

# LATIN LAWYER MAGAZINE

THE BUSINESS LAW MAGAZINE FOR LATIN AMERICA

# DEAL OF THE YEAR 2008

*m&a*

*corporate finance*

*project finance*

*disputes*

*restructuring*

# RESTRUCTURING CATEGORY

## WINNER: DEFYING ALL THE ODDS

**R**estructuring outstanding financing of US\$4 billion after Venezuela's President Hugo Chávez renegotiated the terms of heavy oil projects in the Orinoco belt was never going to be easy.

Four separate joint ventures between state-owned oil company PDVSA and foreign oil companies with quite different views on the Chávez's move, a multitude of lenders and bondholders meant negotiations were frequently fraught and at times on the verge of collapse.

In the end, only the financing of one project – Sincor – was restructured completely. At beginning of the process, on all of the projects, hopes for getting any of the refinancing processes through without a rush of litigation were at least frail, if they existed at all. But given the climates in the financial sector and Venezuela, it is commendable that all the financing agreements have been successfully renegotiated or repaid in one form or another.

When the team of **Curtis Mallet** lawyers advising PDVSA began looking over the associated documents for each project, they remarked on the shared characteristics – there were similar collateral and lenders had interests in more than one project. But once negotiations began, each project took quite different paths. Lenders had different attitudes in each project; there were varying time lines and all kinds of legal issues.

The Sincor project was a joint venture between PDVSA, French oil company Total, and Norway's StatoilHydro. The profitability of the project, the willingness of the sponsors to renegotiate the new terms of the project and the fact that the lending banks had long-term relations with Total and Statoil kept the dialogue moving forward, although at times it was painful. Sincor was by no means straightforward – the injunctive actions against PDVSA by ExxonMobil in the UK courts caused concern by all parties for one.

Sincor not only had the most successful outcome; it kept negotiations around the other projects alive, in part because Sincor lenders had interests elsewhere. Unlike Sincor, the other projects were financed to a degree by bond debt – a far greater, and less manageable, hurdle. In one project, for example, a group of bondholders aggressively demanded payment, while in another they were more passive and lawyers took the lead.

Of course, each project had its own particular barriers to restructuring. In the case of Hamaca, PDVSA's joint venture with Chevron and ConocoPhillips, restructuring was looking possible until one lender, the US Export-Import Bank, pulled out suddenly from talks and asked for repayment – potentially a politically driven move. The outstanding financing was prepaid in full at par in two instalments in 2007.

Roadblocks in the case of the Cerro Negro and Petrozuata projects took the shape of joint venture partners. Cerro Negro partner ExxonMobil and Petrozuata sponsor ConocoPhillips disagreed with the proposed ownership structure of the joint ventures and had gone on to file for arbitration, making their support of any restructuring agreement less likely.

In Cerro Negro, the outstanding sum in the bank credit facility was repaid and 99 per cent of the outstanding project bonds were purchased by PDVSA in a tender offer at a negotiated price of par, plus accrued and unpaid interest, plus a premium. In Petrozuata, PDVSA prepaid the bank credit facility and purchased 98 per cent of the bonds outstanding at a negotiated price of par, plus accrued and unpaid interest, plus a premium in 2008.

### **Counsel to PDVSA and its affiliates**

- In-house counsel – Armando Giraud, Constanza Quevedo, Gigliolla Abreu and Hilmer Barrios

#### Venezuela

- Urdaneta Fontiveros & Asociados  
Partner Enrique Urdaneta

#### US

- **Curtis, Mallet-Prevost, Colt & Mosle LLP**  
Partners George Kahale, III and David Bayrock led the teams in all four of the projects

#### For the Sincor project:

Partner Eduardo Cukier and associates Antonio De Lisi, Matías Mori, Alejandro Garcia Villalpando and Kathleen Diab

#### For the Hamaca project:

Counsel John Nielsen, and associate Antonio De Lisi

#### For the Cerro Negro project:

Partner Evan Borenstein, Eduardo Cukier, Valarie Hing and Steven Reisman, counsel John Nielsen and associates Olga Belodad, Antonio De Lisi, Alejandro Garcia Villalpando, Susana Namnum, Stefano de Stefano and Shannon Wing

#### For the Petrozuata project:

Partners Evan Borenstein, Eduardo Cukier, Valarie Hing and Steven Reisman, and associates Olga Belodad, Antonio De Lisi, Alejandro Garcia Villalpando, Susana Namnum, Benjamin Lowin and Stefano de Stefano

#### For the Sincor project

- In-house counsel to StatoilHydro – Catherine Marchand Støle, Miguel Strauss, Steinar Enoksen and Morten Kjaer Enger
- In-house counsel to Total – legal manager for Total Venezuela Andreina Urdaneta, international legal negotiator Alain Rameau, and senior legal counsel for Total's finance department Antoine Vèry