

CLEARY GOTTlieb

Latin America Insolvency Regime Scorecard



Argentina

Brazil

Chile

Colombia

Mexico

Peru





Argentina

General

<p>Overview:</p>	<p>Ley No. 24522 (<i>Concursos y Quiebras</i>), or “<u>LCQ</u>” sets forth three principal insolvency proceedings: (i) the <i>concurso preventivo</i>, loosely similar to a U.S. Chapter 11 proceeding, (ii) the <i>acuerdo preventivo extrajudicial</i> (or “<u>APE</u>”), an out-of-court voluntary agreement process similar to a pre-packaged Chapter 11 filing in the United States, and (iii) the <i>quiebra</i>, or a liquidation proceeding.</p> <p>The LCQ was first passed in 1995 to modernize the country’s bankruptcy laws. An amendment to include the APE (or pre-pack) proceeding was incorporated following the country’s 2001-2002 financial crisis. As a result of Argentina being one of the first countries in Latin America to update its bankruptcy regime, the law does not benefit from some of the experience that other countries, such as Mexico, have used to introduce further sophistications to their insolvency laws.</p> <p>Following the introduction of the APE, many companies (particularly in the energy and infrastructure industries) have sought to restructure their international obligations either using an APE itself, or using the availability of the APE to encourage participation in an out-of-court restructuring. However, proceedings remain comparatively lengthy, and potential government influence, including as creditor, along with selected areas of inflexibility in the LCQ, can complicate a company’s attempts to successfully restructure.</p>
<p>Cleary Rating:</p>	<p>B-</p>
<p>World Bank Doing Business Ratings¹:</p>	<p>— <i>Average Recovery</i>: 19.2%</p> <p>— <i>Average Cost</i>: 16.5%</p>

¹ World Bank, Doing Business 2020, *Resolving Insolvency in Argentina*, available at https://www.doingbusiness.org/en/data/exploreeconomies/argentina#DB_ri. Assumptions and methodology with respect to the World Bank Doing Business statistics are available at <http://www.doingbusiness.org/methodology/resolving-insolvency>.

- *Average Proceeding Time*: 2.4 years
- *Strength of Insolvency Framework Index (0-16)*: 9.5

Brief Description of Legal Regime:

Concurso Preventivo Proceeding

A *concurso preventivo* proceeding may only be commenced by a filing by the debtor. As a pre-requisite to filing for *concurso preventivo*, the debtor must demonstrate that it is in “suspension of payments” (*estado de cesación de pagos*), or unable to regularly pay its debts when due on more than a temporary basis. Upon the court’s judgment of *concurso* and commencement of the proceeding, all pre-petition monetary unsecured claims are generally stayed and accrual of interest on pre-petition unsecured claims is suspended. However, foreclosure proceedings relating to secured claims (i.e., mortgages and pledges) may be initiated or continued with prior notice to the court adjudicating the *concurso* and the filing by such secured creditors of proof of such claim; post-petition interest on such secured claims is limited to the amount of security.

Once the court has issued its judgment of *concurso*, creditors will have between fifteen to twenty business days (as ordered by the court) following the publication of notice to submit their claims to the receiver. The court then approves the register of claims compiled by the receiver, after which the debtor has ten business days to submit its proposed classification of creditors. The debtor’s classification is required to contain, at a minimum, three classes comprised of secured, unsecured and labor claims (to the extent they exist), respectively. Subordinated creditors must be classed together. Apart from these requirements, the debtor may propose such further classifications based on any reasonable characteristics of its creditors.

In general terms, the debtor has a 90-business day exclusivity period (extendable at the court’s discretion by a maximum of 30 business days) to formulate a plan for its unsecured creditors and receive the requisite majorities of approval. The period runs from date on which the court approves the debtor’s proposed classification of creditors. The debtor’s plan must propose the same treatment for each class of creditors (although it may offer a “menu” of options for each class).

To be approved, a reorganization plan requires the consent of at least an absolute majority of creditors within each unsecured class, which must represent two-thirds of the outstanding unsecured liabilities in such class. Votes by controlling shareholders or partners are excluded, and only creditors whose claims have been admitted by the court will be able to vote. If secured creditors, or other creditors with special priority, are party to a reorganization plan (which is not mandatory), unanimity is required with respect to such creditors. Secured creditors can also opt to renounce 30% or more of their security interest and be treated (with respect to that portion of their claim) as an unsecured creditor. If the requisite majorities are not obtained by the end of the exclusivity period, the court may still approve the plan if: (i) the plan was approved by both (a) at least one of the impaired classes of unsecured creditors and (b) unsecured creditors representing at least three-fourths of the aggregate outstanding unsecured claims voted to confirm the plan, (ii) the plan provides at least liquidation value to creditors, and (iii) the plan does not provide for discriminatory treatment among classes.

