standing controlling shareholders
- Lack of absolute priority rule – equity can retain value
- Secured lenders are not effectively stayed
- Priority for labor claims
- Relatively new restructuring statutes with “loopholes”
 - Very little case history
- Civil law systems: lack of controlling precedent

The resulting uncertainty can cause institutional lenders and investors to sell and many distressed debt funds not to participate in Latin America, driving debt prices downward and creating opportunities for investors who can manage the process.



Variety in Forms of Restructurings

Options are largely driven by the company's source of debt, location of its assets, and terms of restructuring:

- Out-of-court restructuring
 - *Cap Cana, S.A.; Grupo Taca*
- Local (home country) proceeding only
 - *Likely where no significant foreign assets or creditors*
- Local proceeding with chapter 15 case in U.S.
 - *Vitro, S.A. de C.V.; Controladora Comercial Mexicana (CCM)*
- Local proceeding with chapter 11 in U.S.
 - *Corporación Durango, S.A. de C.V.*
- Chapter 11 in U.S. only
 - *Avianca; Satélites Mexicanos, S.A. de C.V.; Tricom, S.A.*

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Satmex (II) Financial Restructuring

Background

- Company provides satellite services throughout Latin America and much of North America
- Company is headquartered in Mexico, and has one subsidiary in the U.S.
- \$238 million in first priority notes due in 2011 and \$202 million in second priority notes due in 2013
- Second priority notes held by U.S. hedge funds
- Each tranche of debt issued under indentures governed by NY law (TIA)

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Satmex (II) Financial Restructuring

Sources of Financial Distress

- First lien debt set to mature in 2011
- Satellite useful life less than anticipated; needed to accelerate construction of replacement satellite
- “Liquidity wall” in June 2011
- Mexican trade creditors, employees and lenders kept current



Satmex (II) Financial Restructuring

Financial Solution

- Refinance the company's debt by raising (1) \$325 million in the high yield markets, and (2) \$96 million in a rights offering for equity in the reorganized company
- Investment bank committed to high yield financing and largest second priority note holders committed to rights offering
- First priority notes (\$238 million) to be paid off in full
- Second priority notes (\$202 million) to be exchanged for equity in new company, and second priority note holders to have opportunity to participate in rights offering



Satmex (II) Financial Restructuring

Implementation of Refinancing

- Prepackaged chapter 11 case in the US needed to bind nonconsenting note holders in the U.S. (30 days)
 - U.S. Bankruptcy Court (Delaware) approved restructuring plan and new financing
- No *concurso mercantil* in Mexico needed because no creditors in Mexico impaired (4 months)
- Company reorganized - “old” equity extinguished and “new” equity issued in reorganized company
- Equity trust allowed for extinguishment of “old” equity without a legal proceeding in Mexico

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Mexico

Concurso Mercantil law passed in 2000. Unique aspects include:

- After filing petition, court-appointed auditor to determine if company is insolvent
- Once declared insolvent, company has one year to obtain approval of plan or face liquidation
- Creditors vote in single class (only simple majority in amount needed)
- Pre-arranged plans can be approved in three to four months

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Mexico

Recent and pending legislative amendments:

- Allow companies to file in advance of default
- Allow for a form of DIP financing
- Greater transparency - full access to court orders
- Subordination of intercompany loans and contractual subordination respected
- Joint administration
- Minimizing the role of IFECOM; allow independent audits to prove insolvency; majority of creditors can appoint conciliator

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Brazil

Law of *Falências e Recuperação de Empresas* passed in 2005. Unique aspects include:

- Plan must be proposed within 60 days and approved within 180 days, otherwise court should order liquidation
- Enhanced protections for secured creditors: initially stayed but stay lifted at end of 180-day period
- Secured lenders still rank below labor claims, but labor claims are capped
- Framework for DIP financing
- Provision for out-of-court restructuring (*recuperação extrajudicial*): can cram-down nonconsenting creditors, but need 60% approval of each class and cannot alter tax and labor claims

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Brazil

- 2012 Amendment:
 - Concessionaires of electricity as a public service no longer eligible to file under corporate restructuring law

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Argentina

Law passed in 1995 and amended several times.

Unique aspects include:

- In-court restructuring procedure where debtor remains in possession and operational control of its assets, but is under the supervision of a court-appointed fiduciary
- Out-of-court procedure (*acuerdo preventivo extrajudicial*) where company can restructure some or all of its debt and court can make binding on nonconsenting creditors

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DIP/Exit Financing in Brazil

Overview

ABI 2015 Cross-Border Insolvency Symposium

June 2015

Overview

- ❖ Under Brazilian Bankruptcy Law ("LRE"), a DIP Loan ranks senior to any pre-petition credit (*superpriority*) and is considered as a post-petition credit.
- ❖ DIP Loans have at least the following advantages when compared with a pre-petition loan:
 - It is not subject to the effects of the judicial reorganization (Brazilian proceeding equivalent to the US Chapter 11), meaning that:
 - it is not stayed at any point during the judicial reorganization proceeding
 - it is not bound/dragged by the terms of a judicial reorganization plan approved by pre-petition creditors
 - In a bankruptcy liquidation scenario (liquidation of the company's assets), a DIP loan claim is only junior to (i) judicial administrator's and its consultants' compensation, (ii) court costs of the bankruptcy proceeding, and (iii) post-petition labor claims.

