

ClientAlert

Financial Restructuring and Insolvency

August 2010

Mexicana Files for Chapter 15 Relief in New York

On August 2, 2010, Maru E. Johansen, in her capacity as the foreign representative (the "Foreign Representative")¹ in respect of Mexican insolvency proceedings regarding *Compania Mexicana de Aviacion, S.A. de C.V.* ("Mexicana"), filed a petition for recognition in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), commencing a case under Chapter 15 of the United States Bankruptcy Code.² Mexicana and its affiliates operate Mexicana Airlines, Mexico's largest airline. Its business has fallen victim to the worldwide recession, "an unprecedented, unexpected and sustained rise in global energy prices," and the swine flu epidemic and related distress affecting Mexican tourism and travel.

The Mexican Restructuring Proceeding

On the same day as the Chapter 15 filing, Mexicana also voluntarily filed a petition for commencement of a corporate reorganization proceeding pursuant to Mexico's commercial restructuring act, the *Ley de Concursos Mercantiles*, before the District Court for Civil Matters for the Federal District, Mexico, to effectuate a restructuring of its business and financial affairs. Click [here](#) to read our Asset Finance Client Alert on Mexicana's *Concursos* proceeding.

According to the pleadings the Foreign Representative filed with the Bankruptcy Court, following the filing of the petition commencing the *Concurso* proceeding, an examination of Mexicana's books and records will be conducted by a court-appointed individual, called a *Visitor*, and the Mexican Court will issue a "business reorganization judgment," determining whether the *Concurso* petition will be granted. If the *Concurso* petition is granted, a stay of seizures, foreclosures and execution of judgments will be put into place, and Mexicana will begin the process of reorganization. Mexicana will remain in control of its business and intends to proceed with a reorganization and obtain approval of the relevant and required number of affected creditors, and confirmation by the Mexican court, of a debt restructuring plan. We understand that the Mexican court has issued a preliminary stay effective upon service of the court order upon lessors. This stay will remain in place until the *Visitor* determines whether Mexicana is eligible for *Concurso*.

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¹ Ms. Johansen was appointed by the Board of Directors of Mexicana to be the Foreign Representative on July 30, 2010, when the Board authorized the commencement of the Chapter 15 case. She is Mexicana's Vice President of Legal and Corporate Affairs for the United States, Canada and the United Kingdom. Her office is in Los Angeles, California.

² *In re Compania Mexicana de Aviacion, S.A. de C.V.*, Case No. 10-14182 (Bankr. S.D.N.Y. 2010).

The process of forming the plan of reorganization is overseen by a court-appointed administrator, the *Conciliador*. Moreover, because Mexicana operates under a concession of title from the Mexican government as a “public service,” the Mexican Ministry of Transportation and Communications will participate.

The Foreign Representative asserts Mexicana has authority to pay and honor outstanding obligations to Mexicana’s customers, vendors, employees and business partners during the pendency of the *Concurso* proceeding.

The Mexicana Chapter 15 Case

In Mexicana’s case in New York, the Foreign Representative is seeking recognition of the *Concurso* proceeding as a foreign main proceeding. If the *Concurso* proceeding is recognized as the foreign main proceeding, then an automatic stay against creditor action against Mexicana and its property that is located in the United States and certain other relief, such as the grant of certain bankruptcy trustee-like powers to the Foreign Representative, automatically follow.³ To be recognized as the foreign main proceeding, a foreign insolvency proceeding must be pending in the country in which the debtor has the center of its main interests.⁴

According to the pleadings the Foreign Representative filed with the Bankruptcy Court, most of Mexicana’s assets and many of its employees are located in Mexico, and its worldwide flight hub is in Mexico City. In addition, Mexicana’s registered office is located in Mexico, which gives rise to a presumption that its center of main interests is located there.⁵ As noted, Mexicana also operates under a concession of title from the Mexican government. All of these factors weigh in favor of recognition of the *Concurso* proceeding as the foreign main proceeding in respect of Mexicana. It should be noted that proceedings under the Mexican *Concurso* law have been previously recognized under Chapter 15 in *In re Corporacion Durango, S.A.B. de C.V.*,⁶ in which case White & Case represented the foreign representative.

Pending entry of an order granting or denying recognition, foreign representatives may request temporary or provisional relief usually designed to maintain the status quo.⁷

According to the pleadings, Mexicana’s assets and operations in the United States include real estate interests at several US airports and valuable “slots” for its aircraft at those locations. Mexicana also has approximately 147 employees, multiple aircraft and aircraft-related parts in the United States at any point in time, together with bank and collateral accounts.

The Foreign Representative’s lawyers report that Mexicana has received several notices of default under the terms of its aircraft and spare engine leases, some of which were followed by termination notices and grounding notices for aircraft. Several of Mexicana’s aircraft have been seized in Canada, and there have been attempts to seize other of its aircraft at Chicago O’Hare and John F. Kennedy International airports, as well as attempts to cancel aircraft registrations (the effect of which is to render aircraft unable to fly).

The Foreign Representative is therefore seeking provisional relief and obtained a temporary restraining order in furtherance thereof on August 3, 2010, which grants essentially the same protections (as described above) as the automatic stay in a Chapter 11 case, protecting Mexicana and its property that is located in the United States from creditor actions pending a decision on a preliminary injunction. The order also entrusts administration of the debtor’s affairs in the United States to the Foreign Representative under the supervision of the Bankruptcy Court pending the hearing on such injunction. A hearing on the preliminary injunction to continue such protections until a determination on recognition is made is scheduled for August 16, 2010 at 10:00 a.m. in New York.

Upon recognition, a foreign representative may request additional discretionary relief from the US bankruptcy court, including, for example, entrustment of US assets to the foreign representative for distribution abroad, or an injunction enforcing a foreign restructuring plan or discharge.⁸ No date has yet been set for the recognition hearing in this case.

³ 11 U.S.C. § 1520(a).

⁴ 11 U.S.C. § 1517(b).

⁵ 11 U.S.C. § 1516(c).

⁶ No. 08-13911 (RDD) (Bankr. S.D.N.Y. Dec. 11, 2008).

⁷ 11 U.S.C. § 1519(a).

⁸ 11 U.S.C. §§ 1507(a), 1521(a).

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