Following the expiration of the exclusivity period, in the absence of a debtor-proposed plan, creditors or other third parties may propose a plan for certain debtor entities (including corporations). During this period, the debtor may also propose modifications to its prior plan, or any proposed by creditors or other third parties, and seek creditor approval. If the third party is successful, the debtor's shareholders must transfer their shares to such third party.

In a *concurso*, the debtor continues to manage its assets subject to supervision by the court-appointed receiver. Acts outside of the ordinary course of business or certain material transactions, however, must receive judicial authorization. In addition, there are certain acts (e.g., transfers for no consideration or acts affecting the status of pre-petition creditors) that are prohibited. A creditors' committee, is also formed by the court and participates in, among other things, approvals of such acts by the debtor. The creditor's committee originally consists of the debtor's three largest unsecured creditors (by amount) and an employee representative, but its composition is updated upon the debtor's classification of its creditors to include a representative from each class of creditors.

A debtor may also opt to continue to comply with executory contracts (subject to court authorization) that have reciprocal loans outstanding; counterparties that loan money to the debtor under such pre-existing contracts enjoy a privileged status for their debt. Providers of public services to whom a debtor owes pre-petition debts are also not permitted to discontinue services during the *concurso* unless the debtor does not comply with the terms of such debts in the ordinary course.

Corporate groups may file for *concurso* as a group, provided the entire corporate group files and that it meets the standard for an “economic grouping” under the LCQ. Only one entity in the group must meet the “suspension of payments” standard, although this state must have the potential to affect the other group members. If a group proposes a single plan that unifies all its liabilities, the LCQ permits the aggregation of voting across entities—if 75% of all liabilities across the group, plus at least 50% of liabilities in each class, vote to approve the plan, it is approved. The LCQ also permits guarantors of a debtor already in *concurso* to submit a *concurso* petition within 30 business days of the judicial announcement of commencement of the proceeding, after which the guarantor’s *concurso* will be handled in the same proceeding.

Once approved, a *concurso* is binding on all creditors (both secured and unsecured). The consequence for failing to receive either a creditor-approved or court crammed-down plan is the judicial declaration of bankruptcy, or *quiebra*.

APE Proceeding

An APE involves the debtor’s submission of a pre-agreed restructuring agreement to the court for judicial endorsement. The APE must be approved by the same majorities as a *concurso* (i.e., an absolute majority of unsecured creditors holding two-thirds of the outstanding total unsecured liabilities), and votes by controlling shareholders and partners are not counted. The debtor is generally free to propose an APE without restrictions as to what creditors in various classes must offer, and unsecured creditors may be classified differently and receive differential treatment.

In order to submit an APE, a debtor must be in “suspension of payments” or be “pre-insolvent”, i.e., undergoing general economic or financial difficulties. If the APE agreement has obtained the requisite majorities, and no creditor objects to the agreement within the five-business day period following the publication of notice of the proceedings, the LCQ provides for the court’s approval of the APE. Upon receiving the court’s endorsement of the APE, it will be binding on all unsecured creditors, including non-consenting creditors.

The debtor does not get the benefit of a stay on claims while negotiating an APE with creditors; however, once the court admits the APE filing and publishes notice of the proceeding, a similar stay applies to the

debtor’s creditors. As with the *concurso*, however, secured creditors may continue to pursue foreclosure or other remedies against their collateral.

Quiebra Proceeding

A *quiebra* is a bankruptcy proceeding that may be initiated by either a debtor in “suspension of payments” or any creditor to whom a debt is due (and, for secured creditors, where the value of their security is insufficient to cover their claim); in addition, it may result from the failure to consummate a *concurso* proceeding. Unlike the *concurso*, the debtor is removed from the management of its assets and replaced by a bankruptcy trustee (with whom all secured and unsecured creditors must file proof of claim, subject to certain exceptions such as labor obligations). The debtor may not dispose of, or manage, its assets (with certain exceptions). The main purpose of the *quiebra* is to liquidate the assets of the debtor, although in certain instances (in order to avoid harm to creditors or in the case of public utilities), the court may order that the debtor’s activities be continued under the bankruptcy trustee’s supervision.

Unless the debtor is in a *quiebra* proceeding due to a failed reorganization proceeding, the debtor may convert a *quiebra* into a reorganization proceeding if it complies with certain requirements.