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Structure / Collateral

❖ Usual structures:

- Pre-Export Financing Facility (exporters)
- Advance on Foreign Exchange Contracts (exporters)
- Discount of receivables
- Bilateral or Syndicated Loan
- Issuance of Securities (bonds/notes)

❖ Collateral:

- Fiduciary transfer – special ownership over collateral is transferred to secured lender and therefore excluded from the bankrupt estate in case of liquidation
- Ordinary Mortgage/Pledge – collateral captured by the bankrupt estate; protection of lender is exclusively the priority in the liquidation waterfall: thus used only in case of restrictions for fiduciary transfer (e.g.: rural lands cannot be transferred to foreigners)

The encumbrance of fixed assets requires special authorization by the bankruptcy court, having heard the opinion of the official creditors' committee or the judicial administrator if there is no committee in place.

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	OGX
AMOUNT	USD 215 million
STRUCTURE	Bridge Loan + Convertible Debenture (two-tranches bond sale entirely subscribed by the creditors, with a possible third tranche of USD 90 million) <u>1st Tranche</u> : convertible into 41,9767% of the Shares of OGX REESTRUTURADA (new company to be created according to the judicial reorganization plan) <u>2nd Tranche</u> : convertible into 23,0233% of the Shares of OGX REESTRUTURADA (new company to be created according to the judicial reorganization plan).
GOVERNING LAW	<u>Indenture</u> – NY Law; <u>Convertible Debentures</u> – BR Law; <u>Collateral</u> – BR and Dutch Law
COLLATERAL	All unencumbered assets, as follows: <u>BR Law</u> : (i) Fiduciary Assignment of: Oil and Gas, Credit Rights (intercompany credit and sale of goods), Tax Credit Rights, Equipment, OGX and OGPar shares (ii) Pledge of: Concession Rights, Credit Rights (intercompany credit and sale of goods), Shares of subsidiaries. <u>Dutch Law</u> : (i) Pledge of: Shares of Subsidiaries, Pledge of Receivables
APPEALS	Appeals filed by local creditor, a group of creditors and the public prosecutor, because debtors would be granting payment conditions and privileges to a limited group of creditors (adherent bondholders), especially related to the first tranche. Appeals dismissed by the Rio de Janeiro State Court of Appeals, especially because (i) the loan was urgent, due to the debtor's financial status; and (ii) there were no unmotivated privileges, considering that such specific limited group of creditors was the only one that took the risk of financing the distressed company and therefore was entitled to a differentiated consideration. Pending judgment (i) by the Rio de Janeiro State Court of Appeals, of motions for clarification filed by the group of creditors and the public prosecutor; and (ii) by the Superior Court of Appeals, of an appeal filed by local creditor.

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	INDEPENDÊNCIA
AMOUNT	USD 165 million
STRUCTURE	144A private placement of bonds (new foreign investors)
GOVERNING LAW	<u>Indenture</u> – NY Law; <u>Collateral</u> – BR and NY Law
COLLATERAL	All unencumbered assets, as follows: <u>BR Law</u> : (i) Fiduciary Assignment of: Movable Assets, Real Estate, Reserve Account; and (ii) Pledge of: Shares and Quotas, Intercompany Loans. <u>NY Law</u> : (i) Reserve Account Control Agreement; and (ii) Security Agreement.
APPEALS	(1) No appeal against the DIP itself. (2) Following the DIP, borrower defaulted and DIP lenders had to enforce. A certain group of creditors tried to block the enforcement of the collateral, because a new plan proposal would be put to vote by the debtor, contemplating the sale of all the property/assets to an investor, which would raise the recovery of the pre-petition creditors. The request was initially granted by the lower court, suspending the effects of the consolidation of title to the properties given as collateral until a new plan proposal was voted on. The Court of Appeals granted an appeal filed by the DIP Lenders, because (i) the bankruptcy court shouldn't have jurisdiction over post-petition credits and (ii) the collateral package was crucial for the lending of new money to the debtor and approved by the creditors in creditors' meeting. The Court of Appeals has declared that the foreclosure was an exercise of a regular DIP lenders' right. The decision rendered by the Court of Appeals has become final/unappealable. (3) In an enforcement action filed by a financial creditor not subject to the judicial reorganization proceeding against the debtor, the proceeds of the sale of the collateral by the DIP lenders were partially attached, because the debtor would have illegally encumbered all its available assets in favor of the DIP lenders. The DIP lenders reverted such decision, arguing that the assets given as collateral did not belong to the debtor anymore, but to the DIP collateral agent on behalf of the DIP lenders. The financial creditor appealed such decision, which is pending judgment at the Appellate Court since 1Q of 2014.
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	INFINITY		
AMOUNT	R\$ 20 million	USD 68 million	USD 22 million
STRUCTURE	Pre-Export Financing Facility Agreement / ACC (local existing creditors)	Issuance of Secured Notes (100% purchased by a single foreign new investor)	Pre-Export Financing Facility Agreement
GOVERNING LAW	<u>Facility</u> – BR Law <u>Collateral</u> – BR Law	<u>Indenture</u> – NY Law <u>Collateral</u> – BR Law	<u>Facility</u> – NY Law <u>Collateral</u> – BR and NY Law
COLLATERAL	All unencumbered assets, as follows: <u>BR Law</u> : (i) Fiduciary Assignment of equipment; (ii) Fiduciary Assignment of real estate	All unencumbered assets, as follows: <u>BR Law</u> : (i) Fiduciary Assignment of equipment (ii) Fiduciary Assignment of real estate	All unencumbered assets, as follows: <u>BR Law</u> : (i) Fiduciary Assignment of equipment (ii) Pledge of Sugar Cane. <u>NY Law</u> : (i) Account Control Agreement; (ii) Security Agreement (pledge of the collection account, the assigned offtake contract and each of the export finance agreements)
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2015 CROSS-BORDER INSOLVENCY PROGRAM

