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Ecuador's Insolvency, Reorganization and Bankruptcy Regime: A Roadmap

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In This Issue

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As in other countries, Ecuador's insolvency, reorganization and bankruptcy regime aims to give debtors the legal space to restructure or discharge their obligations in an orderly fashion, maximizing creditors' recovery, and preserving the value of assets. These aims, however, are undermined by three critical obstacles:

1. **Disjointed and overlapping laws;**
2. **Procedural obstacles limiting their accessibility; and**
3. **Societal stigma surrounding insolvency.**

In 2020[2] , the government adopted two laws addressing these obstacles, within targeted initiatives: one aiming to promote entrepreneurship; another to address COVID-19's liquidity and insolvency crisis. Their targeted scope precluded an overall regime revamp, however. In this article, we review how the current regime relates to corporate entities.[3]

Overview

Ecuadorian law has traditionally had two bankruptcy proceedings: preventive contests and creditor contests. The former, akin to the U.S. Bankruptcy Code's Chapter 11 Reorganization, aims to resolve debtors' obligations, promoting rehabilitation over liquidation. The debtor, or creditor(s), can bring it, under the Superintendence of Companies, Securities and Insurance ("**SCVS**"), meaning it only applies to SCVS-regulated debtors. A creditor contest, by contrast, focuses on maximizing creditor recovery, and is available to all debtors. In addition, formal liquidation, an administrative proceeding for SCVS-regulated companies, seeks to liquidate debtors' assets to discharge obligations.

In 2020, two new Ecuadorian statutes touched on bankruptcy. The Organic Law of Entrepreneurship and Innovation, which came into effect on February 28, 2020, aimed to create a more start-up friendly legal and regulatory environment, including provisions facilitating restructuring.

The Organic Law for Humanitarian Support to Combat the COVID-19 Crisis (the "**COVID-19 Humanitarian Support Law**") came into effect on June 22, 2020, adopting temporary measures to address an expected bankruptcy-wave resulting from the COVID-19 crisis, including:

1. **A legal framework for private resolution between debtors and creditors, before any preventive or creditor contest;**
2. **An exceptional Preventive Contest proceeding meant to address fallacies in the traditional one;**
3. **An exceptional judicial rehabilitation process; and**
4. **Modification of the priority of payments, intended to subordinate government claims and maximize private creditor recovery.**

Preventive Contest

Ecuador's Preventive Contest Law (*Ley de Concurso Preventivo*) establishes preventive contest proceedings ("**Preventive Contest**") for SCVS-regulated companies, aiming to prevent debtors' liquidation by creating the legal space to reach an agreement with creditors, that maximizes their recovery, while allowing debtors to continue business.[4]

Creditors may file a Preventive Contest petition any time.[5] Debtors, however, must file it within 60 days of what the law terms "cessation of payments,"[6] namely:

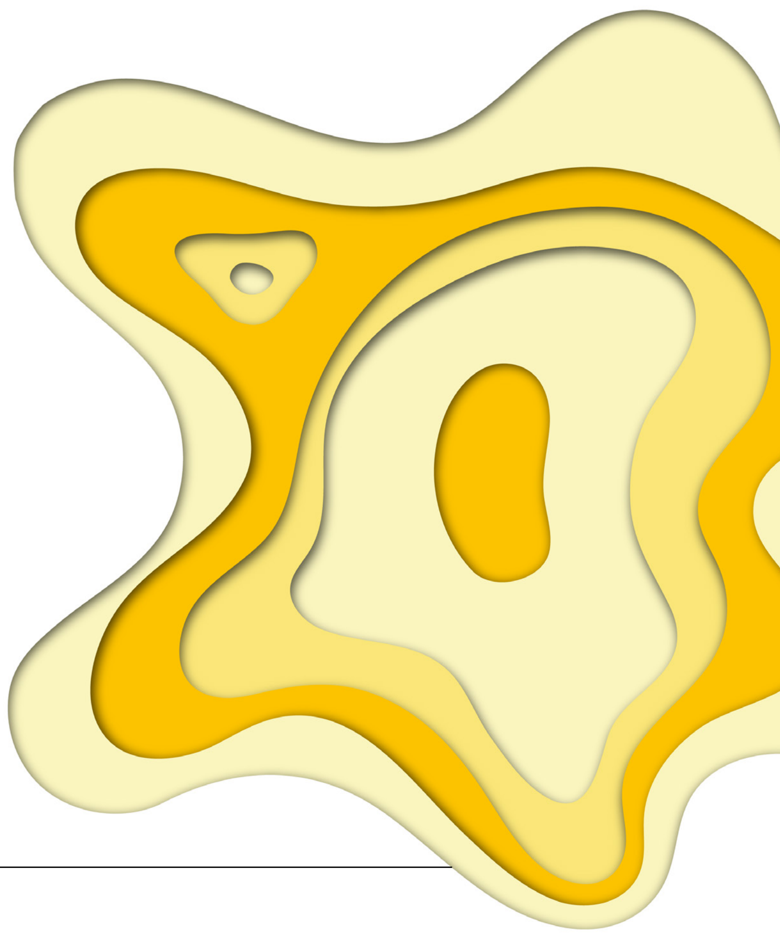
- Failure to satisfy commercial obligations, collectively worth 30% or more of total liabilities;
- Failure to comply with one or more judicial or administrative payment orders, worth 30% or more of total liabilities;
- Aggregate debt obligations with a term of less than two years exceed 80% of debtor's total assets' value, and the petitioning party can show obligations cannot be satisfied in a timely manner;
- The debtor uses assets necessary for business operations, worth more than 20% of all assets, as payment in kind; or
- The debtor's losses in any given year exceed 50% of its share capital and reserves.