Key Features:

- No specialized bankruptcy courts – proceedings are overseen by a judge, but there are no specialized bankruptcy courts.
- Debtor-controlled reorganization proceedings – in a *concurso*, the debtor initially has an exclusivity period to propose and gain creditor acceptance for its restructuring plan, and creditors cannot file for involuntary reorganization proceedings.
- Third-party take-over – if a debtor fails to win sufficient approval for its restructuring plan during the exclusivity period, creditors and third parties have the opportunity to take over the debtor’s equity through proposing and gaining sufficient creditor approval for restructuring plans of their own.
- Optional court cram-down of debtor’s *concurso* plan – if the debtor has received sufficient approval from some creditor classes, but not all, the court may also, in its discretion, order the approval of the *concurso* plan and cram-down the dissenting creditors.

	<ul style="list-style-type: none"> — <u>Recognition of international insolvency</u> – the LCQ does not permit international insolvency rulings to bind creditors with respect to credits payable in Argentina. — <u>Specialized rules for corporate group filings</u> – if filing as an “economic group”, the LCQ sets forth special aggregate voting standards for approval and also excludes intercompany claims from voting (a feature that is not present in stand-alone proceedings). — <u>Relative inflexibility in allowing multiple attempts to restructure</u> – subject to a cram-down at the court’s option, if the debtor misses its chance at a voluntary reorganization, the LCQ requires the judge to convert the <i>concurso</i> into a <i>quiebra</i> proceeding. Rules creating a “cool-off” period of 1 year (and court rulings, such as the Transportadora de Gas del Norte proceeding) also restrict companies from multiple attempts to restructure their debt through an APE or a <i>concurso</i> filing.
<p>Key Creditor Issues/Risks:</p>	<ul style="list-style-type: none"> — <u>Timing</u> – while the LCQ establishes strict time limits for various phases of the proceeding (e.g. verification of credits, identification of classes of creditors, presentation of a restructuring plan), in practice, in part due to judicial extensions and appeals, proceedings tend to last two to three years on average, although the APE can be accomplished in less time. — <u>Ability to control the process</u> – the debtor has a 90-day exclusivity period (extendable by a maximum of 30 days) to file a plan in a <i>concurso preventivo</i> proceeding, after which creditors or interested third parties may propose a plan, and creditors cannot file an involuntary proceeding against a debtor. — <u>Stays in <i>concurso</i> and APE proceedings do not apply to secured creditors</u> – for unsecured creditors, this places them in a significant disadvantage during the pendency of the stay. — <u>No cram-down of secured creditors</u> – debtors cannot impair secured creditors’ right to get paid from their security interests unless such creditors agree to receive less. Secured creditors are not required to be part of the restructuring plan; however, if the debtor proposes a plan to secured creditors and fails to receive their unanimous approval, this will not necessarily jeopardize the <i>concurso</i> if the debtor has received the approval of the requisite majority of unsecured creditors.

- Less robust standards for APE plan treatment – in an APE plan, the debtor may propose discriminatory treatment for similarly situated creditors, and court review is limited
- Voting for securities holders – voting on plans by securities holders (including bondholders) takes into account the principal amount of holders voting in favor and against of those attending a specially called meeting of holders, and may (according to some court’s interpretations) exclude the principal amount of holders not attending the meeting. For purposes of the headcount, however, holders voting in favor of the plan are treated as solely one person.
- Voting for affiliates/intercompany claims – although votes by controlling shareholders and partners are not counted as part of the votes to approve a plan, there is no express exclusion for votes of affiliates, leaving creditors open to being out-voted by intercompany claims. An exception arises if the proceeding is a consolidated *concurso* of a company group, where intercompany claims (and their assignees) from the prior two years are excluded from voting.
- Judicial review of *concurso* plan and creditor challenges – in the absence of a creditor challenge, the court is required to approve a plan based solely on finding that it meets the required majority approval set forth in the LCQ and that neither is “abusive” (including toward dissenting creditors) nor commits fraud on the law. Creditors affected by the *concurso* plan have limited ability to challenge a plan prior to the judicial approval, as well as during the 6 months following such approval; grounds include fraudulent concealment of assets or liabilities, fraudulent exaggeration of liabilities and errors in calculation of the requisite creditor majorities.
- Restrictions on multiple attempts at restructuring – If a court has approved a *concurso* plan, the debtor may not re-file for *concurso* for one year following such approval. Similarly, if a petition for *concurso* has been rejected or withdrawn, there is a one-year prohibition on re-filing. In addition, debtors may not apply to convert a declaration of insolvency into a *concurso preventivo* if such declaration was as a result of a breach of a prior restructuring plan.
- No DIP financing – the LCQ does not provide for superpriority status for DIP lenders.