	SIDERÚRGICA IBÉRICA	AGRENCO (NOT CLOSED – COMPANY WAS LIQUIDATED)
AMOUNT	USD 16 million	R\$ 130 million (pre-approved credit facility)
STRUCTURE	Advances on Exchange Contract (" <u>ACC</u> ")	Bilateral agreement (new foreign investor) + Subordinated loan agreement (foreign parent company not under RJ)
GOVERNING LAW	<u>Facility</u> – BR Law <u>Collateral</u> – BR Law	<u>Bilateral agreement</u> (GEM Group and Agrenco Ltd.) – Foreign Law (not publicly available). <u>Subordinated loan agreement</u> (Agrenco Ltd. and debtors) – BR Law
COLLATERAL	Fiduciary assignment of real properties. Pledge of real properties (considering that the real property is attached to another creditor, the parties had established that, if the debtor manage to pay the debt regarding the attachment, the pledge shall be converted into fiduciary assignment).	Foreign investor may subscribe company's shares up to R\$130 million. Share subscription price equivalent to 89.5% of the average closing price of the share during a given trading period.

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LEADERSHIP. PROBLEM SOLVING.
VALUE CREATION

Mexico's *Concurso Mercantil* Update:
Select Key Issues from Oceanografía and
the Homebuilders (Urbi, Geo, Homex)

ABI Cross-Border Insolvency Program

June 2015

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NORTH AMERICA EUROPE MIDDLE EAST LATIN AMERICA ASIA

I. OSA UPDATE: PEMEX CONTRACTS AND COLLATERAL



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COMPANY AND CASE BACKGROUND

Company Background

- Oceanografía, S.A. de C.V. ("OSA") owned and operated a fleet of approximately 70 vessels under charter contracts with PEMEX. These vessels provided off-shore services such as supply, crew transportation, inspection, repair and maintenance activities, amongst others

Case Background and Select Example Regarding Separation of Secured Collateral from the Estate

- April 10, 2014. After OSA was seized by the Mexico's Department of Justice (the Procuraduría General de la República "PGR") in February 2014, the PGR filed a petition for OSA to be admitted into *Concurso Mercantil*
- April 15, 2014. OSA's *Concurso Mercantil* petition was acknowledged as received by the court
- July 8, 2014. OSA's *Concurso Mercantil* petition was accepted by the court
- December 19, 2014. A secured creditor in a non-debtor special purpose vehicle filed an Acción Separatoria with the bankruptcy court to request the separation of its collateral, residing in the SPV, from the masa (bankruptcy estate) of OSA

COMPANY AND CASE BACKGROUND (CONT.)

- January 13, 2015. The Conciliador in the OSA *Concurso Mercantil* case filed a motion to object to the Acción Separatoria. A&M believes that the *Conciliador's* objection was simply a stalling technique or was done with political motivations, since there are many examples in Mexico whereby secured creditors have successfully separated their assets from the Estate of a company in *Concurso Mercantil* through the use of an Acción Separatoria
- February 18, 2015. A hearing was held to discuss the *Conciliador's* objection to the Acción Separatoria
- March 17, 2015. The bankruptcy judge granted the Acción Separatoria to the secured creditor
 - On a de facto basis, the secured creditor can now take possession of its collateral; however, as of the date of this memo, the creditor has not taken possession of the collateral, for reasons unrelated to the binding decision of the judge received on March 17, 2015
- May 5, 2015. OSA creditors presented a plan of reorganization to the Mexican court overseeing the company's insolvency proceeding
- May 18, 2015. The judge presiding over the OSA case entered an order approving the plan of reorganization, without making one single change to the plan