These requirements have curtailed debtors' use of Preventive Contests. Debtors often miss the filing window, because they are unaware of the triggers and process, and/or due to the stigma associated with them. Creditors, meanwhile, often sidestep Preventive Contests altogether, and move directly to judgment and enforcement proceedings.

Once a Preventive Contest petition, meeting all formalities, is filed, the SCVS admits the process, designating one or more supervisors ("**Supervisors**") and summoning all creditors through a notice in a local newspaper.[7] The Supervisor's broad oversight powers include the ability to:

- Review debtors' actions during the year before the petition's filing date, to determine why payments ceased;
- Determine the viability of a petition's settlement proposal; and
- Supervise the debtor company's income and expenses' flow.[8]

Filing a Preventive Contest petition has several effects that promote orderly negotiations. Chiefly, all judicial and administrative proceedings brought by creditors (except labor claims), and all precautionary measures, are suspended, and no new ones can be bought.[9] During the Preventive Contest,[10] debtors cannot grant security interests, create trusts, sell property (except in the ordinary course of business), or reach agreements with creditors, outside the Preventive Contest. Moreover, during the Preventive process, statute limitation periods are suspended for creditor claims.[11]



The debtor company can continue operating throughout the Preventive Contest, maintaining full managerial control, except for acts requiring the Supervisor's approval. Under Article 27, neither the debtor nor creditors can use the Preventive Contests to justify terminating business contracts early. Additionally, debts incurred to enable normal business operations and promote financial recovery during the Preventive Contest, are not subject to it.[12]

Decisions made within a Preventive Contest require express acceptance from the debtor and creditors representing at least 75% of the aggregate value of obligations admitted to the process. All decisions must be general in nature (i.e., not specific to individual creditors) and must abide by the obligations' legal rankings – although creditors can voluntarily waive rankings, for their common benefit, or the company's. The settlement agreement can have a maximum seven-year term;[13] it is subject to SCVS approval, and, once approved, is binding on all creditors,[14] including absentee and dissenting creditors. If the debtor and creditors fail to reach an agreement, parties revert to their pre-Preventive Contest positions.[15]

Under Article 27, neither the debtor nor creditors can use the Preventive Contests to justify terminating business contracts early.

Lastly, Article 26 establishes a "claw-back" provision, rendering any of the following debtor actions, during 180 days before the petition's filing date, unenforceable:

- Any act transferring possession of, or creating real rights over, assets, for the benefit of shareholders, managers (e.g., legal representatives), or their spouses or relatives, within the fourth degree of consanguinity[16] or second degree of affinity;[17]
- Granting liens, mortgages, guarantees, pledges, or trusts as security for debtor or third party debts, that were not originally secured;
- Payment of debts not due or unenforceable;
- Payment in kind with, or formation of trusts over, assets necessary for business operations; or
- Disposing of assets for no value. Additionally, assignees of obligations originally owed to company managers, legal representatives or shareholders, are not entitled to vote on the settlement agreement.[18]

Creditor Contest

Creditor Contests are a judicial process brought before a civil court, intended to allow orderly resolution of obligations, and maximize creditors' recovery.[19] They may be petitioned any time by debtors ("voluntary"), or creditors ("necessary"), where there is a presumption of bankruptcy.[20]

Under Article 416 of the General Organic Code of Processes ("**COGEP**"), there is a presumption of bankruptcy when:

- The debtor fails to satisfy a judgement or judicial order;
- Assets relinquished as payment in kind are: subject to litigation, not in the debtor's possession, located outside Ecuador, or consist of receivables that are not properly documented, or against a person of notorious insolvency;
- Assets relinquished as payment in kind are insufficient to discharge obligations, based on a judicial appraisal; or
- Assets relinquished as payment in kind are subject to foreclosure in another judicial process.

