



Latin America Newsletter

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EDITOR'S NOTE



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The 5th edition of the INSOL Latin America Newsletter will address relevant matters regarding the COVID-19 crisis and its reflections in Argentina and Mexico, as well as technological measures taken in Chile as a consequence of the global health crisis, which evidenced the latent need to modernize the judicial and administrative processes in Chile.

As for Brazil, this edition will address the first decision recognizing a foreign proceeding in Brazil, as a result of the recently amendment to the Brazilian Bankruptcy Law, and a recent precedent from the Superior Court of Justice – the main Court in Brazil for non-constitutional matters – that analyze the possibility to discharge a security interest or a personal guarantors upon the approval of the reorganization plan of a company undergoing judicial reorganization.

This edition analyzes the impacts of the crisis arising from COVID-19 that still emerges even after the breakthroughs made by scientists and vaccination moving forward in Latin America, but also how Court precedents guide insolvency proceedings in Brazil, even after the enactment of the Law that amended the Brazilian Bankruptcy Law and even though Brazil does not adopt the Common Law system

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HIGHLIGHT ARTICLE

Securities, the Superior Court of Justice and the Brazilian Bankruptcy Act

By Frederico Kerr Bullamah and Nathalia Beschizza, Mattos Filho Advogados, Brazil

1. Insolvency Proceedings in Brazil

Seeking to improve the regime of insolvency proceedings in Brazil, Law No. 14.112/2020, amended certain provisions of Law No. 11.101/2005 (the “Brazilian Bankruptcy Act”). Heavily influenced by the United States’ Bankruptcy Code, Law No. 14.112 introduced provisions on relevant matters – such as debtor-in possession (“DIP”) financings, cross-border insolvencies, substantive consolidation, and other measures necessary to preserve the ongoing business of the debtor in financial crisis. However, despite the recent amendments, there were no changes with regard to guarantees or securities granted by debtors or third parties prior to the judicial reorganization.

Highlight
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ARGENTINA

The Coronacrash in Argentina: When the Going got Tough, the Judges got Going!

By Javier A. Lorente and Mariana Mastrovincenzo, Lorente Lopez Abogados, Argentina

I.- The context of the Covid 19 crisis in Argentina.

It is not our intention to waste the reader's valuable time by spending long paragraphs describing the impact of the global Covid 19 pandemic on economies around the world, and the devastating effect it had on a huge number of companies which became insolvent or whose insolvency was worsened. This is what is known as the "Coronacrash" (in English) or “Insolpandemia” (in Spanish).

But we do want to explain, very briefly, that the economic crisis caused by the Covid 19 pandemic, and the health measures taken to deal with it, had an even worse effect in Argentina than in other countries, for one simple,

straightforward and undeniable reason: the Argentine economy, prior to 2020, had been in stagnation for four years (2016 to 2018) and, even worse, was in recession in the last two (2018 and 2018).

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BRAZIL

The Prosafe Case: Recent Acknowledgement of International Insolvency Proceedings in Brazil

By Gilberto Deon Corrêa Jr, Souto Correa Advogados and Fábio Rosas & Luiz Guilherme Halasz, Cescon Barrieu Flesch & Barreto Advogados, Brazil

Several changes were made to Law 11101/2005 (the “Brazilian Bankruptcy Law”) with the enactment of Law 14112/2020. One of the main changes was the inclusion of Chapter VI-A, which adopted the rules of the Model Law created by the United Nations Commission for International Commercial Law to address cross-border insolvency cases (the “Model Law”) and was aimed at facilitating cooperation between judges and authorities in Brazil and judges and authorities in other countries, as well as improving the security and efficiency of transnational insolvency proceedings.

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CHILE

“Technological Measures Taken in Chile as a Consequence of the Global Health Crisis”: A Crisis that Demonstrated the Latent Need to Modernize Judicial and Administrative Processes in the Country

By Pablo del Campo Brahm, Macarena Gajardo Molina and Isidora Jacob Lizama, DNPV Abogados, Chile

The current Covid-19 pandemic being experienced at an international level has had multiple effects in Chile, producing, in the first instance, an impediment to the normal functioning of judicial and administrative processes. This is due to the fact that, prior to the arrival of the virus in the country, there were various activities that could only be carried out in

person. With the advent of the pandemic, it became obvious that there was an urgent need to incorporate technology into the existing state apparatus.

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MEXICO

The Perils of Mexican Restructurings

By Thomas Heather, Creel, Mexico

Introduction

In recent times, Mexico has experienced a downward trend in its economy, not only because of the Covid-19 pandemic but also as a result of inconsistent policies of the Lopez Obrador Administration currently in power, namely: untimely responses with regard to public health initiatives; a sluggish vaccination process; attacks on the private sector; reversals of clean energy plans; and a disregard of investment in several sectors. All this was coupled with a lack of fiscal initiatives to support the private sector at all levels. Manufacturing and exporting output has also been affected, and many companies have been forced into financial restructuring negotiations.

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