PEMEX CONTRACT BACKGROUND

The following are the key events in regards to OSA's contractual situation with PEMEX:

- April 2014. OSA enters *Concurso Mercantil* with ~39 active service contracts (the "Active Contracts") with PEMEX
- July 2014. OSA's debarment from participating in PEMEX public tender offers as imposed by the PGR, which went effective in February 2014, is suspended by the judge presiding over this case (the debarment matter was handled outside of the *Concurso Mercantil* case)
- August 18, 2014. PEMEX is ordered by the judge to (i) respect the Active Contracts and (ii) extend the contractual end dates (in order for OSA to generate cash flow and try to preserve itself as a going concern)
- April 29, 2015. According to testimony provided by Antonio de la Peña, a legal director of PEMEX, in front of the Mexican Senate, today, OSA only has three (3) active contracts with PEMEX, given that 27 contracts were rescinded^[1] and nine (9) other contracts reached the contractual end date and were not renewed

[1] A&M has investigated whether PEMEX's contract cancellation clause is/was enforceable in OSA's *Concurso Mercantil*. In our review of the docket for the case, we did not find any ruling from the judge whereby the contracts were ordered to be cancelled, although based on the testimony of PEMEX's legal director, one might conclude that contracts were actually rejected in this case

LEGAL CONTEXT

To fully understand OSA's situation, we need to review PEMEX's ability to cancel service contracts with OSA and the required legal procedures for the same, which are based on the corresponding Mexican Laws under which PEMEX operates

PEMEX Laws

- The following table provides perspectives as to whether by law PEMEX is able to cancel an active contract. These perspectives are based on a review of: (i) Disposiciones Administrativas de Contratación en Materia de Adquisiciones, Arrendamientos, Obras y Servicios de las Actividades Sustantivas de Carácter Productivo de Petróleos Mexicanos y Organismos Subsidiarios ("PEMEX Contracting Frameworks"), (ii) Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público ("PEMEX Contracting Law"), and (iii) Reglamento de la Ley de Adquisiciones, Arrendamientos y Servicios del Sector Público ("PEMEX Contracting Regulation"):

Law / Date Enacted / Article	Content	OSA Application / Interpretation
PEMEX Contracting Frameworks March 10, 2010 Article 70	Decentralized Institutions can administratively terminate any contract without any judicial statement once the termination has been notified to the supplier or contractor, if it has entered <i>Concurso Mercantil</i>	PEMEX could terminate contracts with OSA, since it entered <i>Concurso Mercantil</i>

LEGAL CONTEXT (CONT.)

Law / Date Enacted / Article	Content	OSA Application / Interpretation
PEMEX Contracting Law January 16, 2012 Article 54	Departments and entities can administratively terminate any contract when suppliers commit breach of their duties according to an established procedure	A&M understands that filing for <i>Concurso Mercantil</i> is a breach under OSA's contracts with PEMEX
PEMEX Contracting Regulation July 28, 2010 Article 98	Suppliers, for various reasons, in breach of their duties, will be subject to contract termination according to Article 54 (discussed above) At any time, the department or entity can administratively terminate a contract proving termination with a foreseen cause, but if the supplier wants to terminate the contract, it must request to a federal judicial authority to do so	If OSA wanted to terminate the contract, it would have had to request such cancellation to federal judicial authorities

LEGAL CONTEXT (CONT.)

Concurso Mercantil

- After understanding the laws that govern PEMEX, it is necessary to review how executory contracts are treated in Mexico's *Ley de Concursos Mercantiles* (the “*Concurso Mercantil Law*”)

Law / Date Enacted / Article	Content ^[1]	A&M Perspective
<i>Concurso Mercantil Law</i> January 10, 2014 Article 87	Any contractual stipulation which due to the filing of a business reorganization petition or demand, or the business reorganization declaration, sets modifications that worsen the contract terms for the Merchant, shall be deemed not included, with the exceptions expressly set by this Act	Contract cancellations by the Creditor could be considered a condition that worsens the contract terms, and this could not be allowed by the judge
<i>Concurso Mercantil Law</i> January 10, 2014 Article 92	Any preliminary or final contracts pending enforcement must be fulfilled with by the Merchant [Debtor], unless the <i>Conciliador</i> objects to such fulfillment on the grounds that such objection is in the best interests of the Estate	The Debtor must fulfill its contracts unless the <i>Conciliador</i> opposes and requests that it be rejected

[1] Based on the informal translation of the *Ley de Concursos Mercantiles* found on the webpage of INSOL International, International Association of Restructuring, Insolvency, & Bankruptcy Professionals

LEGAL CONTEXT (CONT.)

