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Testing the Amendments to the Mexican Insolvency Law (Ley De Concursos Mercantiles)

By Pedro Velasco de la Peña, Rodrigo Castelazo de la Fuente & Christian Dorantes Picazo

On 13 January 2014, several amendments to the Mexican Insolvency Law (*Ley de Concursos Mercantiles*, the “Insolvency Law”) were enacted as part of a financial reform which included amendments to 34 statutes. These amendments were designed to address long-standing concerns arising from inefficiencies and lack of certainty over the results of collection efforts and the foreclosure of collateral by lenders, as well as concerns arising from competition from unregulated financial service providers.



On the insolvency front, the amendments were motivated, among other things, by the suspect cram-downs imposed on creditors by related parties in the *Vitro concurso mercantil* proceeding and the protracted *Mexicana de Aviación* insolvency, which had made creditors understandably concerned about the protection of their rights.

The main concerns that were addressed by the amendments to the

Insolvency Law were:

Limiting the rights of related parties of an insolvent entity to impose a reorganization agreement on other creditors. Pursuant to the amendments to the Insolvency Law, if the recognized claims of subordinated creditors of the company (including certain unsecured related party claims) represent 25% or more of total amount of all recognized claims, then such subordinated claims will not be taken into account for the voting requirements of a reorganization plan.

Setting hard deadlines for the reorganization of an insolvent company. Pursuant to the amendments to the Insolvency Law, the mediation stage of the *concurso mercantil* procedure may not exceed a 185 day initial period with two possible 90 day extensions, and such maximum period may not be extended as a result of a judicial resolution, as judges are now prohibited from extending any term set forth in the Insolvency Law. If a

valid reorganization agreement has not been reached upon the conclusion of such periods, the insolvent entity will be declared bankrupted.

Introducing a “pre-pack” proceeding that reduces the time to conclude an insolvency proceeding with a valid reorganization plan. Pursuant to the amendments to the Insolvency Law, an insolvent entity may file an insolvency petition with a pre-agreed reorganization plan, in which case the company may be declared insolvent by the court without an insolvency opinion from an inspector (*visitador*).

Contemplating financing alternatives for the insolvent entity during the *concurso mercantil* stage. Pursuant to the amendments to the Insolvency Law, the concept of Debtor-in-Possession or “DIP” financing was introduced. Under this concept, lenders will be able to receive “super-priority” status in an insolvency proceeding, to the extent that such financing : (a) is granted with the prior authorization of the court or mediator (*conciliador*), and (b) does not contravene any resolution is-

sued by the court or any authorization granted by the mediator.

Recent Tests of the Revamped Insolvency Law

Since the introduction of such amendments to the Insolvency Law, certain important cases, particularly on the housing industry (*i.e.* Geo, Homex, Urbi), have put the Insolvency Law to test. Brief summaries of some of these cases follow:

Urbi Desarrollos Urbanos, S.A.B. de C.V. (“Urbi”): During December 2014, Urbi and 15 of its subsidiaries filed insolvency petitions with pre-agreed reorganization plans. After more than a year of negotiations, Urbi and 63.83% of its recognized creditors agreed upon the terms and conditions of the reorganization plan and on 15 February 2016, the insolvency judge approved the end of its insolvency procedure.

Corporación Geo, S.A.B. de C.V. (“GEO”): During April 2014, an insolvency judge declared the legal insolvency of GEO and 15 of its subsidiaries initiating the mediation stage

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of their *concurso mercantiles* with pre-agreed reorganization plans. After more than a year of negotiations, GEO and 74.43% of its recognized creditors agreed upon the terms and conditions of a reorganization plan and on 12 June 2015, the insolvency judge approved the end of its insolvency procedure.

Desarrolladora Homex, S.A.B. de C.V. ("Homex"): On 13 June 2014, Homex and 11 of its subsidiaries were declared in *concurso mercantil*. During the mediation stage, Homex and 70.01% of its recognized creditors filed insolvency petitions with pre-agreed reorganization plans. On 8 July 2015, after more than one year of negotiations among Homex and its recognized creditors, the insolvency judge approved the reorganization plan of Homex, which ended its insolvency procedure.

Conclusions

As mentioned, recent amendments to the Insolvency Law were de-

signed to address concerns of creditors arising from various questionable insolvency procedures. As described above, the hard deadlines imposed by the amended Insolvency Law have been enforced and have provided a good degree of certainty to lenders.

On the flow of DIP financing, there is still a lot of work to be done. Lenders are still reluctant to provide DIP financing, despite the "super priority" features offered by the Insolvency Law, given certain regulatory challenges on capital reserves, existing exposure to a certain industry and lack of collateral to be provided by the insolvent entity.

Facts and resolutions on future cases will be essential to measure the success of the amendments to the Insolvency Law, and to determine whether new amendments to the Insolvency Law will be required in the near future.

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