Once the Creditor Contest is admitted to trial, the court appoints a síndico or receiver ("**Receiver**") with broad powers to:

- Represent the bankrupt estate and manage the debtor company;
- Take inventory and possession of all debtor assets;
- Take necessary steps to protect creditors' rights and collect credits in the debtor's favor; and
- Initiate or continue processes for or against the debtor's assets.[21] The Receiver must approve all business financing, as well as procurement of new products or services.

Once admitted, Creditor Contests envelope all other creditors' (civil) judicial proceedings against the debtor.[22] Filing a Creditor Contest petition does not, however, preclude terminating any debtor contracts.

Article 2370 of the Ecuadorian Civil Code adopts a one-year claw-back period for a Creditor Contest and any assignment for creditors' benefit, dating back from the Contest's opening. Creditors may request any of the following acts, taken within this period, be rescinded:

1. **Contracts, mortgages, pledges, antichresis, or creation of family estates, granted by the debtor to the creditors' detriment, where the debtor and receiver of the rights are aware of the business's poor condition; and**

2. **All other acts or contracts not captured under clause 1, including releases and waivers granted freely for no value, if it can be established the debtor acted in bad faith, to the creditors' detriment.**

While this is a longer claw-back period than in Preventive Contests, it requires proof of bad faith, making it harder to enforce.[23]

In a Creditor Contest, the supervising civil court must identify all the debtor's obligations and rank them according to law. The Ecuadorian Civil Code ranks debtors' obligations by class.[24]

Generally, first-class obligations do not have recourse to assets pledged or mortgaged to other creditors. However, if the other assets prove insufficient to discharge all first-class obligations, pledged or mortgaged assets are also available to first-class creditors.[25]

In light of COVID-19's expected wave of bankruptcies, the Ecuadorian National Assembly has temporarily modified legal rankings, to help private creditors recover more. Article 34 of the COVID-19 Humanitarian Support Law provides that until 2023, private parties' secured and unsecured obligations rank as first-class (with the former ranking first), above obligations owed to the government and state-owed entities (including the Social Security Institute), but not above labor obligations.[26] It is unclear how effective Article 34 will be, in practice. There may be other penalties and liabilities, including personal and criminal liability for a company's legal representative (i.e., its chief executive officer), if a debtor fails to pay obligations to government entities – particularly taxes or social security contributions.

Debtor companies may, therefore, take steps to pay these government-, or government entity-owed obligations, before allowing bankruptcy proceedings to begin.

Having identified and ranked all obligations, the civil court supervising the Creditor Contest orders a public assets' auction. The proceeds are distributed among creditors, according to their obligations' legal rankings, and if they prove sufficient to do so, the court declares obligations to have been discharged and the debtor takes whatever is left. If, on the other hand, the debtor's assets are insufficient to pay all obligations, the court summons all creditors to a hearing, to decide whether to release the debtor from its obligation to pay the remaining balance.[27] At the hearing, decisions are binding on all creditors.[28]

One obvious flaw, here, is the law fails to specify what happens if creditors decide not to release the debtor. Presumably, at this point, the civil court would declare the Creditor Contest has failed, creditors would be free to pursue other remedies, and the debtor would be liquidated, since it would have no assets to make further payments.

Prior to the COVID-19 Humanitarian Support Law's amendments, a corporate debtor's obligations were generally ranked as follows:[29]

- First-class obligations consisting of privileged unsecured obligations, including (in ranking order): judicial expenses incurred in creditors' common interests, labor obligations, obligations owed to the Ecuadorian Social Security Institute, and obligations owed to the government or governmental entities;
- Obligations secured by a pledge of assets;
- Obligations secured by a mortgage; and
- General unsecured obligations

Exceptional Bankruptcy Processes Pursuant to the COVID-19 Humanitarian Support Law

The COVID-19 Humanitarian Support Law introduced three additional bankruptcy processes, available until 2023, to manage COVID-19's anticipated wave of bankruptcies:

1. **The Pre-Contest Agreement;**[30]
2. **The Exceptional Preventive Contest; and**[31]
3. **The Exceptional Judicial Rehabilitation.**[32]

These exceptional bankruptcy processes are, broadly, available to all corporate entities, other bodies, and individuals engaged in commercial, economic, cultural, or recreational activities, excluding Ecuadorian private deposit-taking financial institutions.[33]

Pre-Contest Agreement

The Pre-Contest Agreement process creates a legal framework for debtors and creditors to resolve obligations privately, through haircuts, repayment term extensions, debt capitalizations, or other restructuring measures, before any contest is commenced.[34] The goal is to encourage voluntary agreements between debtors and creditors, to avoid clogging up the courts and slowing down proceedings.

