

## Pre-packaged Reorganisations under Mexico's *Ley de Concurso Mercantiles*: New Amendments Offer New Possibilities for Cross-Border Insolvencies

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### I Introduction

As Mexico's reformed *Ley de Concurso Mercantiles* (LCM) approaches its ninth year of effectiveness, the country's legislature and judiciary continue to search for procedures that further the law's stated objectives of corporate rescue.<sup>2</sup> That search has led, most recently, to amendments<sup>3</sup> to the LCM designed to implement and facilitate 'pre-packaged' reorganisations.

How will such reorganisations be treated in cross-border proceedings requiring recognition and other relief in US Bankruptcy Courts? The following article discusses very briefly the LCM's amendments and, based on existing precedent involving other Latin American cross-border restructurings, offers some initial thoughts as to how US Courts might treat 'pre-packaged' reorganisations commenced in Mexico.

### 2 Pre-packaged reorganisation plans under the *Ley de Concursos Mercantiles*

Among the LCM's 2007 amendments are a new 'Title XIV', captioned *Concurso Mercantil con Plan de Reestructura Previo* ('Reorganisation with Prior Plan

of Restructuring'). These amendments – consisting of four new articles – are rooted in the policy objectives of encouraging commercial debtors to negotiate proactively with their creditors for an effective 'exit strategy' in advance of liquidity problems:

'The reform's most important addition is the implementation of the "Reorganisation with Prior Plan of Restructuring", designed to permit companies with anticipated liquidity problems to pre-negotiate with their creditors a reorganisation and exit.'<sup>4</sup>

The LCM's 'pre-pack' amendments are quite straightforward:

- A petition must comply with all requirements of Article 20 otherwise applicable to the commencement of *concurso* proceedings.<sup>5</sup>
- The petition must be submitted with sworn testimony evidencing the support of creditors representing at least 40% of the face value of the debt.<sup>6</sup>
- The petition must be submitted with the debtor's further sworn testimony that the debtor either (a) presently satisfies the liquidity requirements of Arts 10 and 11; or (b) satisfaction of such requirements is 'imminent'.<sup>7</sup>

### Notes

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- 2 LCM Art. 1 ('It is in the public interest to preserve companies and prevent the generalized default of payment obligations that jeopardise the continuation of the companies themselves and the companies with which they have dealings.').
- 3 The *Reformas a La Ley de Concursos Mercantiles (Reformas)*, effective 27 December 2007, were provided to the author by Dr Luis Manuel C. Méjan, Director General of Mexico's *Instituto Federal de Especialistas de Concursos Mercantiles* (IFECOM) and a member of the International Insolvency Institute. Spanish and English-language copies of the *Reformas* are on file with the author. The author wishes to further thank Dr Méjan and Sr Jesús Enríquez of IFECOM for the generous and gracious assistance.
- 4 *Reformas*, at p.37 ('La más importante adición de la reforma consiste en la creación de la figura del Concurso Mercantil con Plan de Reestructura Previo, inspirada por la idea de permitir a empresas que tienen dificultades de liquidez pactar privadamente con sus acreedores un camino de solución y salida.').
- 5 LCM Art. 339(I).
- 6 LCM Art. 339(II).
- 7 LCM Art. 339(III).