Law / Date Enacted / Article	Content ^[1]	A&M Perspective
Article 92 (Cont.)	<p>Anyone who executed a contract with the Merchant [Debtor] shall be entitled that the <i>Conciliador</i> declare if he will object to the contract fulfillment</p> <p>If the <i>Conciliador</i> declares that he will not object [to the contract fulfillment], the Merchant must fulfill or guarantee fulfillment of the contract</p> <p>If the <i>Conciliador</i> declares that he will object [to the contract fulfillment], or does not provide an answer [to a request for definition regarding the same] within twenty days, the party that executed the contract with the Merchant may at any time rescind the contract and so notify the <i>Conciliador</i></p> <p>If the <i>Conciliador</i> has assumed the management or authorized the Merchant [Debtor] to enforce any outstanding contracts, he may avoid the setting aside of the goods or else demand their delivery, upon payment of their price</p>	<p>Creditors have a right to have a determination made regarding the assumption/rejection of their contract</p> <p>A contract is deemed to be assumed, unless the it is expressly rejected by the Debtor</p> <p>No additional A&M Perspective</p> <p>Contracts assumed by the Debtor must by the creditor when fair value (i.e., payment of agreed prices) is exchanged</p>

[1] Based on the informal translation of the *Ley de Concursos Mercantiles* found on the webpage of INSOL International, International Association of Restructuring, Insolvency, & Bankruptcy Professionals

JUDGE'S RULINGS AFFECTING COLLATERAL

Separately, in the OSA case, there were rulings whereby the judge permitted OSA to seek out new charter contracts for its vessels. The order applied to vessels that were both (i) free and clear of any liens and (ii) also for encumbered assets. The ruling was surprising given that the Debtor, OSA, was given the opportunity to explore ways to utilize the collateral of secured creditors, without gaining the express consent of those secured creditors

A. Request for Chartering of Vessels and Secured Creditors' Objection

File Number: 265/2014

Decree file: 03/19/2015

Publication date: 03/20/2015

The following contains verbatim translation of the judge's order, along with some clarifying language from A&M to ease understanding

- On 2/11/15 OSA asked the authorities to be informed about the possibility to sublease the vessels to third parties since OSA has received several sublease proposals [from operators in the market]
- Shippin Group Mexico (SGM) rejected the idea of having OSA's manager lease the vessels (Caballo Maya and Caballo Marango) prior to having full disclosure of the terms and base rent fees to be allocated to OSA and SGM

JUDGE'S RULINGS AFFECTING COLLATERAL (CONT.)

- Candies Mexican Investments is against any sublease related to any of [its] 21 vessels
- Caballo Frion Arrendadora also is against subleasing its vessels
- Shanara Maritime International is against the subleasing of its vessels
- The [secured] creditors established that since the leasing proposal is untimely, unclear and imprecise and does not allow for an objective analysis about its feasibility, subleasing permission should not be granted
- The Judge [then] authorized the leasing of the vessels by SAE, since the affected [secured] lenders did not present proof of the damage the vessels could suffer with the leasing authorization, nor included any clear arguments as to why it would support the reactivation of OSA's operations
- Amongst the opposed [secured] creditors, there was a request for a 90 day extension to reach an agreement, which demonstrates an interest to maintain OSA's on-going operations. It is important to note that PEP has not yet signed any services contract with OSA
- It is required for OSA and the *Conciliador*, prior to signing any contract, to submit a timetable of service activities to be performed, the vessels that will be chartered and to whom, maintenance programs and plate assignments, as well as all other relevant activities

JUDGE'S RULINGS AFFECTING COLLATERAL (CONT.)

B. Judge's Ruling Regarding the Request for Chartering of Vessels and Secured Creditors' Objection

Later, the judge issued a ruling in response to the secured creditor's objections which we reviewed in the previous section

File Number: 265/2014

Decree file: 03/31/2015

Publication date: 04/06/2015

The following contains verbatim translation of the judge's order, along with some clarifying language from A&M to ease understanding

- The judge authorized that OSA could sublease the vessels to support the reactivation of the Company's operations. The Judge's order to sublease the vessels denies the owners [the secured lenders] the right to have their vessels returned in good conditions. The vessels' [safe] operations will be in danger due to the lack of recent maintenance. Additionally, there is a possibility to lose human lives and the vessels [if operated given their under maintained condition]
- The [secured] creditors requested to have the contested decree revoked and refrained from authorizing the SAE (Servicio de Administración y Enajenación de Bienes) to sublease the vessels [to 3rd parties or PEMEX] and have the promoted separation incidents [requests to separate secured assets from the Estate] issue resolved

JUDGE'S RULINGS AFFECTING COLLATERAL (CONT.)