Debtors initiate the process by filing a sworn affidavit before a notary, listing all obligations and creditors, disclosing its related parties, and parties it shares joint and several liability with, as well as obligation-guarantors, all judicial, arbitration and administrative proceedings the debtor is a party to (including any precautionary measures against it) and financial information, setting forth its proposed restructuring plan.[35]

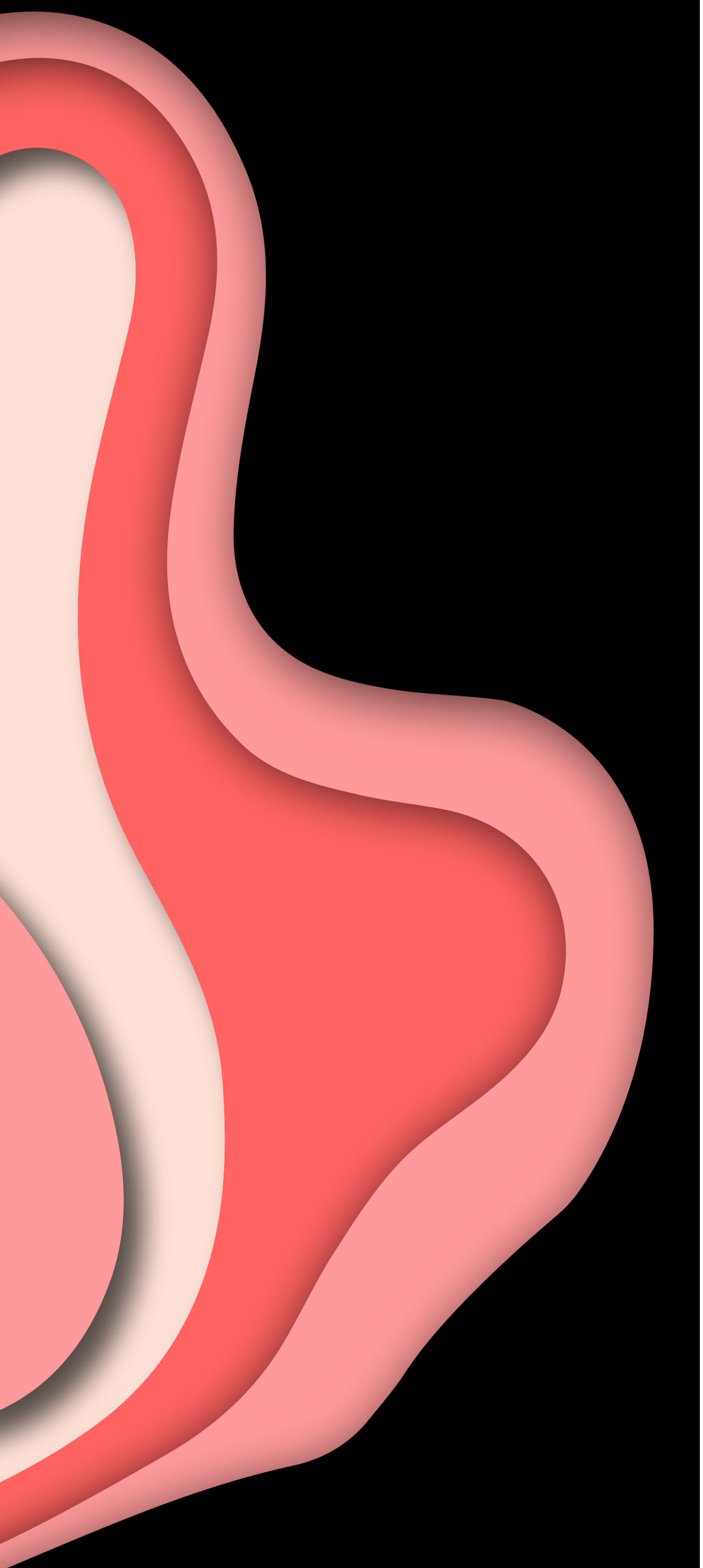
If the debtor reaches an agreement with creditors representing at least 51% of outstanding obligations (excluding related parties), they can execute the agreement as a mediation act.

The debtor may then convene all creditors to begin a mediation before an authorized mediation center, which requires participation from creditors collectively holding at least 51% of the aggregate value of all obligations (excluding obligations owed to related parties).[36] If the debtor reaches an agreement with creditors representing at least 51% of outstanding obligations (excluding related parties), they can execute the agreement as a mediation act, which has the legal force of a final judicial judgment.[37] If the creditors include private financial institutions, the Pre-Contest Agreement must receive the support of at least 51% of the obligations owed to such creditors.[38] The Pre-Contest Agreement is binding on dissenting and absentee creditors[39] (including public-sector entities),[40] but not on Ecuadorian private deposit-taking financial institutions.[41]

Initiating a pre-contest mediation affords the debtor several valuable protections. It may continue normal business during the mediation; creditors cannot initiate or continue any judicial or extra-judicial enforcement action against the debtor during mediation; nor can they take actions to improve their situation against other creditors.[42] All coercive-collection measures, such as attachments or garnishment of funds, brought by public-sector entities are likewise suspended (or reversed if they pre-dated the mediation) throughout. Financial institutions may not lower the debtor's credit-rating during mediation, nor may they charge the debtor default interest, fines, surcharges, expenses or contributions for late payments.[43]

No company legal representatives undertaking any of these exceptional bankruptcy processes will be jointly liable for obligations, unless they committed fraud or willful misconduct which prejudiced one or more creditors. It is unclear whether such protection extends to related criminal liability.

