



INSOL INTERNATIONAL

Latin America Newsletter

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EDITOR'S NOTE



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It has been almost a year since the first issue of the Latin America Newsletter. Since then, the COVID-19 pandemic has affected every part of the world.

To prevent a larger spread of the coronavirus domestically and internationally, governments have been taking measures such as temporarily shutting down businesses as well as all types of mobility restrictions.

Companies, in turn, have taken on more debt given the difficulties with short-term cash requirements for the payment of employees, suppliers, all kinds of operating expenses as well as taxes. Economic activity has plummeted and vulnerability has increased. Corporate defaults tend also to undermine the credit assets of financial institutions and lenders in general.

Companies and Institutions are therefore evaluating and dealing with the effects of the COVID-19 pandemic in an attempt to mitigate its effects on economies and insolvency. Insolvency professionals play a critical role by helping companies and Institutions make well thought out decisions in the current extremely volatile economic environment.

As a global non-governmental organization exclusively devoted to promoting the development of turnaround and insolvency systems, practices and policies, INSOL's vision of a global economy where transactions can occur with minimal risk and protected value is now more important to prevent and mitigate the effects of a global pandemic. The improvement of national legal and insolvency systems has become a priority as economies continue to deteriorate.

Clearly, this is a crucial moment for INSOL. At times like this, professionals should share experiences and assist each other.

This 3rd issue of the Latin America Newsletter brings a series of very interesting contributions from Latin American firms as well as from international firms active in Latin America. Topics include overviews of public policies and legislative measures to contain and overcome the economic effects of the pandemic in Chile, Colombia, Argentina and Peru. In addition, there is a more comprehensive review of insolvency regimes in Latin America, a review of airline restructurings under US legislation (which is of particular interest to the restructuring of major Latin American airlines), and an article with details of Brazilian insolvency procedures (creation of subclasses of creditors) of particular interest to foreign investors.

I hope you find this Newsletter informative.

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If you would like to introduce a new member to INSOL International please contact [Tony Ashton](#).

HIGHLIGHT ARTICLE

Judicial restructuring plans and the possibility of creating subclasses of creditors as bondholders

Antonio Mazzucco & Vitor Ferrari, Mazzucco & Mello Advogados, Brazil

One of the objectives of Brazilian judicial restructuring is the economic restructuring of the debtor, thus halting foreclosures and asset constrictions and allowing the debtor to demonstrate to its creditors that it has the capacity to reverse the economic-financial crisis in which it finds itself and also the means to fulfil its basic obligations, thereby avoiding a decree of insolvency and consequent bankruptcy.

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ARGENTINA

Relief measures for debtors in response to the COVID-19 pandemic outbreak in Argentina

Fernando Hernández, Marval, O'Farrell, Mairal, Argentina

After the COVID-19 outbreak, since March 20, 2020 the Argentine government has imposed a rigid nationwide lockdown, including a mandatory stay-home order and restriction on the free circulation of people except for individuals rendering a limited number of services deemed essential, like food services, health services and utilities. The lockdown and stay-home order extended without interruption for more than eight months, until November 7, 2020, when the Argentine government released the lockdown and stay-home order in almost all jurisdictions (including the City of Buenos Aires and surrounding areas) except in a certain limited number of jurisdictions that continue to be highly affected, where the lockdown and stay-home order were further extended until November 29, 2020.

During a great portion of the lockdown period the courts were also closed, except for extremely urgent matters. Since July 27, 2020, the courts began lifting the extraordinary recession, commencing with the Argentine Supreme Court (court of last resort in Argentina) that lifted the extraordinary recession for itself and for the first instance and appellate national and federal courts sitting in the City of Buenos Aires.

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CHILE

COVID-19 and business distress in Chile: public policies to contain and overcome the economic effects of the pandemic

Diego Rodríguez, Kramm & Rodríguez, Chile

The year 2020 will be remembered for the pandemic generated by SARS-CoV-2, a virus that had its genesis in China at the end of 2019 and that has rapidly affected various aspects of national and international affairs. In the economic sphere, unemployment, the reduction in consumption, the interruption of production chains and restrictions on internal and international transit have generated a notable lack of liquidity in companies of all sizes and, as a consequence of the foregoing, a current inability to meet their required liabilities, all in the context of a general climate of pessimism and uncertainty.

At the global level, the International Monetary Fund has projected an estimated 3% drop in Gross Domestic Product worldwide, syndicating the current crisis as an unprecedented global recession, resulting in the need for massive funds to help developing nations.

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COLOMBIA

The "broad spectrum" legislative reform of the Colombian bankruptcy system to face the COVID-19 crisis

Judge Susana Hidvegi Arango, Superintendencia de Sociedades, Colombia

Sometimes doctors have to use "broad-spectrum" antibiotics to cure fast and effectively a disease when there is no certainty of the causes. Similarly, to face the crisis derived from the Covid-19 pandemic, the Colombian government has issued decrees pertaining to the bankruptcy regime, which contain several available alternatives to deal with business insolvency. These rules offer solutions for multiple scenarios, while balancing the interests of stakeholders.

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PERU

Necessary reforms: adaptation of insolvency regimes in Latin America due to the crisis

Carla Cervantes, Martinot Abogados, Peru - Richard Turton Award Winner 2020

The economic crisis caused by the COVID-19 pandemic has brought with it the consequence that governments around the world must seek the best ways to help companies address difficulties generated by the fall in their incomes.

In this context of systemic crisis, insolvency regulation not only has to face the increase in the number of applications, but it also has to innovate and provide specific alternatives to the urgent refinancing needs of companies, such as modernizing its

proceedings in accordance with the limitations imposed by governments to stop contagion. In response to this challenging scenario, governments have implemented different legal measures, and Latin America has not been oblivious to these changes.

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USA

Airline restructurings: section 1110 of the US Bankruptcy Code, the Cape Town Convention, and recent developments in US Chapter 11 cases

David Rosenzweig & Francisco Vazquez, Norton Rose Fulbright, USA

Peru, as many countries in the region, has a long-standing history of economic crisis. Whether caused by external factors or as a consequence of internal mishaps, generations of Peruvians were born, grew and worked in a perpetual crisis environment which seemed to never end. Things changed in the 90's when the country opened up its markets to foreign investment and adopted a more liberal approach on its economic policy. All in all, 30 years of economic and political stability and continued growth have turned Peru into one of the Go-to destinations in Latin America. Despite the several challenges such as the fight against poverty, corruption and the lack of infrastructure, Peru has been perceived as a stable emerging market where growth, profits and opportunities were still available as opposed to some of the neighboring countries.

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FORWARD PROGRAMME

Join us for the INSOL Latin America Virtual Seminar on 4, 11, 18 March 2021.

We will be running three one-hour webinars over three weeks. The Committee is preparing an exciting programme. Further details coming soon!

Keep up to date by visiting our [webinars and podcasts page](#).

Latin America Newsletter Committee

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