- Government as creditor – precedents where the Argentine government (particularly ANSES, the Argentina social security system) has served as creditor have shown that the role of the Argentine government as creditor can make the proceeding more lengthy and tumultuous (e.g., the APE of Transportadora del Gas del Norte, where ANSES sought various avenues to challenge the APE in court).

Key Indicators

EXPERIENCE LEVEL

- Multiple established precedents of successful in-court restructurings over a significant period of time involving international bond or bank debt
- Some established precedents of successful in-court restructurings involving international bond or bank debt or multiple established precedents but mostly occurring more than 10 years ago **X**
- Limited established precedents of successful in-court restructurings or significant cultural resistance to resolution of insolvency through court proceedings
- Recently approved law or no established precedents

KEY PROCEDURAL ISSUES

— Can bondholders/lenders participate directly (<i>i.e.</i> , do they have standing to individually participate in a proceeding or must they act through a trustee/agent as recognized creditor?)	Not expressly permitted by the LCQ.
— Involuntary reorganization proceeding that can be initiated by creditors?	No
— Can creditors propose a plan?	Yes, after the exclusivity period (90+30 business days)
— Can a creditor-proposed plan be approved without consent of shareholders?	Yes ²
— Absolute priority rule?	No
— Are <i>ex parte</i> proceedings (where only one party participates and the other party is not given prior notice or an opportunity to be heard) permitted?	Unclear.
— Are corruption / improper influence issues a common occurrence?	Yes
— Viable prepackaged proceeding available that can be completed in 3-6 months	No
— Secured creditors subject to automatic stay?	No ³

² Creditor may propose plans within the post-exclusivity period, in which a debtor may be taken over by a third party anyways.

³ However, the LCQ permits the court to order a special temporary suspension of execution against security and injunctions, up to 90 business days.

— Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so)	No ⁴
— Bond required to be posted in case of involuntary filing or challenge to fraudulent/suspect transactions?	Not under LCQ.
— Labor claims can be addressed through a restructuring proceeding	Yes ⁵
— Grants super-priority status to DIP Financing?	No
— Restructuring plan may be implemented while appeals are pending	According to the law, no.
— Does the restructuring plan, once approved, bind non-consenting (or abstaining) creditors?	Yes
— Does the debtor have the ability to choose which court in which to file the insolvency proceeding (or is it bound to file where its corporate domicile is)?	No
— Other significant exclusions from automatic stay?	Yes: besides remedies against secured claims, certain labor claims, among others
— Prevents voting by intercompany debt?	No ⁶

⁴ LCQ does not clearly give creditors right to challenge; unsecured creditors may challenge under other Argentine laws, including the Civil Code, for fraud.

⁵ 100% approval is required from privileged labor claims.

⁶ But if the proceeding is a consolidated *concurso* of a company group, intercompany claims (and their assignees) from the prior two years are excluded from voting.

— Strict time limits on completing procedure?

Yes (but in practice proceedings take longer)

— Management remains in place during proceeding?

Yes

Precedents and Sources

Recent Significant Cross-Border Insolvency and/or Debt Restructuring Cases:

Out of Court:

- Autopistas del Sol, a toll highway operator (after getting approval for an APE in 2004, reached separate voluntary restructuring agreement with bondholders in 2010)
- Capex, an oil and gas producer and power generation company (reached voluntary agreement with creditors in 2005)
- Edenor, the largest electricity distributor in Argentina (reached voluntary agreed with creditors in 2006)
- Transportadora de Gas del Sur (TGS), natural gas transporter (reached voluntary agreement with creditors in 2004)

In-Court:

- IMPESA, an alternative energy company (2014-ongoing; expected to file an APE)
- IEBA, an electricity distributor (APE received judicial approval in September 2016)
- Sideco Americana, a conglomerate of construction, infrastructure and related enterprises (APE received judicial approval in 2004)
- Metrogas, one of the largest natural gas distribution companies in Argentina (following earlier restructurings, filed for *concurso preventivo* in 2010)
- Transportadora de Gas del Norte (TGN), natural gas distributor (attempted APE approval in 2009 and filed, unsuccessfully, for *concurso preventivo* in 2012)