Creditors can only challenge Pre-Contest Agreements through ordinary legal proceedings, on the grounds they are prejudicial to one or more creditors.[44] It is unclear what this means in practice, since most Pre-Contest Agreements are likely to contain conditions detrimental to creditors – vacating it on that basis would seem to defeat the object. Thus, it seems likely, and advisable, that courts will require more than mere detriment, and "prejudicial", in this context, will be interpreted to mean improper behavior, such as collusion or bad faith. Another important ambiguity is the lack of distinction between secured and unsecured creditors, suggesting dissenting secured creditors are bound by Pre-Contest Agreements, despite their payment priority over unsecured creditors.



The Exceptional Preventive Contest

Where the debtor and creditors cannot reach a Pre-Contest Agreement, the debtor may petition for an Exceptional Preventive Contest. The petition must be accompanied by the pre-contest mediation resolution showing it was impossible to reach an agreement, as well as a sworn affidavit from the debtor's legal representative, that the debtor cannot satisfy past-due obligations, or it reasonably foresees it will be unable to do so. The sworn affidavit must also contain:

1. **A list of all creditors, debts and obligations;**
2. **A list of all judicial or arbitral proceedings filed against the debtor; and**
3. **The restructuring plan.[45] Without the Preventive Contest's narrow filing window for petitions, the Exceptional Preventive Contest is more accessible to debtors.**

If the court admits the Exceptional Preventive Contest petition, all judicial and administrative proceedings brought by creditors against the debtor, as well as all precautionary measures, are suspended, and creditors cannot take further action for 120 days.[46]

Exceptional Preventive Contest Provisions have Two Important Fallacies:

1.

Firstly, there is no minimum percentage of obligations, creditors in favor of an agreement must collectively hold, to make it binding. The relevant article of the law[47] refers to the General Organic Code of Processes, which contains provisions regulating traditional Creditor Contests. This could suggest that – as in Creditor Contests – the threshold is 51% of all admitted obligations' aggregate value. However, another section of the COVID-19 Humanitarian Support Law[48],incorporates the provisions of both the General Organic Code of Processes and the Preventive Contest Law. The relevant threshold to reach an agreement in the latter is 75%, not 51%. Since all Ecuador's corporate and quasi-corporate entities are subject to both these statutes, it is unclear which threshold applies. A better reading of the law would apply the 51% threshold, since the article regulating creditors' meetings – where all such decisions are made – expressly references the General Organic Code of Processes and not to the Preventive Contest Law.

2.

A second issue relates to secured creditors. Under the General Organic Code of Processes, incorporated by reference into the Exceptional Preventive Contest, secured creditors that vote in the Creditor Contest lose their claims' preferred legal ranking.[49] This approach is reasonable in a Creditor Contest, since creditors are voting on whether to release the debtor from outstanding debt obligations once foreclosure proceeds have been distributed. Since secured creditors have ranking priority, they will already have recovered in full, provided their collateral value covers the full amount owed to them. An Exceptional Preventive Contest, however, is designed to restructure all the debtor's obligations and rehabilitate the business. It does not necessarily (or preferably) contemplate enforcement by secured creditors against their collateral. Within an Exceptional Preventive Contest, this provision places secured creditors between Scylla and Charybdis. They can preserve their priority over the collateral, submitting to whatever restructuring arrangement other creditors agree to, or exercise their right to vote, but lose their priority ranking.

The Exceptional Rehabilitation Proceeding

The COVID-19 Humanitarian Support Law also contemplates an Exceptional Rehabilitation Proceeding: a civil judicial process, in which, if the debtor's assets are sufficient to pay at least 60% of total outstanding obligations, the court shall order a payment plan for the remainder and order the debtor's immediate rehabilitation. If the debtor fails to comply with the payment plan, the judge will revoke the rehabilitation.[50]

This provision is devoid of detail, making its meaning unclear. It could be a means to sidestep pre-contest mediation, and preventive and creditor contests entirely, allowing the debtor to reach a more expedient resolution. However, it is unclear, for instance, what happens if the debtor's assets are not liquid, but largely real or movable property used in business operations. Must the debtor liquidate them to pay 60% of its outstanding obligations, and if so, how does it continue its operations? Moreover, it is unclear how the court should determine the payment plan for the remaining 40%. Is it based on a debtor proposal, and is there consultation with creditors? None of these important questions are addressed. In practice, it is likely to establish 60% as a target for immediate recovery by creditors in any restructuring, through other proceedings discussed above, with the remaining 40% subject to an agreed payment plan, tied to the debtor's future operations.

