



# INSOL INTERNATIONAL

## Latin America Newsletter

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### EDITOR'S NOTE



**Fábio Rosas**  
**Cescon, Barrieu, Flesch & Barreto Advogados**  
**Brazil**

Under the new wings of change that the diminishing of Covid-19 cases by vaccination is bringing in some countries worldwide and as a certain level of relaxation on restriction measures is adopted, we start this month's issue with renewed hope. Although many countries in the world, especially the developing ones, are still suffering with the effects of the pandemic, it is an enlightening fact that the causes of the extensive damage that the pandemic has produced in all areas, and especially in the economic field, may be coming to an end once the spread of disease has been controlled.

This edition of the journal is focused on the recent changes in restructuring instruments and rules that countries of the Latin America region have adopted.

In Brazil, the Brazilian Federal Law 11,101/2005 was amended by the recently enacted Federal Law 14,112/2020, modifying and updating all of the most important rules adopted by the Brazilian insolvency system. The enactment of the law in January 2020 has provided important inclusions that have resulted in relevant discussions that will be summarized in this edition. Companies and economic agents in Brazil now have a modernized set of tools for distressed situations due to the new outline of the Brazilian Bankruptcy Law that will certainly help them to overcome financial crisis.

The changes in the Brazilian Bankruptcy Law for debtor-in-person ("DIP") financing loans to companies under judicial reorganization is in the highlight article, in which we comment on the insertion of new DIP financing rules and provisions and the protections to investors which provide financing to companies under restructuring proceedings.

Ms Liv Machado and Ms Clarissa Tauk address the new Brazilian law provisions based on the Model Law on Cross-border Insolvency, issued by the United Nations Commission on International Trade Law ("UNCITRAL"). The amendment to the law introduced the Model Law rules issued by UNCITRAL and aims to provide mechanisms for cross-border bankruptcy and international collaboration. Although the application of the Chapter 15 procedure is commonly used by Brazilian companies, it is now also possible for companies to file for the recognition of international insolvency proceedings and collaboration in Brazil.

Concerning distressed merger and acquisitions ("M&A") transactions, Mr Salvatore Milanese discusses the recent changes in the Brazilian Bankruptcy Law and the impacts on the distressed investment market and distressed M&As. Due to the Covid-19 pandemic, the market has changed, and the modifications in the Brazilian Bankruptcy Law aim to improve the sale of assets by companies under judicial reorganization.

In relation to other changes in the Brazilian Bankruptcy Law, the provisions

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regarding tax liabilities have been included in the article by Guilherme Martins and Vitor Ferrari who discuss the new mechanisms for settlement with the National Treasury and more incentive for companies under judicial reorganization to restructure and be able to finance their tax claims.

From Argentina, we have Prof Dr Héctor José Miguens, a contributor from Universidad Austral, who comments on the Argentine Cross-Border Insolvency Bill of 2018 and Private International Insolvency Law in Argentina.

The combat of the pandemic and its effects are the subject of the article by Mr Francisco Cuadrado, who brings the analysis of public policies and legislative measures about the subject currently in the congress of Chile.

In addition, the relations between arbitration and insolvency in Colombia's experience are explored by Ms Diana Talero.

We are very grateful to INSOL for continuing to provide the opportunity for promoting important discussions in the Latin America region through high-level articles that enable readers to stay in touch with debates about the most important matters involving restructuring practice. And we also thank our contributors, who make this journal a relevant forum for networking and assist professionals in improving their knowledge.

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## HIGHLIGHT ARTICLE

### DIP Financing aspects according to recent changes to Brazilian Law

*Fábio Rosas, José Luis de Rosa Santos Jr, Luiz Guilherme Camargo - Cescon, Barrieu, Flesch & Barreto Advogados, Brazil*

This paper aims to discuss certain debtor-in-possession ("DIP") financing aspects (financing to a company under court-approved reorganization) in accordance with Law No. 14,112/2020, which changed a number of the legal provisions of Law No. 11,101/2005, known as the Corporation Recovery and Bankruptcy Law ("LRF").