- The Federal Judge emphasized that the SAE, as OSA's manager, must point out the direct benefit and financial payback the [secured] creditors will receive in case the vessels are subleased
- Prior to subleasing the vessels, the *Conciliador* must present to the Judge a timetable of service activities to be performed, the vessels that will be chartered and to whom, maintenance programs and plate assignments, as well as all other relevant activities
- Charter contracts of each vessel have not been given a new duration since it was SAE's idea to lease the vessels
- [Any claims related to] breaches of contracts will not be a result of OSA's negligence but of the fact that vessels are seized by the PGR and managed by the SAE. Therefore, the release of the vessels is uncertain until the seizure [from the PGR] is resolved
- The 03/19/2015 decree responds to SAE's request and assigns SAE the responsibility for any chartering contracts
- An investment of hundreds of thousands of dollars is required to put the vessels in adequate sailing conditions; also, it is necessary to have an insurance policy. [The incurrence of] both of these expenses do not assure income will be generated by the vessels since there are no specific instructions regarding which vessels will be subleased
- Per the [Mexican Commercial Code], there is a breach of property rights by granting the option to a third party to use the vessels [that are the collateral of another party] as their own. In the understanding that it is granting a subleasing authorization of an asset of OSA, upon which OSA agreed to not sublease
- As of [the date of this ruling], the SAE has not established which vessels will be subleased

CONCLUSIONS

Cancellation of PEMEX Contracts in a *Concurso Mercantil*

- A&M has not yet obtained definitive evidence as to whether PEMEX's contract cancellation clause is enforceable in *Concurso Mercantil*
- Although Mexico's Services Laws and the *Concurso Mercantil* Law establish that PEMEX can cancel contracts with suppliers that enter *Concurso Mercantil*, OSA's Judge ordered that the contracts should be fulfilled (August 2014), while at the same time:
- PEMEX's legal director stated on April 29, 2015 that PEMEX had successfully rescinded 27 contracts with OSA, and it is unclear whether the contract rescissions were implemented based on OSA's activities prior to, or subsequently after, its filing for *Concurso Mercantil*

PGR Debarment of OSA in PEMEX Tender Offers

- Also, a judge outside of the *Concurso Mercantil* established that OSA can take part in tenders, submit proposals and sign contracts with all federal and state entities, thus cancelling the debarment that was given to OSA in February 2014
- Although OSA's debarment was canceled by the judge, OSA has not been able to participate in new bids due to failure to meet PEMEX's requirement relating to the supplier's financial conditions (healthy balance sheet, sufficient cash flows, etc.)

CONCLUSIONS (CONT.)

PEMEX Penalties Incurred / Charged During *Concurso Mercantil*

- From, February 2014 to April 2015, PEMEX has penalized OSA with MxP\$506 million due to incompleteness of contracts, per testimony given by a legal director of PEMEX in front of the Mexican Senate

Collateral of Secured Lenders

- A&M subsequently learned from a secured creditor that the judge simply authorized SAE/OSA to seek out charter contracts involving the collateral of secured creditors, but did not necessarily approve new charter contracts
- Later, the secured creditor filed an *Amparo Trial* (appeal) in order to overturn the concurso judge's ruling. Initially, a judge in the Sixth District Court of Mexico City did not admit the secured creditor's request for a hearing because he opined that such an authorization was very much abstract (in that moment) and that no acts had yet materialized (no actual damages) had been yet incurred in order for the secured creditor to have standing to try to overrule the judge's ruling
- The secured creditor appealed the decision of the Sixth District Court and subsequently the Eighth Collegiate Tribunal agreed with the secured creditor that the simple authorization of the chartering was enough in order to file an *Amparo* (appeal) that the District Judge had to admit the *Amparo* and study the merits of the situation

II. KEY TERMS PROPOSED IN RESTRUCTURINGS OF MEXICAN HOMEBUILDERS



ALVAREZ & MARSAL

INDUSTRY BACKGROUND

Industry Background

- Prior to 2011, affordable housing homebuilders in Mexico started to purchase low-cost land beyond the limits of urban centers to develop housing communities. These homebuilders utilized debt to finance the acquisition of land for future developments
- In 2013, the Mexican government implemented a change in housing policies to encourage the following initiatives: (i) product mix shift towards vertical housing, (ii) registration and classification of land reserves and (iii) government subsidies for land closer to urban amenities
- These changes negatively impacted the homebuilders' business plan since most of the land previously acquired did not qualify for government subsidies under the new rules and would not be developed unless it qualified for such subsidies; and vertical housing required greater initial investment
- As a consequence of their overleveraged balance sheets, liquidity problems and sudden changes in the business plans, the largest homebuilders in Mexico identified the necessity to restructure their operations and balance sheet
- Due to the complexity of their legal and financial structures (amongst other reasons), Geo, Urbi and Homex decided to file for *Concurso Mercantil* and continue to operate under the protection of the Mexican courts to facilitate negotiations with their financial and trade creditors
- Throughout the *Concurso Mercantil*, these Companies have prepared the corresponding documentation to reach an agreement with their main creditors; and consequently seek to emerge successfully from *Concurso Mercantil*

The following pages review the key terms and conditions of these companies' restructurings proposals