Start-ups Restructuring

The Organic Law of Entrepreneurship and Innovation establishes an additional regime for restructuring start-up ventures' obligations, regulated by the SCVS or the Superintendence of Popular and Solidarity Economy (the "**SEPS**" and together with the SCVS, the "**Superintendencies**"). For this purpose, a start-up venture is defined as a project under five years old, requiring resources "to cover a need or take advantage of an opportunity" with the goal of "generating utility, employment and development."[51] The start-up must also be registered in the National Register of Start-up Ventures.[52]

Like Preventive Contests, this administrative proceeding aims to facilitate restructuring of a start-up venture's obligations. Unlike Preventive Contests, the start-up does not have to incur a cessation of payments, or be unable to meet obligations, but it must provide in its petition a reasoned basis for seeking a reorganization. All start-up creditors are entitled to participate in the restructuring process, except:

- Those that own or owned more than 50% of the debtor's share capital during the year before restructuring commenced,
- Any person who is or was part of its management in the year before restructuring began (including auditors), and
- Spouses or relatives, within the fourth degree of consanguinity[53], or second degree of affinity,[54] of the legal representative or any shareholders, owning more than 50% of the share capital. In each case, any debts owed are subordinated to the repayment of all other secured and unsecured obligations.[55]

Once the restructuring process is admitted by the relevant Superintendence, several bankruptcy protections kick in, including:

- The start-up cannot be dissolved, liquidated, intervened or cancelled;
- No administrative, judicial or arbitral proceedings, or coercive-collection measure, may be brought against it;
- All judicial, coercive-collection or enforcement proceedings against the start-up are suspended;
- All payments of obligations incurred prior to the restructuring petition are suspended, except labor obligations and any payments that are indispensable to ordinary business operations, as approved exceptionally by the relevant Superintendence; and
- All debt-collection processes undertaken by public and private banks are suspended.[56] Additionally, no venture contracts can be terminated prematurely, nor security arrangements enforced.[57] In its restructuring petition, the venture must describe all products and services it must continue to receive for continued operations ("**Indispensable Goods and Services**").[58] If approved, the provision of Indispensable Goods and Services cannot be interrupted during the restructuring process.[59]

While the start-up may continue its business operations during the restructuring process, it cannot

1. **Create any lien over, or dispose of, any assets beyond normal business operations;**

2. **Constitute trusts or grant guarantees or security interests to third parties,[60] or;**

3. **Modify organizational documents or transfer rights to its share capital.[61]**

The restructuring agreement must be subscribed to by two or more creditors,[62] representing more than half the obligations under negotiation, and is binding on dissenting or absentee creditors. Importantly, all Indispensable Goods and Services providers have a veto right over the restructuring agreement.[63] Furthermore, following the agreement's subscription, obligations arising from Indispensable Goods and Services provision rank higher than other civil or commercial obligations.[64]

This cram-down provision is somewhat muddled by a separate provision, intended to incentivize creditors to participate in negotiations, which states that creditors who don't, can only collect on debts after obligations included in the agreement are fully performed.[65] When the relevant provision (Article 52 of the Entrepreneurship and Innovation Law) speaks of such recalcitrant creditor's debt, it is unclear whether it means the original debt or the debt modified by the restructuring agreement. Presumably, in light of the cramdown, it is the latter. If so, creditors have a strong incentive to participate in negotiations until the end, even if they don't subscribe to the final agreement. Additionally, the debtor may enter side deals with one or more creditors, with the relevant Superintendence's approval.[66] Once again, it is unclear whether creditors entering such a deal, and therefore absent from broader restructuring negotiations, would have their debts relegated, behind obligations included in the restructuring agreement.

In one somewhat odd provision, the Entrepreneurship Regulations state that if no restructuring agreement can be reached, as evidenced by an agreement signed by the start-up and at least two creditors, the venture will be liquidated. In this agreement, the start-up and creditors can include certain stipulations, provided no creditor's legal payment ranking is lowered. Creditors providing additional liquidity may, however, gain greater priority, provided labor, tax and social security obligations' rankings are unaffected.[67] Giving these creditors greater priority does, however, essentially impinge on other creditors' rankings, even if they are not lowered in a strict sense.

Lastly, the start-up and creditors representing more than half restructured obligations, may request the restructuring agreement's early termination, for actual or potential breach.

Ecuador's bankruptcy laws offer multiple proceedings for companies to reach agreement with creditors, with a view towards reorganization or liquidation. Despite some flaws and misalignments, the laws contain features that should enable corporate debtors to navigate bankruptcy systematically and maximize creditors' recovery. In difficult economic times, like those caused by COVID-19, timely and savvy application of these laws can make all the difference for corporate debtors striving to preserve the value of their businesses.