	<ul style="list-style-type: none"> — <u>Telecom Argentina</u>, one of the largest telecommunications companies in Argentina (APE received judicial approval in 2005) <p>Foreign Court:</p> <ul style="list-style-type: none"> — <u>Multicanal</u>, a cable company (sought recognition of its APE in the SDNY in 2004)
Key Statutes:	<ul style="list-style-type: none"> — Ley No. 24522 (<i>Concursos y Quiebras</i>), or “<u>LCQ</u>”, promulgated in 1995.
Recent Significant Amendments:	<ul style="list-style-type: none"> — Ley No. 24522 was last amended in 2006. — Significant amendments include the introduction of the “APE” pre-packaged proceeding following the 2001-2002 financial crisis in Argentina.
Additional Materials:	<ul style="list-style-type: none"> — Cooper, Moss & Brenneman, “<i>Expedited Restructurings in the U.S. and Select Latin American and Caribbean Jurisdictions</i>”, Pratts Bankruptcy Law Journal 2012 — Cooper, Brenneman & McBride, “<i>A New Role for Latam Creditors: Insolvency Reform in Latin America</i>”, Pratts Bankruptcy Law Journal 2015



General

Overview:	Overhauled in 2005 largely to provide debtors with better prospects for restructuring instead of liquidation, the Brazilian Bankruptcy Law is fairly well-developed (by emerging markets standards). Though the Brazilian Bankruptcy Law contains basic substantive and procedural protections for creditors, Brazil generally remains a debtor-friendly jurisdiction, in large part because only a debtor may submit a plan of reorganization for a vote at a general meeting of creditors and the absolute priority rule does not apply. Additionally, notwithstanding the substantive and procedural protections for creditors, transparency issues often arise, and obtaining information from the court can be difficult in certain instances, in part because of the lag time between a court order and the publication of such order in the <i>Official Gazette</i> . In recent years, large bankruptcies such as OGX, Oi and Odebrecht, which included a substantial number of international investment institutions as creditors, have tested the limits of the Brazilian Bankruptcy Law from both a procedural (<i>e.g.</i> , issues relating to bondholder voting as discussed below) and substantive (<i>e.g.</i> , plans contemplating debt-for-equity exchanges and secured DIP financings) perspective.
Cleary Rating:	B-
World Bank Doing Business Ratings⁷:	<ul style="list-style-type: none"> — <i>Average Recovery</i>: 18.2% — <i>Average Cost</i>: 12.0% — <i>Average Proceeding Time</i>: 4.0 years — <i>Strength of Insolvency Framework Index (0-16)</i>: 13

⁷ World Bank, Doing Business 2020, *Resolving Insolvency in Brazil*, available at <https://www.doingbusiness.org/en/data/exploreconomies/brazil#>.

Brief Description of Legal Regime:

The Brazilian Bankruptcy Law provides legal means for commercial debtors and their creditors to restructure their debts under court supervision. Generally speaking, the Brazilian Bankruptcy Law provides three paths for distressed companies: *recuperação judicial* (in-court restructuring, or “RJ”), *recuperação extrajudicial* (out-of-court restructuring (“EJ”)) and *falência* (liquidation).

RJ: There is no involuntary RJ—only a debtor may file, and post-filing, absent removal for cause, the debtor’s management remains in control of the business. While most of a debtor’s creditors are subject to the RJ proceeding, there are a few important exclusions, including (i) holders of claims secured by “fiduciary liens,” (ii) holders of claims in respect of “foreign exchange advances,” (iii) lease counterparties and (iv) tax claims, which can make a true comprehensive restructuring difficult. Additionally, some ambiguity exists under Brazilian law as to whether the claims of certain regulators, even when unsecured, are subject to the RJ proceeding.

Once a proceeding is initiated a 180-day automatic stay is imposed on all creditors except those not subject to the proceeding, and the debtor has 60 days during which it must file a plan with the bankruptcy court. While these deadlines impose a loose structure on the proceeding, debtors will frequently file shell plans to meet the plan filing deadline, and the automatic stay is typically extended as a matter of course by the court; as a result, while the applicable filing deadlines impose some structure on the proceedings, there is little immediate consequence for a debtor that does not have an agreed plan after 60 days or remains in RJ proceedings after 180 days. A plan of reorganization is ultimately voted on at a general meeting of creditors, which must be attended (either in-person or, more frequently, by proxy) by creditors that wish to cast a vote.

The Brazilian Bankruptcy Law applicable to RJ proceedings provides for four classes of creditors: labor, secured, unsecured and small companies. Generally speaking, creditors in the same class must be treated equally, but the Brazilian Bankruptcy Law provides the flexibility to present creditors in the same class with a “menu” of options to choose from and as a practical matter tolerates some justified differentiation among creditors in the same class.

A plan is confirmed if the applicable statutory majorities vote in favor of the plan at the general meeting of creditors (for the labor and small companies classes, a majority in number of those present, and for the secured and unsecured classes, a majority in number and amount of those present), and such plan will be binding even on those creditors subject to the RJ that voted against the plan or abstained from voting.