RESTRUCTURING PROCESSES BACKGROUND

***Concurso Mercantil* Start Date**

- GEO's *Concurso Mercantil* was admitted by the judge on April 21, 2014
- HOMEX's *Concurso Mercantil* was admitted by the judge on June 13, 2014
- URBI's *Concurso Mercantil* was admitted by the judge on January 22, 2015

Restructuring Proposal Date

- GEO announced its Restructuring Proposal on April 6, 2015
- HOMEX announced its Restructuring Proposal on May 6, 2015
- URBI announced the terms and conditions of its Pre-Packaged *Concurso Mercantil* filing on December 1, 2014

NEW MONEY

Concept	GEO ^[1]	URBI	HOMEX ^[1]
New Money Upon Exit	<ul style="list-style-type: none"> Equity injection of US\$230mm Shareholders will have right of first refusal to subscribe to this equity issuance at an equity value of US\$270mm The Plan Sponsors' will receive a back-stop fee comprised of warrants for 17.46% of fully diluted shares structured as follows: <ul style="list-style-type: none"> Tranche 1: 1.25% fully diluted equity ownership and a vesting price equity value of US\$760mm Tranche 2: 7.48% fully diluted equity ownership and a vesting price equity value of US\$960mm Tranche 3: 8.73% fully diluted equity ownership and a vesting price equity value of US\$1,160mm All three tranches have a strike price equity value of US\$270mm and a 5-year vesting period and a 7-year option period 	<ul style="list-style-type: none"> Right to subscribe for new money investment of US\$130mm in New Secured Notes to be offered to all unsecured creditors with rights offering to be potentially backstopped 20.0% payment in kind (with option by the Company to pay in cash at a rate of 15.0%), without a prepayment penalty The new money investors will receive a back-stop fee comprised of 9-year warrants for 16.25% of the fully diluted shares 	<ul style="list-style-type: none"> New Convertible Loan of US\$100mm to fund the Company's emergence from the <i>Concurso Mercantil</i> <ul style="list-style-type: none"> 7-year maturity with a payment in kind at 4.5% per annum or in cash at 3.5% per annum, in each case on a semi-annual basis through and including December 31, 2020, and thereafter payable in cash at 4% per annum on a semi-annual basis, in each case in arrears Loan is convertible for 70% of reorganized equity, subject to dilution from management incentive plan and unsecured creditors options Two revolving credit facilities in an aggregate amount of US\$120mm Terms and conditions not disclosed

[1] Assumes an exchange rate of MxP\$15.25 / US\$1.00

REORGANIZED EQUITY OWNERSHIP

Stakeholder	GEO ^[1]	URBI	HOMEX
Unsecured Creditors	<ul style="list-style-type: none"> Unsecured creditors receive 88% of New Equity pre-dilution of New Money and warrants Right to subscribe to the New Money equity offering at US\$270mm Vesting/barrier Warrant for 9.70% of the New Equity <ul style="list-style-type: none"> Vesting price equity value of US\$1,440mm Strike price equity value of US\$270mm 5-year vesting period and a 7-year option period 	<ul style="list-style-type: none"> Unsecured creditors receive 85% of the equity ownership of the reorganized company, subject to any dilution from incentive packages or fees New debt in aggregate principal of up to US\$300mm The equity ownership proportion shall be applicable to all unsecured creditors without distinction 	<ul style="list-style-type: none"> Unsecured creditors receive 90% of the equity ownership of the reorganized company, subject to any dilution from incentive packages or fees
Existing Equity	<ul style="list-style-type: none"> Receive 8% of New Equity pre-dilution of New Money 	<ul style="list-style-type: none"> Retain 2.5% of the equity ownership of the reorganized company, subject to any dilution from incentive packages or fees 	<ul style="list-style-type: none"> Retain 10% of the equity ownership of the reorganized company, subject to any dilution from incentive packages or fees
Existing Management	<ul style="list-style-type: none"> Receive 4% of New Equity pre-dilution of New Money and warrants <ul style="list-style-type: none"> 3% of fully diluted shares Strike price equity value of US\$1,580mm 2 year tenor 	<ul style="list-style-type: none"> 12.5% of the equity of the reorganized company to be reserved to be granted to management pursuant to the terms and conditions of the Management Incentive Plan, subject to any dilution from incentive packages or fees 	<ul style="list-style-type: none"> No special treatment to Existing Management May be selected to be included in the Management Incentive Plan