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## ARGENTINA

### Private International Insolvency Law in Argentina: A commentary on the Argentine Cross-Border Insolvency Bill of 2018

*Prof. Dr. Héctor José Miguens, Universidad Austral, Argentina*

This work echoes the initiatives developed by institutions such as the World Bank, the International Monetary Fund, INSOL International, INSOL Europe, the International Insolvency Institute, the American Bankruptcy Institute, the American Law Institute, the International Bar Association and current regulations such as the European Insolvency Regulation of 2000 and 2015. It proposes the adoption of rules such as the Argentine Draft of 2002 and the Argentine Draft of 2018 on Cross-Border Insolvency, with some modifications and additions, inspired by the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on Cross-Border Insolvency (the “Model Law”) of 1997 and the Principles of Private International Insolvency Law.

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## BRAZIL

### Brazil's adoption of the UNCITRAL Model Law

*Hon. Clarissa Somesom Tauk, Judge of the 3rd Bankruptcy Court of São Paulo and Liv Machado, TozziniFreire and INSOL Fellow, Brazil*

The option to invest in a particular country takes into account, in addition to its economic development, the insolvency rules that govern the treatment given to creditors and the protection of the assets located inside and outside its territory. Legislation providing for equitable treatment between national and foreign creditors is more likely to attract the interest of international investors and, consequently, to foster the economy and business growth.

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### The provisions of the new Brazilian bankruptcy law in dealing with tax liabilities

*Antonio Mazzucco, Guilherme Martins and Vitor Ferrari - Mazzucco & Mello Advogados, Brazil*

On 23 January 2021 Law 14,112 came into effect, amending Law 11,101/2005, which regulates bankruptcy, judicial reorganization, and out-of-court reorganization. The new law brought some innovations, especially for judicial reorganization. Among these changes, the treatment given to tax credits is of interest to this article.

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### Recent changes in the Bankruptcy Code in Brazil and likely impacts on the distressed investing market

*Salvatore Milanese and Laysa Gouveia, Pantalica Partners, Brazil*

Almost 15 years have passed since the establishment of the New Bankruptcy Code in Brazil (the “NBC”) that transformed bankruptcy and restructuring proceedings in Brazil by proposing something much more aligned with the United Nations Commission on International Trade Law (“UNCITRAL”) rules and similar to Chapter 11 and 7 bankruptcy proceedings in the United States.

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## CHILE

## Public policies and legislative measures in the congress of Chile to combat the effects of the pandemic

*Francisco Cuadrado, Cuadrado Abogados, Chile*

Little over a month ago, after three bad seasons because of a lack of snow and then having to close down during the 2020 snow season because of the pandemic, the creditors of Valle Nevado in Chile, South America's largest ski resort, approved a plan to reorganise and restructure assets, to the tune of over U\$40,000,000, with a grace period of four years to repay the capital. They were hopeful there would be snow and they could operate again for around four months, the length of the snow season. This approval by the creditors was undoubtedly influenced and determined by the promise made by the ski resort owners to contribute U\$4,000,000 to the plan. The case in hand is an exceptional one in Chile, because of the difficulties that companies find, having to submit to a legal procedure of reorganisation of their assets to obtain finance and resources to ensure continued operations during the time permitted for repayment of debts and make sure they are not forced to close down only months or, if lucky, one or two years after being declared bankrupt.

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## COLOMBIA

### Arbitration and insolvency in Colombia

*Diana Talero, UVP&A Abogados, Colombia*

Law 1116 of 2006 regulates insolvency in Colombia for merchants and companies. It seeks to resolve insolvency situations in corporate entities that incur the cessation of payments or become “imminently incapable” of making payments. Colombia has various types of restructuring procedures comprising different degrees of formality. Colombia's system covers formal judicial insolvency proceedings and an intermediate hybrid procedure to validate the insolvency agreement. Traditionally, the *Superintendencia de Sociedades*, in conjunction with ordinary civil judges (civil circuit judges), is the judicial body responsible for insolvency proceedings in Colombia.

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