A plan may be crammed down on a non-accepting class if (i) 1/3 of those voting in the non-accepting class (in number for labor and small companies and in number and amount for secured and unsecured) vote in favor of the plan, (ii) a majority in amount of all creditors present voted in favor of the plan, (iii) the creditors in the non-accepting class are treated equally by the plan and (iv) the remaining classes vote in favor of the plan.⁸

If a plan is not approved at a general meeting of creditors, the Brazilian Bankruptcy Law provides that the debtor must be placed into liquidation. However, as a practical matter, debtors that are not confident in expected voting outcomes can continuously adjourn the general meeting of creditors until such date when they believe a plan will be approved.

Brazil is currently considering a bill that, if effected, would amend the current law to meet the United Nations and International Commercial Law standards. The main changes are based on jurisprudence and include establishment of specialized courts, and granting broader rights to creditors (for instance, the ability to propose the RJ plan).

EJ: In the EJ process (for which there are very few successful precedents), a debtor negotiates with its creditors prior to filing and submits its creditor-approved plan to the court, which then analyzes the plan for legality and viability. However, certain limitations, including (i) 60% class approval thresholds, (ii) the unavailability of DIP financing and (iii) the exclusion of the labor class from the proceedings, make EJ a difficult option for debtors, particularly those looking to restructure both financially and operationally. Additionally, as with most pre-packaged or out-of-court regimes, the automatic stay does not apply during ongoing negotiations.

Key Features:

— In-court and out-of-court options available (though out-of-court restructuring is difficult).

⁸ Until recently, Brazilian in-court proceedings had only three classes of creditors, but the Brazilian Bankruptcy Law was recently amended to provide for the fourth class (small companies). Unfortunately, the provisions of the Brazilian Bankruptcy Law relating to cram down, which previously required approval of at least two (2) classes of creditors, were not correspondingly amended, and so it remains uncertain as to whether approval of two (2) or three (3) of the other classes is required to cram down the fourth.

	<ul style="list-style-type: none"> — Many procedural and substantive protections available to creditors, but the lack of absolutely priority rule and permanent exclusivity for the debtor cause the jurisdiction to remain largely debtor-friendly. — Claims trading is generally permitted, although procedures for updating the court with respect to bond claims are not well established and are usually fashioned on a case-by-case basis by courts.
<p>Key Creditor Issues/Risks:</p>	<ul style="list-style-type: none"> — Generally known as a debtor-friendly jurisdiction since only debtors can submit plans of reorganization for consideration at a general meeting of creditors and the absolute priority rule does not apply; — Process of ensuring bondholders’ right to vote is often cumbersome and expensive; — Lack of specialized courts creates some unpredictability in outcomes⁹; — Looser standard for substantive consolidation than in the U.S. (though substantive consolidation remains the exception rather than the norm); — Local accounts required for foreign investors to hold equity directly in Brazil; — Strong preemptive rights for existing shareholders under Brazilian corporate law can complicate debt-for-equity based plans; — Regulatory approvals sometimes required in certain instances in the case of DIP financing; and — No established Chapter 15 equivalent for in the case that a debtor’s main proceeding is elsewhere.

⁹ Although this is still true, this has started to change and specialized courts have been and are being established. Sao Paulo is ahead of the other Brazilian cities in this respect.

Key Indicators

EXPERIENCE LEVEL

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| — Multiple established precedents of successful in-court restructurings over a significant period of time involving international bond or bank debt | X |
| — Some established precedents of successful in-court restructurings involving international bond or bank debt or multiple established precedents but mostly occurring more than 10 years ago | |
| — Limited established precedents of successful in-court restructurings <u>or</u> significant cultural resistance to resolution of insolvency through court proceedings | |
| — Recently approved law or no established precedents | |

KEY PROCEDURAL ISSUES

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|--|---------|
| — Can bondholders/lenders participate directly (<i>i.e.</i> , do they have standing to individually participate in a proceeding or must they act through a trustee/agent as recognized creditor?) | Usually |
| — Involuntary reorganization proceeding that can be initiated by creditors? | No |
| — Can creditors propose a plan? | No |
| — Can a creditor-proposed plan be approved without consent of shareholders? | No |