[1] Assumes an exchange rate of MxP\$15.25 / US\$1.00

SECURED AND UNSECURED CREDITORS

Concept	GEO	URBI	HOMEX ^[1]
Existing Construction Loans	<ul style="list-style-type: none"> Continued funding of existing construction loans and revolving credit lines to ensure project completion Grace period on interest payments until projects are re-started Secured debt in non-strategic projects will be paid-in-kind 	<ul style="list-style-type: none"> Continued funding of existing construction loans and revolving credit lines to ensure project completion, existing bridge loan lines to remain open at the current economic conditions and commitment levels 	<ul style="list-style-type: none"> Continued funding of existing construction loans and revolving credit lines to ensure project completion
Other Secured Debt / Lenders Secured by Land Not used in Business Plan	<ul style="list-style-type: none"> To be determined according to the Restructuring Proposal 	<ul style="list-style-type: none"> Secured debt in non-strategic projects will be paid-in-kind to satisfy the loan amount due up to the face amount of the claim Any deficiency will be treated as unsecured debt 	<ul style="list-style-type: none"> Secured claims will be recognized in an amount not to exceed the value of the applicable collateral Satisfied in exchange for the underlying collateral
General Unsecured Creditors (Trade Creditors and Financial Creditors)	<ul style="list-style-type: none"> Capitalized into equity as discussed on the previous page 	<ul style="list-style-type: none"> Capitalized into equity as discussed on the previous page 	<ul style="list-style-type: none"> Capitalized per previous page 7-year options at an exercise price of 1 peso, for 5% of common stock at an equity strike price US\$820mm; and 7-year options at an exercise price of 1 peso, 5% of the common stock at an equity strike price of US\$980mm.

[1] Assumes an exchange rate of MxP\$15.25 / US\$1.00

CORPORATE GOVERNANCE AND MANAGEMENT INCENTIVE PLAN

Concept	GEO	URBI	HOMEX
Corporate Governance	<ul style="list-style-type: none"> • Board of Directors: Comprised of 8 to 12 members to be allocated as follows: <ul style="list-style-type: none"> • Chairman of the Board to be appointed by the Plan Sponsors' • Two thirds shall be independent directors; • Plan Sponsors' will appoint 50% plus 1 of the directors • Management: CEO and CFO to be appointed by Plan Sponsors'. Other members of senior management to be appointed by the Board 	<ul style="list-style-type: none"> • Board of Directors: Comprised of 9 directors: <ul style="list-style-type: none"> • At least 5 independent directors • Management: Cuauhtémoc Perez Roman and Netzahualcoyotl Perez Roman to be ratified in their existing management positions. <ul style="list-style-type: none"> • The new CFO will be appointed upon the recommendation of the Backstop Parties 	<ul style="list-style-type: none"> • Board of Directors: Comprised of 7 members: <ul style="list-style-type: none"> • 2 directors from the De Nicolas family • 2 directors designated by a committee • 3 directors designated by the New Money Investors • Role of Chairman of the Board reserved to a designee of the De Nicolas family • Management: To be appointed by the Board of Directors
New Management Incentive Plan	<ul style="list-style-type: none"> • Up to 1.75% of fully diluted shares to be allocated • May be distributed as warrants, stock grants, options or other means 	<ul style="list-style-type: none"> • Management Options Plan: Options for up to 15% of fully diluted shares to be allocated to certain members of the future management team • Executive Options Plan: Options for up to 10% of fully diluted shares to be allocated to certain members of the future management team 	<ul style="list-style-type: none"> • Up to 25% of the fully diluted equity distributed to management over five years <ul style="list-style-type: none"> • Key employees will be able to earn incremental equity rewards based on performance targets

OTHER CREDITORS TREATMENT

Concept	GEO	URBI	HOMEX
Leases	<ul style="list-style-type: none"> To be determined according to the Restructuring Proposal 	<ul style="list-style-type: none"> Specific lease payment proposal to each provider Restructured lease balance based on the estimated market value of the asset Any residual amount due will be treated as an unsecured claim 	<ul style="list-style-type: none"> To be equitized
Intercompany Claims	<ul style="list-style-type: none"> Not discussed in the Restructuring Proposal 	<ul style="list-style-type: none"> Subordinated to all recognized debt under the <i>Concurso Mercantil</i> In case of a succesful emergence from <i>Concurso Mercantil</i>, they shall be capitalized (without causing any dilution) or restructured as a perpetual non-interest-bearing note 	<ul style="list-style-type: none"> To be discharged and expunged, with no distribution on account thereof
Priority Claims and Tax Claims	<ul style="list-style-type: none"> Not discussed in the Restructuring Proposal 	<ul style="list-style-type: none"> To be determined in accordance with Mexican law 	<ul style="list-style-type: none"> Payments are paid monthly over five years starting in July 2018

CONCLUSIONS

Restructuring Proposals Take-Aways

- Unsecured creditors will retain the majority of the equity of the reorganized companies
- Each of the three proposals contains a significant injection of new money (which has been backstopped for a corresponding fee) in order to restart the homebuilders' operations (which have been basically stopped for the last two years)
- Management incentive packages have been structured to motivate the future management team to turnaround these companies. The packages appear to be consistent with management incentive plans observed in cases in other markets
- Supporters of the restructuring proposals will have a notable presence on the Board of Directors of each company
- Business plans will be focused solely on strategic projects that will enhance margin profitability and returns to the new money investors, unsecured creditors and the companies/management

III. CONTACT INFORMATION



ALVAREZ & MARSAL

CONTACT INFORMATION

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