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Rigging the Game In Mexico: The Role of Intercompany Claims

EMTA

The Vitro Effect: Troubling Developments in

Mexican Insolvency Law

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Issues:

Contractual Covenants

Subordination

Vote of Intercompany Claims

Guarantors

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What Concursos Law provides?

- **Concept of Debtor- Art 4**
- **Controlled entities- Art 15**
- **Look-back or hardening period: 270 calendar days.- extensions? Art 112**
- **Fraudulent conveyances – Arts 113-119**
- **Class of creditors: Creditors with a *special privilege*? Arts 217, 220-222**

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- **Recognized creditors - *Debt recognition, ranking and grading Judgment***

- **Effects of Subrogation**

- **Intercompanies formed in the ordinary course of business *vs* fraudulent conveyances**

- **Federal Institute of Business Reorganization Specialists [*Instituto Federal de Especialistas de Concursos Mercantiles*]**

- ***Intercompanies should vote?***

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What Mexican companies could attempt to do?

- **Create intercompany claims (out of the ordinary course of business?)**
- **Wait 270 days**
- **File a Plan**
- **Cram-down**
- **Attempt to release obligations of guarantors**

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How to structure mechanism to minimize the risk?

- **Subordination**

- **Banning the voting of any subsidiaries' claims in the event of a future debt restructuring**

- **Restrictions on the creation of any new intra-company obligations**

- **Revolving credit facility**

- **Trust**

- **Secured vs common creditors**

- **Security interests: Pledge-Mortgage vs Guaranty Trusts**

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Amendments to the Concursos Law

- **Look-back period**
- **Intercompanies: Vote // Recognition of claims**
- **Treatment of holders of debt instruments (bonds-notes)**

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Alejandro Sainz is the Chairman of the Insolvency & Restructurings Practice Group and Co-Chair of the Mergers & Acquisitions Practice Group of *Cervantes Sainz*. He represents national and multinational clients in a broad range of transactional matters, providing legal advice in the areas of corporate, finance and commercial law, including reorganizations, restructurings and work-outs, bankruptcy and cross-border insolvency procedures *(concursos),* corporate finance, mergers & acquisitions, foreign investment, joint ventures, and infrastructure, real estate, gaming and telecommunications transactions. He was selected by *Latin Lawyer* as one of Mexico's top lawyers, and by *The International Who's Who of Insolvency & Restructuring Lawyers 2010, 2011 & 2012* as one of the world's pre-eminent Insolvency & Restructuring lawyers. Mr. Sainz was also cited by *Chambers and Partners* (Latin America 2010, 2011 and 2012 edition) *Latin America´s Leading Lawyers for Business* as one of Mexico's premier insolvency and restructuring lawyers. Mr. Sainz is the author of multiple articles and publications in transactional, M&A, corporate and insolvency matters. Among others, he was selected by *Latin Lawyer* to contribute with the chapters of *"Mexico: Restructuring"* for years 2009-2012.

Mr. Sainz attended Universidad Panamericana for Postgraduate Studies in Tax Law in 2009, Harvard Business School, Executive Education, Diploma Programme in Negotiation in 2004, Harvard University, Postgraduate Studies in U.S. Law and Business Transactions in 1996, Escuela Libre de Derecho, Postgraduate Studies in Corporate, Banking and Finance Law in 1995, Universidad Panamericana, Diploma Program in North American Legal System in 1993 and Universidad Panamericana, Licenciado en Derecho (J.D. equivalent) in 1993.