

GUERRA

GONZÁLEZ ABOGADOS

-LIDERAZGO EN LITIGIO-

-LEADERSHIP IN LITIGATION-



INSOLVENCY IN MEXICO

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INSOLVENCY BEFORE VITRO

- The *Ley de Concursos Mercantiles* (Mexican Bankruptcy Code) provided a shy distinction between third-party creditors and intercompany creditors.
- This shy difference resulted improper interpretations of the law that allowed intercompany creditors to vote and approve a restructuring plan.
- The impropriety of that interpretation was taken to the absurd in Vitro where, after a corporate restructuring that substantially increased intercompany debt, the entities controlled by Vitro (which were joint obligors of Vitro under its bonds) voted and approved a restructuring plan reducing their own debt.
- During Vitro, the bond issuances saw sought the so called “Vitro Clause” to avoid use of intercompany debt.

INSOLVENCY AFTER VITRO

- The legislative branch enacted an amendment to the Ley de Concursos Mercantiles for the purpose to, among other things:
 - Create a new category of subordinated claims, where intercompany debt is included.
 - Provide regulation for the voting and treatment of collective credit, in absence of its own regulation.
 - Create a new chapter governing the liability of shareholders and management.
 - Include the possibility to file for insolvency when it is imminent the default of the debtor.
- The amendments of the law destroyed the shy distinction between third-party debt and intercompany debt. Is it good news?

INSOLVENCY DURING ORO NEGRO

- After Vitro, Oro Negro has been one of the most litigated insolvency proceedings in Mexico.
- At the abuse of creditors, there have been proceedings in Mexico, United States of America, Singapore and Norway.
- While the insolvency proceedings aim to provide a much-needed breathing room to the troubled debtor, the bondholders of Oro Negro have engaged in serious actions to deteriorate the value of the company.
- The bondholders chose to enforce collateral, which they used to appear as the controllers of certain entities of Oro Negro and withdraw their insolvency petitions.
- There has been an abuse of the process by the bondholders to force Oro Negro to run out of money.

INSOLVENCY AFTER ORO NEGRO

- Oro Negro has demonstrated there is much to improve in the *Ley de Concursos Mercantiles* and should look into common law countries to find answers, as large restructuring have an element of common law jurisdictions.
- Possible amendments to the *Ley de Concursos Mercantiles*:
 - Automatic Stay.
 - Abuse does not only come from debtors, it might also come from creditors.
 - Liability of debtors and/or creditors when their hurts the viability of the business or other creditors.
 - Jurisdiction on matters involving complex transactions governed by multiple laws and jurisdictions.
 - Admission of insolvency petitions.
- Oro Negro is putting at test both: (i) the strength of the insolvency proceedings in Mexico, and (ii) the UNCITRAL Model Law on cross-border restructurings.

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