Jesús M. Beltrán Tribin, Partner, Robalino, With more than 20 years of professional experience locally and internationally, Jesus has unrivaled experience advising lenders and borrowers in various types of cross-border financing, such as syndicated and bilateral loans, club deals, project financing and acquisitions.

He also advises issuers and underwriters on bond and equity issues in capital markets, as well as on securitizations, structured financing, derivatives transactions and loan portfolio repurchases.

Jesus has extensive experience in restructuring liabilities, and extensive knowledge of the banking sector, particularly of the various laws in Latin America that impact the business of multi-jurisdictional institutional banking.

In the Corporate area, he focuses on mergers and acquisitions, joint ventures, equity investments and other strategic cross-border transactions. Jesus also has in-depth knowledge of the laws that regulate insolvency and bankruptcy processes in Ecuador.

Juan Bernardo Guarderas, Senior Associate, Robalino Juan Bernardo has extensive experience advising clients on l ocal and international transactions, acquisitions, joint ventures, asset purchases, share purchase agreements (SPA), shareholder agreements (SHA), among other complex corporate matters. He also gives corporate and corporate advice to companies.

Before joining ROBALINO Abogados, he was an associate of a prestigious firm in Ecuador, where he was part of the tax and corporate area, focusing his practice and training on tax advice and structuring, administrative processes and contentious tax litigation before the tax administration.

Currently, Juan Bernardo works in the M&A department, in cross-border transactions with an emphasis on mergers and acquisitions, purchases, sales, joint-ventures and all business areas.

He collaborates with the Financing and Capital Markets area, advising and assisting clients in syndicated and bilateral loans, as well as in bond or share issues in international capital markets, among other transactions of the firm's line of business.

1. Jesús M. Beltrán is a Partner and Juan Bernardo Guarderas a Senior Associate in the Quito office of Robalino® Donoso, Gachet, Beltrán, Pallares, Valdivieso, Wiesson.
2. Organic Law of Entrepreneurship and Innovation dated as of February 28, 2020, and the Organic Law for Humanitarian Support to Combat the COVID-19 Crisis dated as of June 22, 2020.
3. Financial institutions are subject to their own bankruptcy and insolvency process under the purview of the Superintendence of Banks, which is outside the scope of this article.
4. Article 2 of the Preventive Contest Law dated as of December 21, 2006.
5. Article 9 of the Preventive Contest Law.
6. Article 4 of the Preventive Contest Law.
7. Article 12 of the Preventive Contest Law.
8. Article 13 of the Preventive Contest Law.
9. Article 24 of the Preventive Contest Law.
10. Article 12 of the Preventive Contest Law.
11. Article 25 of the Preventive Contest Law.
12. Article 48 of the Preventive Contest Law.
13. Article 30 of the Preventive Contest Law
14. Article 32 of the Preventive Contest Law.
15. Article 43 of the Preventive Contest Law.
16. Pursuant to Article 22 of the Ecuadorian Civil Code, "consanguinity" means the blood descendance relationship between two people, and the degree is counted by the number of generations. In the case of the Preventive Contest Law, "claw-back" provisions are applicable to parents and their children, brothers, grandparents and grandchildren, great grandparents and great grandchildren, uncles and nephews, up to the extent of cousins.
17. Pursuant to Article 23 of the Ecuadorian Civil Code, "affinity" means the relationship that exists between a person who is or has been married and the blood relatives of its spouse.
18. Article 30 of the Preventive Contest Law.
19. Article 414 of the General Organic Code of Processes ("COGEP") of May 22, 2015.
20. Article 416 of COGEP.
21. Article 434 of COGEP.
22. Article 418 of COGEP.
23. Guamán Aguila v. Montalván Díaz, Judicial Gazzette 8 of March 8, 2002
24. Articles 2373 through 2389 of the Ecuadorian Civil Code.
25. Articles 2378 and 2380 of the Ecuadorian Civil Code.
26. Article 34 of the COVID-19 Humanitarian Support Law.
27. Article 437 of COGEP.
28. Article 427 of COGEP.
29. We have listed only those obligations that are relevant in a corporate setting, and thus, for instance, exclude entirely the Fourth-Class Obligations.
30. Articles 27 through 29 of the COVID-19 Humanitarian Support Law.
31. Articles 30 through 32 of the COVID-19 Humanitarian Support Law.
32. Article 33 of the COVID-19 Humanitarian Support Law.
33. Article 26 of the COIVD-19 Humanitarian Support Law. Ecuadorian financial institutions encompass all financial institutions that form part of the Ecuadorian financial system or fall under the purview of one of the Ecuadorian financial regulators, including the Superintendence of Banks
34. Article 27 of the COVID-19 Humanitarian Support Law.
35. Article 23 of the Implementing Regulations for the COVID-19 Humanitarian Support Law issued by the President of the Republic on December 29, 2020 (the "Humanitarian Law Implementing Regulations")
36. See Article 27 of the Humanitarian Law Implementing Regulations. Unusually, Article 27 includes within the related parties of a debtor parties located outside of Ecuador that have granted the debtor external credits, which have not been registered with the Ecuadorian Central Bank.
37. Articles 27 and 28 of the COVID-19 Humanitarian Support Law.
38. Article 26 of the Humanitarian Support Law Implementing Regulations. This requirement appears only in the implementing regulations and thus is susceptible to legal challenge on the basis that it contravenes the express conditions set forth

in the law.

