



INSOL INTERNATIONAL

Latin America Newsletter

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EDITOR'S NOTE



Rafael Klotz
Gordon Brothers
USA

Welcome to the inaugural issue of INSOL's Latin America Newsletter. I have had the distinct pleasure of acting as the editor of this first-ever edition, which will be published biannually. The Latin America Committee spearheaded this project to create a forum where practitioners in the region can address the unique, albeit diverse, legal and financial topics that are common across its many countries. We expect that the contents of this newsletter will inform both Latin American-based members, as well as members in other parts of the world who are interested in keeping up or learning about insolvency-related developments in this vast territory. Perhaps the most rewarding outcome of this process for all involved was achieving the ambitious goal of publishing every article in English, Spanish and Portuguese. This will ensure a broad reach to the Latin American insolvency community at-large, which extends well beyond those who speak English.

All of the articles in the newsletter are original, and were specifically commissioned for this edition. They tackle a range of topics, including updates on insolvency and pension-reform in Brazil, to practical application of the insolvency laws in Argentina, to a general overview of the unique nature of distressed investments in Latin America. Our gratitude goes out to each of the authors who contributed to this edition. We also extend an invitation to all insolvency practitioners with expertise in the region to contribute their knowledge and experience to future editions. We welcome all ideas and feedback, so please contact INSOL if you or someone you know would like to participate in future editions or to provide topics or ideas for future articles. We hope to see most of you at the upcoming Mexico City One Day Seminar on 13 February 2020, where many of the issues in the newsletter, and much more, will be discussed.

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If you would like to send an article for inclusion in the Latin America Newsletter, please contact our Technical Officer, [Louise Jennings](#).

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

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HIGHLIGHT ARTICLE

Investing in Latin America – the Foreign Capital Perspective

Rafael Klotz, Gordon Brothers, USA

Latin America is a highly complex and diverse investment environment. While most of the countries in the continent have common roots and analogous legal systems, there is great disparity when it comes to investor and creditor rights. These differences are further complicated by a long history of political instability, market volatility, public corruption and personal safety concerns across the region. While the continent is often viewed as a block, underwriting risk for an investment in any Latin American country requires a deep knowledge of each jurisdiction's local customs and idiosyncrasies. These factors have restricted the availability of capital and thus provide ample opportunities for investors in search of high yields. A high risk premium, however, comes with an increased prospect of material losses. This article provides a brief overview of the key factors that need to be considered when investing in the region.

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ARGENTINA

An Overview of Argentine Bankruptcy Law

Pablo Falabella, Bruchou, Fernández Madero & Lombardi

With the evolution of commerce and the necessity of credit in today's world, Argentina's bankruptcy law and system has generally proven to be inadequate to deal with debtors with more complex capital structures and businesses. In stark contrast with U.S. bankruptcy law or similar sophisticated bankruptcy statutes, Argentina's concurso preventivo proceeding does not provide a level-playing field to allow all parties-in-interest to reach a consensus and allow a failing business to reorganize and rehabilitate. The reality that creditors face in an Argentine bankruptcy process is that the debtor's equity holders will continue to dictate the fate of the company. This article provides a useful summary chart laying out the major differences between the Argentine concurso preventivo and the U.S. Chapter 11 process.

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BRAZIL

**Cross-Border Insolvency Recent Chapter 15
Recognition of Brazilian Judicial Insolvency in the**

Amendments to the Brazilian Bankruptcy Act

USA

Fábio Rosas & Luiz Guilherme Halasz, Cescon Barrieu

A significant proportion of foreign creditors with claims against Brazilian companies under insolvency proceedings are located in the United States. Increasingly, recognition of Brazilian insolvency proceedings is being sought in the United States Courts pursuant to Chapter 15 of the United States Bankruptcy Code in order give effect in that country to and confirm the terms of insolvency plans approved and ratified in Brazil. This article details some recent and long-running examples.

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Frederico Kerr Bullamah & Giovanna Campedelli, Mattos Filho

There are several ongoing initiatives seeking to amend the Brazilian Bankruptcy Act. The most relevant initiative, which was submitted to the Brazilian Congress on May 10, 2018, is Bill No. 10,220/2018 (Bill 10,220/2018) Until its final approval by both houses, any Congress member may propose further amendments to Bill 10,220/2018. This Article highlights the most relevant amendments to the Brazilian Bankruptcy Act, as proposed by the current draft of Bill 10,220/2018, including provisions in relation to cross-border insolvency proceedings, DIP finance and substantive consolidation.

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New Brazilian Compliance Standards and Rules, the Car-Wash Operation and the Restructuring of the Brazilian Civil Construction Sector

Antonio Mazzucco, Christian Rosa & Vitor Ferrari, Mazzucco & Mello

Since 2014, the Brazilian construction industry has faced economic and financial crisis which has led some of the largest domestic economic groups to file for Court-Supervised Reorganization. This was caused in part by the introduction of the Anti-corruption Law of 2013, which provides for the civil liability of legal entities for acts harmful to domestic or foreign governments. These payment commitments, in addition to the industry's stagnation, resulted in restricted credit to this sector, and, as a result, precarious cash flows for their operations. This article examines in detail these and other factors that contributed towards the crisis currently faced by the main Brazilian construction companies.

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Pension Reform in Brazil

Liv Machado, TozziniFreire Advogados

On 20 February 2019, Brazilian President Jair Bolsonaro, submitted to Brazilian Congress an amendment of the Federal Constitution ("PEC 06/2019") providing a Pension Reform drawn up by the Ministry of Economics. The main goal of the Pension Reform, which is one of the priorities of the current government along with the Tax Reform, is to reduce the public budget deficit. Proposed modifications relate to age, minimum time of contributions and percentage of the contributions among other issues.