— Absolute priority rule?	No
— Are <i>ex parte</i> proceedings (where only one party participates and the other party is not given prior notice or an opportunity to be heard) permitted?	Generally no
— Are corruption / improper influence issues a common occurrence?	Yes (although generally more prevalent in politics than the judiciary)
— Viable prepackaged proceeding available that can be completed in 3-6 months?	No
— Secured creditors subject to automatic stay?	Yes (to the extent subject to the proceeding)
— Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so)?	Yes (but little to no successful precedent)
— Bond required to be posted in case of involuntary filing or challenge to fraudulent/suspect transactions?	Yes
— Labor claims can be addressed through a restructuring proceeding?	Yes (in-court only)
— Grants super-priority status to DIP Financing?	Yes (but non-consensual priming liens not possible)
— Restructuring plan may be implemented while appeals are pending?	Yes (though immediate appellate courts frequently grant limited stays in the

	case of interlocutory appeals)
— Does the restructuring plan, once approved, bind non-consenting (or abstaining) creditors?	Yes
— Does the debtor have the ability to choose which court in which to file the insolvency proceeding (or is it bound to file where its corporate domicile is)?	No (typically bound to file where headquartered)
— Other significant exclusions from automatic stay?	Yes
— Prevents voting by intercompany debt?	Yes
— Strict time limits on completing procedure?	No ¹⁰
— Management remains in place during proceeding?	Yes (subject to supervision by judicial administrator and can also be removed in the case of fraud, dishonesty or gross mismanagement)

¹⁰ Though a debtor is statutorily required to hold a vote on a plan within 180 days of filing, the Brazilian Bankruptcy Law imposes no penalty for not doing so.

Precedents and Sources

<p>Recent Significant Cross-Border Insolvency and/or Debt Restructuring Cases:</p>	<p>Out of Court:</p> <ul style="list-style-type: none"> — Lupatech (2014) <p>In-Court:</p> <ul style="list-style-type: none"> — CELPA / Rede Energia (2012) — OGX (2013) — OSX (2013) — ENEVA (2014) — Galvão (2015) — OAS (2015) — Schahin (2015) — Lupatech (2015) — Oi (2016) — Odebrecht (2019)
<p>Key Statutes:</p>	<ul style="list-style-type: none"> — Lei de Falências e Recuperação de Empresas - Law No. 11.101/05 (the “<u>Brazilian Bankruptcy Law</u>”) (2005)
<p>Recent Significant Amendments:</p>	<ul style="list-style-type: none"> — Lei Complementar (August 2014) – Brazilian Bankruptcy Law amended to include a fourth category of claims for small companies (along with labor, secured and unsecured)

	<p>— Nova Lei de Falências – Bill of Law No. 10.220/2018 (to be approved)</p>
<p>Additional Materials:</p>	<p>— Cooper, Cestero, Mosier & Soltman, “The Brazilian Insolvency Regime: Some Modest Suggestions—Part II”, Pratt’s Journal of Bankruptcy Law 2016</p> <p>— Colombo & Junqueira, “Ten Years of the Brazilian Bankruptcy Code: Lessons, Challenges and Prospects”, Cleary Gottlieb Emerging Markets Restructuring Journal, Issue No. 1 2016</p> <p>— Lobeiras, “Deal News / Brazil – OGX Debt-for Equity Exchange”, Cleary Gottlieb Emerging Markets Restructuring Journal, Issue No. 1 2016</p> <p>— Cooper, Cestero, Mosier & Soltman, “The Brazilian Insolvency Regime: Some Modest Suggestions—Part I,” Pratt’s Journal of Bankruptcy Law 2016</p> <p>— Cestero & Soltman, “The Fight For Bondholder Suffrage in Brazilian Restructurings”, Pratt’s Journal of Bankruptcy Law 2016</p> <p>— Cooper, Brenneman & McBride, “A New World For LatAm Creditors: Insolvency Reform in Latin America”, Pratt’s Journal of Bankruptcy Law 2015</p> <p>— Cooper, Kordula & Brenneman, “Six Restructuring Questions For LatAm Investors”, International Financial Law Review 2013</p> <p>— Cooper, Moss & Brenneman, “Expedited Restructurings in the U.S. and Select Latin American and Caribbean Jurisdictions”, Pratt’s Journal of Bankruptcy Law 2011</p> <p>— Cooper & García, “Brazil’s New <i>Recuperação Judicial</i> Proceedings—New Hope For Brazilian Companies In Search Of Relief Under The Section 3(a)(10) Exemption?”, International Business Transactions With Brazil 2008</p>



