

International companies continue to turn to U.S. restructurings in 2021 for COVID-19 relief

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Since the COVID-19 pandemic began, many foreign companies experiencing financial distress caused or exacerbated by the pandemic have utilized the U.S. bankruptcy system to restructure. While many companies felt the effects of the pandemic more acutely, necessitating Chapter 11 filings in 2020, a number of large international companies did not file for Chapter 11 protection until 2021. This article highlights some of the major U.S. restructurings of international companies from the last year.

On Dec. 8, 2021, just six weeks after having filed for Chapter 11 in the U.S. Bankruptcy Court for the Southern District of New York, Grupo Posadas SAB de CV, Mexico's largest hotel operator, secured confirmation of its prepackaged Chapter 11 plan. The company conducts business in both the hotel management sector and the vacation club sector.

COVID-19 has had a material effect on the hotel industry, which was negatively impacted by general consumer sentiment, and further exacerbated by government-mandated lockdowns that forced hotels to close. Even once lockdowns were lifted, many hotels have continued to operate at reduced capacity and/or with reduced amenities. This has had a significant impact on Grupo Posadas' operations and profits.

In advance of filing for Chapter 11, Grupo Posadas SAB de CV entered into a restructuring support agreement with an ad hoc group of bondholders to address the maturity wall facing the company on its approximately \$400 million in principal unsecured notes due 2022 by securing the debt and extending the maturity date on the bonds through 2027. The restructuring support agreement was initially supported by 34% of the outstanding notes, and ultimately the company obtained the support of holders of approximately 66.66% of the outstanding notes in advance of filing.

Grupo Posadas' prepackaged Chapter 11 plan enabled it to restructure its debt, while having a minimal impact on its operations given the short stay in bankruptcy and the ability of the company to generally continue operating in the ordinary course throughout the bankruptcy case.

Prepackaged Chapter 11 cases, like the one employed by Grupo Posadas, enable the company to limit its time in Chapter 11 — in this case, just six weeks, and in other cases, less than a day. In addition,

Grupo Posadas was able to have all other stakeholders — including its existing publicly traded equity and all general unsecured creditors—ride through the Chapter 11 case unimpaired.

Earlier this year, Automores Gildemester SpA, a Chilean-based vehicle importer and distributor primarily operating in Chile and Peru, filed a prepackaged Chapter 11 case after struggling financially due to a variety of factors, including the pandemic and macroeconomic conditions that the company indicated had resulted in decreased consumer confidence in the markets in which it operates. Less than two months later, Automores Gildemester confirmed a Chapter 11 plan that helped the company restructure over \$500 million in prepetition funded debt.

Both U.S. and foreign-based companies experiencing financial distress should consider whether a Chapter 11 case (or its threat) can help right-size their balance sheets.

Philippine Airlines Inc., the Philippines' only full-service network airline, struggling from the prolonged impact of the pandemic on air travel, filed for Chapter 11 in September and confirmed a fully consensual plan of reorganization on Dec. 17. The plan implements over 40 different restructuring agreements with various key creditors.

Facing liquidity issues by the end of 2021, Alto Maipo SpA, a Chile-based special purpose company formed to develop, construct and operate a hydroelectric energy project in Chile, filed a prearranged Chapter 11 case in November. Among other factors, the pandemic led to unexpected delays in construction, straining the budget for the project.

Alto Maipo recently filed an amended restructuring support agreement evidencing support by holders of approximately 78% of the company's senior secured lenders. As one of the milestones agreed to by the company with the providers of its debtor in

possession financing, the company will have a Chapter 11 plan confirmed prior to May 18, 2022.

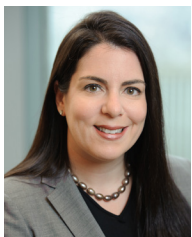
Other large international companies that filed for Chapter 11 in 2021 include: Stoneway Capital Corporation, an Argentine power company; and Alpha Latam Management, LLC (a Delaware entity) and certain of its Colombian affiliates that operate a specialty finance business offering consumer and small business lending services in Colombia (additional affiliates operating in Mexico did not file Chapter 11 cases).

Minimal or intangible property in the U.S. can serve as a foreign entity's "passport" into U.S. bankruptcy, because the Bankruptcy Code specifies no minimum amount or threshold.

Foreign companies are drawn to key benefits available under the U.S. Bankruptcy Code. Perhaps most significantly, there is a worldwide stay of actions against the debtor while a Chapter 11 case is pending; and management typically retains control of the company, in contrast to many jurisdictions, where a liquidator is appointed. Both U.S. and foreign-based companies experiencing financial distress should consider whether a Chapter 11 case (or its threat) can help right-size their balance sheets.

A foreign entity needs only minimal U.S. ties to qualify for relief under its bankruptcy laws. Section 109 of the Bankruptcy Code provides that "only a person that resides or has a domicile, a place of business, or property in the U.S., or a municipality may be a debtor." The property requirements under §109 have proven relatively easy to satisfy, making U.S. bankruptcy protection a viable option for many businesses incorporated elsewhere, even if they engage in little or no business activity in the United States.

About the authors



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