

ALTO MAIPO GETS COURT APPROVAL OF CHAPTER 11 RESTRUCTURING

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08 June 2022

Chilean hydroelectric project operator Alto Maipo has had its Chapter 11 plan approved by a Delaware court, after the company modified language related to third party releases in response to an objection by the US trustee.

On 17 May, Judge Karen Owens in the US Bankruptcy Court for the District of Delaware approved a seventh amendment to Alto Maipo's restructuring support agreement (RSA), which adds a US\$250,000 cap on law firm Davis Polk & Wardwell LLP's fees for tax services provided to creditor Cerberus on or after 11 May that the debtor will cover.

Just four days earlier, the judge had approved the power plant operator's Chapter 11 plan, allowing it to restructure over US\$2 billion of senior secured debt obligations and significantly de-leverage its capital structure.

The court sanctioned the plan after Alto Maipo made changes to its language on third-party releases.

In a memorandum, the company said the modifications resolved a sole remaining objection from Andrew Vara at the US Trustee's office, who complained on 5 May that the third-party release clauses were imposed on parties who were "merely...related in some fashion" to the creditors. None of the related parties were given the chance to consent to the releases or had the ability to opt out, he said.

Senior lenders including term lenders and the Austrian construction company Strabag who deem themselves as "the key economic stakeholders" in the hydroelectric plant company told the court on 10 May that the plan was "indisputably" in the best interest of the

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debtors and all stakeholders.

They added that their “patience and resilience” had been tested since the RSA had been amended five times and the deal had also changed multiple times to address unexpected developments, which “in almost every instance, made the deal worse for the Senior Lenders and required further concessions from the group”.

The senior lenders urged the court to approve the plan, because no party other than the US Trustee had objected.

In its memorandum, Alto Maipo said it removed language from the plan’s exculpation provisions that the US Trustee claimed “improperly” included findings of fact by the court in relation to certain parties’ good faith conduct.

The US Trustee said if the debtors wanted to propose factual findings for the court to make, they could do so in a proposed form of confirmation order and introduce evidence to support their request – which is what Alto Maipo did.

The hydroelectric plan builder also included additional language to settle an objection from the Trustee over the plan being called a settlement. The Trustee accused the debtor of trying to sidestep the law applicable to confirmation of plans by describing the plan as “some undocumented settlement”.

According to Alto Maipo, the plan is the “product of months of robust, arms’-length negotiations”, and received unanimous support from all of the creditor classes allowed to vote by the voting deadline of 5 May.

A total of three classes were entitled to vote – holders of senior secured obligations totalling US\$2.04 billion; Alto Maipo’s majority owner AES Andes, a subsidiary of US-incorporated power company AES Corporation, which provided US\$50 million in debtor-in-possession financing to the debtors; and Strabag in respect of US\$17.5 million worth of claims it has under a February 2018 tunnelling contract.

Strabag is also a member of the senior secured obligations class along with senior lenders, with its claims totalling US\$392 million.

Around 96% in number and 99.5% in value of the senior secured obligations voted on the plan, with all of them supporting it, while

both AES Andes and Strabag voted in favour in their own classes.

Under the plan, holders of senior secured obligations will see a recovery of between 60% and 66.8%, according to the company's disclosure statement. The senior secured class will have their debts exchanged for new senior first-lien secured obligations and amended and restated second-lien secured obligations.

The senior first lien debt worth US\$1.05 billion will be structured as a combination of notes and project-finance style loans, with Alto Maipo being required to go to market to refinance the debt within six months, extendable to 12 months by the lenders.

It will reach maturity in June 2024, accrue interest at 4% from the date the hydroelectric plant group exits bankruptcy, and have a mandatory annual debt service amount of US\$62.4 million with a view to reducing the outstanding principle to US\$500 million by the maturity date. The new first-lien debt will also have a cash sweep element.

The new senior second lien debt worth US\$995 million, meanwhile, will have an interest rate of 2% per annum paid in cash or kind. It will also have an upside fee payable after each calendar year-end and a cash sweep element as well, both reduceable pro-rata to the amount of second lien debt that is mandatorily converted into shares in the hydroelectric company upon maturity of the debt in October 2042.

Second lien debt holders can choose to extend the maturity of their debt by 10 years to 2052, after which another mandatory conversion will apply.

Strabag will also be fully repaid its US\$17.5 million under the tunnelling contract, subject to certain deferrals to the end of the year and with 4% interest.

AES Andes has agreed to fully repay general unsecured claimants in cash, up to US\$300,000.

The majority owner's US\$50 million debtor-in-possession funding will be exchanged for, or paid with, the proceeds of an amended and restated secured exit financing facility that it will also provide.

In return for lending the increased exit facility, agreeing to have its DIP claims impaired, offering the US\$300,00 contribution to unsecured claimants, agreeing to certain deferrals, and contributing

up to US\$10 million to satisfy certain other claims, AES Andes will receive all the new common equity in the restructured company.

The plan also provides for US\$1.1 billion in intercompany claims being reinstated or cancelled.

Alto Maipo said in a press release on 13 May that the conclusion of the restructuring guarantees the financial viability of its Chilean hydropower project, which was completed in December last year.

The Alto Maipo hydroelectric project “is now a reality and will provide essential renewable energy for the next 100 years in Santiago, the main centre of consumption in the country”, it added.

Sullivan & Cromwell LLP is currently representing Chile’s Minera Los Pelambres in a dispute with Alto Maipo arising under a power purchase agreement and in connection with Alto Maipo’s Chapter 11 proceeding.

In the US Bankruptcy Court for the District of Delaware

In Alto Maipo

Judge Karen Owens

Counsel to Alto Maipo

Cleary Gottlieb Steen & Hamilton LLP

Partners Rich Cooper and Luke Barefoot, senior attorney Carina Wallance, associates Belen Pironi and Ignacio Lagos in New York, and associate Jack Massey in Washington DC

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