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WEBINAR

Click here to view our Latin America webinar which aired earlier this year. The webinar topic is - *'Recent Developments in the Application of the Model Law on Cross-Border Insolvency - Recognition in the U.S. of Latin American*



Proceedings. Watch two experts discuss the topic from US and Latin American perspectives.

To access use the password **latam.111**

MEXICO CITY ONE DAY SEMINAR



REGISTER NOW

Early booking deadline: 6 January 2020

INSOL International is hosting its next Latin America seminar in **Mexico City**!

Mexico City is not one to be missed! Visit its neighbourhoods flooded with art nouveau and art deco, enjoy its cuisine and lose yourself in the streets of the city with the most museums in the world.

The seminar chairs and Main Organising Committee are busy preparing an engaging technical programme, including topics on:

- **A keynote address from Dr. Luis Madzaro**

Dr. Madrazo's keynote will cover Mexico's undergoing multiple, rapid and profound changes in a continuously developing climate. As some tail risks grow, a complex but discernible central scenario is visible.

- **Veil-piercing theories**

Latin America vs the US. This topic will include the use of substantive consolidation, liabilities of shareholders / directors, options for creditors.

- **Chair:** David Mizrachi, MDU Legal, Panama
- Javier Lorente, NTMDALL Abogados, Argentina
- Liv Machado, *Fellow*, INSOL International, TozziniFreire Advogados, Brazil
- Judge Robert A. Mark, SDFLA, USA
- Fábio Rosas, Cescon Barrieu Advogados, Brazil

- **Global insolvencies**

Recent trends in global insolvencies as reflected in the work of UNCITRAL (recognition, work on group insolvencies, the model law on recognition enforcement, MSME insolvency).

- **Chair:** Diego Sierra, Von Wobeser y Sierra, Mexico
- Hon. Daniel Carnio Costa, International Insolvency Institute, Brazil
- Fernando Hernandez, Marval, O'Farrell & Mairal, Argentina
- Christopher J. Redmond, Redmond Law Firm LLC, USA
- Diana Rivera, Rivera Andrade Estudio Jurídico, Colombia

- **A need for certainty**

Appeals and recourses in insolvency proceedings and the doctrine of equitable mootness (evolution of EM in bankruptcy, need of uniform approach to appeals, appropriate timing to appeal, how equitable mootness can be utilized by debtors during insolvency proceedings).

- **Chair:** Howard Seife, Norton Rose Fulbright, USA
- Judge Susana Hidvegi Arango, Superintendencia de Sociedades, Colombia
- Edgar M. Bonilla, IFECOM, Mexico
- Judge Martin Glenn, SDNY, USA
- Alejandro Sainz, Cervantes Sainz S.C, Mexico

- **Creditors' perspectives of restructuring proceeding**

How can creditors can be more proactive and effective in restructurings and insolvencies. Explore the use of ad-hoc committees, and what tools are available to creditors can do to increase the success rate of restructurings, DIP financing (US vs other jurisdictions), etc.

- **Chair:** Thomas Heather, Ritch, Mueller, Heather y Nicolau, S.C., Mexico
- Mark Bloom, Greenberg Traurig, USA
- Brock Edgar, FTI Consulting, Canada
- Jaime Guerra, Guerra Gonzalez y Asociados, S.C., Mexico
- Juan Jose Perojo, Deloitte, Mexico

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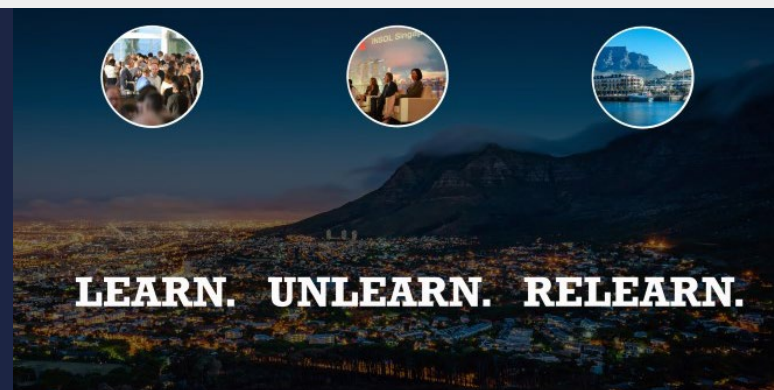
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We look forward to seeing you in Mexico City!

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INSOL Cape Town

Sunday 15 March – Tuesday 17 March 2020

At INSOL Cape Town the chosen theme 'Learn. Unlearn. Relearn.' reflects the need to evolve and develop in current market conditions. Take advantage of a stellar technical programme featuring sessions on Brexit, the Neuroscience of Leadership, Crisis Communication, and Learning from Failure - in which CEOs will retell their stories.

Along with the opportunity to connect with key senior professionals from across the globe.

Closing Deadline: 14 February 2020

[Register now](#) to secure your place!

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Australian Restructuring, Insolvency and Turnaround Association	Insolvency Practitioners Association of Singapore	REFOR-CGE, Register of Insolvency Practitioners within "Consejo General de Economistas, CGE"
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Business Recovery and Insolvency Practitioners Association of Sri Lanka	International Association of Insurance Receivers	Restructuring Insolvency & Turnaround Association of New Zealand
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Canadian Association of Insolvency and Restructuring Professionals	Japanese Federation of Insolvency Professionals	Turnaround Management Association (INSOL Special Interest Group)
Commercial Law League of America (Bankruptcy and Insolvency Section)	Korean Restructuring and Insolvency Practitioners Association	Turnaround Management Association Brasil (TMA Brasil)



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