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.
  ➢ Lability 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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