39. Article 28 of the COVID-19 Humanitarian Support Law.

40. Article 31 of the Humanitarian Law Implementing Regulations. High-ranking officials of public-sector institutions, as well as judges and public officials charged with carrying out coercive-collection processes, must take measures to facilitate, and not take actions that obstruct, implementation of a Pre-Contest Agreement. Public-sector entities must also adapt their regulations with the aim of facilitating implementation of Pre-Contest Agreements. See Article 31 of the Humanitarian Law Implementing Regulations. These provisions are clearly intended to remove bureaucratic obstacles that defeat the purpose of promoting Pre-Contest Agreements between debtors and the creditors, which have undermined the effectiveness of other bankruptcy processes. However, the lack of clearer guidelines leaves considerable uncertainty as to how far public-sector entities will take this mandate.

41. Article 29 of the Humanitarian Law Implementing Regulations.

42. Article 25 of the Humanitarian Law Implementing Regulations. These limitations appear only in the implementing regulations and are in line with proposals that the President made in his veto of the original bill of the law passed by the National Assembly. The National Assembly, however, did not incorporate those proposals into the final version of the law as enacted, and thus the limitations are susceptible to legal challenge on the basis that they impinge on rights beyond the scope and intent COVID-19 Humanitarian Support Law.

43. Article 30 of the Humanitarian Law Implementing Regulations.

44. Article 28 of the Humanitarian Support Law.

45. Article 30 of the COVID-19 Humanitarian Support Law.

46. Article 30 of the COVID-19 Humanitarian Support Law.

47. Article 31 of the COIVD-19 Humanitarian Support Law.

48. Article 32 of the COIVD-19 Humanitarian Support Law.

49. Article 427 of the COGEP.

50. Article 32 of the COVID-19 Humanitarian Support Law.

51. Article 3 of the Entrepreneurship and Innovation law.

52. Article 40 of the implementing regulation of the Entrepreneurship and Innovation Law (the "Entrepreneurship Regulations").

53. Pursuant to Article 22 of the Ecuadorian Civil Code, "consanguinity" means the blood descendance relationship between two people, and the degree is counted by the number of generations. In the case of the Preventive Contest Law, "claw-back" provisions are applicable to parents and their children, brothers, grandparents and grandchildren, great grandparents and great grandchildren, uncles and nephews, up to the extent of cousins.

54. Pursuant to Article 23 of the Ecuadorian Civil Code, "affinity" means the relationship that exists between a person who is or has been married and the blood relatives of its spouse.

55. Article 57 of the Entrepreneurship Regulations. Oddly, Article 57 also states that amounts owed to a company's shareholders arising from the company's profits or dividends are not considered liabilities for purposes this section. The import of this provision is not clear as it could be read to suggest that the distribution of profits and payment of dividends are not subordinated to the payment of secured and unsecured third-party obligations. That, however, would not be a proper interpretation since it would contravene basic provisions and principles of Ecuadorian corporate law.

56. Article 50 of the Entrepreneurship and Innovation Law.

57. Article 50 of the Entrepreneurship and Innovation Law. If the venture is duly performing its obligations towards government entities, it also may not be excluded from public procurement processes. However, this protection is less relevant since the venture may not actually sign any public procurement contracts until after the restructuring agreement has been approved by the relevant Superintendence.

58. Article 53 of the Entrepreneurship and Innovation Law.

59. Article 3 of the Entrepreneurship and innovation Law.

60. Article 23 of the Entrepreneurship Regulations.

61. Article 51 of the Entrepreneurship and Innovation Law.

62. Article 55 of the Entrepreneurship and Innovation Law.

63. Article 53 of the Entrepreneurship and Innovation Law.

64. Article 46 of the Entrepreneurship Regulations.

65. Article 52 of the Entrepreneurship and Innovation Law.

66. Any payment or transfer of asset pursuant to any such bilateral agreements must also be specifically approved by any supervisor or entity assisting the relevant Superintendence in the restructuring process. See Article 45 of the Entrepreneurship Regulations. Additionally, any creditor may at any time capitalize its debt without the approval of the relevant Superintendence or any other creditor. See Article 52 of the Entrepreneurship and Innovation Law.
67Article 47 of the Entrepreneurship Regulations.