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PRE-PACKAGED PLANS IN LATIN AMERICA

By

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PRE-PACKAGED PLANS IN LATIN AMERICA

Co-Chairs: Ricardo W. Beller, *O'Farrell & Mairal*; Thomas B. Felsberg, *Felsberg e Associados*

Moderator: Josefina Fernandez-McEvoy, *Fox Rothschild LLP*

Speakers: Luiz Galeazzi, *Galeazzi & Associates*; David Gurfinkel, *Allende & Brea*; Luis Manuel C. Méjan, *Universitat Pompeu Fabra*; Victor A. Vilaplana, *Foley & Lardner*

Situation Overview

- The Company faces company specific distress.
- The Company has adequate liquidity to meet operating expenses.
- The Company will face severe liquidity issues when 80% of its longer term secured and unsecured debt matures in 10 months.
- The Company needs to focus on maximizing total enterprise value while reducing its debt and/or extending its maturity date, and at the same time it needs to balance competing interests among creditors and collateral and balancing conflicting stakeholder positions.
- After considering its current capital structure, conducting a debt capacity analysis and evaluating other factors, the Company decides to restructure its balance sheet and operations through a pre-packaged plan of reorganization.

Pre-Packaged Plan of Reorganization

■ Pros

- Expedited timing if consensus exists
- Avoids public disclosure
- Management time can be focused on operating the business.
- Maintains relationship with trade creditors.
- Less costly.

■ Cons

- Creditor hold out risk
- No standstill creates risk of involuntary bankruptcy filing
- If vote not obtained court supervised restructuring or bankruptcy may be the ultimate result and delay could cause deterioration in value.



Pre-packaged proceedings were introduced in 2005.

Standstill is voluntary until Filing with the court.

Permit partial workouts with one or more classes of creditors.

Types of pre-petition claims excluded as a matter of law:

- Labor
- Tax
- Advances on Exchange Contracts (ACC)
- Leases
- Conditional Sales
- Chattel Mortgages

Pre-packaged proceedings were introduced in 2007.

Standstill is voluntary until admitted by the court.

Permit one or more classes of creditors to be represented by an interventor.

Pre-packaged proceedings were introduced in 2002.

Standstill is voluntary until filing with the court. Upon filing, all claims are automatically stayed,

Permit one or more classes of creditors to be represented by a steering committee.



Strategic suppliers, other general unsecured creditors and secured creditors may consent.

Strategic suppliers, other general unsecured creditors and secured creditors may consent.

Scope of agreement generally includes all unsecured creditors; however, habitual suppliers and other general unsecured creditors that ordinarily do business with the debtor may be excluded.

Plan must not discriminate against any member of a class of creditors.

Plan must not discriminate against any member of a class of creditors.

Plan must not discriminate against any creditor nor against any class of creditors.

Requires documentary evidence of the debtor's insolvency filed with petition and pre-packaged plan.

Requires documentary evidence of the debtor's generalized insolvency to be filed with petition and pre-packaged plan.

Requires documentary evidence of the debtor's insolvency or general financial difficulties to be filed with petition and pre-packaged plan.

No automatic stay triggered upon filing pre-packaged plan with restructuring court.

Automatic stay is not triggered upon filing with the restructuring court.

Automatic stay triggered upon filing pre-packaged plan with restructuring court; however, stay does not suspend accrual of interest.



Requires affirmative request for injunction/moratorium upon filing with restructuring court.

Does not permit cram down of secured creditors.

Does not contemplate the sale of the debtor's business free and clear of liens and claims.

All post-petition claims excluded as a matter of law.

Requires affirmative request for injunction/moratorium upon filing with restructuring court.

Secured creditors may not be crammed down.

Scope of agreement refers only to unsecured creditors. Secured creditors and privileged creditors (v.g. labor and tax creditors) are not crammed down by the agreement.

Does not contemplate the sale of the debtor's business free and clear of liens and claims (although this is not prohibited and could be structured).

All post-petition claims excluded as a matter of law.



Court gives creditors 30 days to challenge pre-packaged plan.

Binding on dissenting creditors in a class if approved by 60% of the members of the class.

Effective upon court's approval.

U.S. relief/enforcement available through Chapter 15 of U.S. Bankruptcy Code.

Requires that creditors holding at least 40% in amount of the debtor's total liabilities consent.

Effective upon court's approval.

U.S. relief/enforcement available through Title XII of Mexico's LCM and Chapter 15 of U.S. Bankruptcy Code.

Court gives creditors 10 days to challenge pre-packaged plan.

Binding on dissenting creditors if approved by at least two-thirds in amount and more than one-half in number of unsecured creditors.

Effective upon court's approval.

U.S. relief/enforcement available through Chapter 15 of U.S. Bankruptcy Code.