Chile

General

<p>Overview:</p>	<p>In 2014, a year when the World Bank ranked Chile the 22nd best country in the world for starting a business, but 102nd in the world in resolving insolvency, Chile rolled out a new insolvency law with many improvements to the previous insolvency regime, which had been in place since 1982. Unlike the prior law, which contained few mechanisms for a reorganization proceeding and presented little to no incentives for debtors to join the process, the new law is clearly focused on providing a business with a fresh start, down to the name of the law: “The Law of Re-entrepreneurship and Insolvency”. The most notable features of the new law are the creation of a true reorganization proceeding that includes an automatic stay and the possibility of DIP financing, expedited timelines and provisions to address cross-border proceedings. However, to date, use of the new law has been limited, with just a few bank debt restructurings and no restructurings of international bond debt.</p>
<p>Cleary Rating:</p>	<p>C</p>
<p>World Bank Doing Business Ratings¹¹:</p>	<ul style="list-style-type: none"> — <i>Average Recovery</i>: 41.9% — <i>Average Cost</i>: 14.5% — <i>Average Proceeding Time</i>: 2 years — <i>Strength of Insolvency Framework Index (0-16)</i>: 12
<p>Brief Description of Legal Regime:</p>	<p>Ley de Insolvencia y Reemprendimiento, effective October 2014 (the “<u>LIRE</u>”) provides for a judicial reorganization process instead of just a liquidation process. During a reorganization proceeding, “<i>protección financiera concursal</i>” (bankruptcy protection) provides for an automatic suspension of collection proceedings and most creditor actions within five days of filing, and prohibits the debtor’s</p>

¹¹ World Bank, Doing Business 2020, *Resolving Insolvency in Chile*, available at https://www.doingbusiness.org/en/data/exploreeconomies/chile#DB_ri.

disposal of any assets other than in the ordinary course, for 30 days after the proceedings are initiated. This stay period can be extended for up to 30 days, with consent from two or more creditors representing 30% of liabilities, or for up to 60 days, with consent from two or more creditors representing a majority of liabilities. During the stay period, ordinary course suppliers/dealers may continue providing support and financing to the debtor, and the claims of those suppliers/dealers and international trade financing counterparties receive preferential treatment during the proceedings. Except in the case of prepackaged plans, a trustee (*veedor*) is appointed to oversee the proceedings.

All creditors can participate in the proceedings, other than creditors that have acquired their claim within 30 days of the commencement of insolvency proceedings. In addition, credits that originated within 2 years of the insolvency proceeding may be subject to clawback if the beneficiary was “aware” of the debtor’s economic state or the contract prejudiced other creditors. Clawback actions can be brought by creditors or by the trustee within one year of the appointment of the trustee.

The LIRE follows Mexico and Brazil in allowing for DIP financing representing up to 20% of its total assets without creditor consent, and a commercial debtor may sell up to 20% of its assets without creditor consent. This 20% threshold in both cases may be expanded with majority creditor support.

A plan (*acuerdo de reorganización judicial*) can only be proposed by the debtor, and may create different classes of creditors with different treatment, provided that secured credits are not impaired. The plan may only address pre-petition debt; post-petition obligations receive preferential treatment. Under the LIRE, shareholders may not receive dividends or distributions until all payments are made under the LIRE, except as may be agreed in the plan. The plan can be approved by 2/3 of the creditors present at the meeting called to approve the plan, which must have a quorum of 2/3 of the total liabilities entitled to vote on the plan in each class. Related parties cannot vote for the plan.

The LIRE contemplates prepackaged bankruptcy plans, which, under the previous insolvency regime only bound approving creditors, but under the LIRE are binding on all creditors once approved by the court and supported by two or more creditors representing 75% of the total amount of liabilities entitled to vote. Such prepackaged plans must be approved by the court within ten days.

Additionally, the LIRE helps to facilitate multi-jurisdictional restructurings involving Chilean companies by providing for a procedure similar to U.S. Chapter 15 recognition, which recognizes insolvency

	<p>proceedings against Chilean companies brought outside of Chile, and is based on the UNCITRAL model law on cross-border insolvency.</p> <p>Perhaps the most groundbreaking feature of the LIRE, unlike many insolvency proceedings in Latin America, is that it provides for unusual transparency by requiring that all judicial reorganization filings and proceedings be placed on a public online portal.</p>
<p>Key Features:</p>	<ul style="list-style-type: none"> — Both restructuring and insolvency proceedings available to debtors, with oversight by an appointed trustee — Creditor-friendly provisions such as option for prepackaged bankruptcy plans and automatic stay with ability for secured creditors to enforce non-essential assets — DIP financing options available — Provisions to address and allow for cross-border proceedings
<p>Key Creditor Issues/Risks:</p>	<ul style="list-style-type: none"> — Only debtor (shareholders) can file for judicial reorganization (creditors can bring liquidation proceedings that can be converted into reorganization proceedings, but this option is substantially more lengthy) — No absolute priority rule — Strict and short deadlines limit creditors’ ability to effectively verify claims (must be done within 8 days of appointment of trustee) and reach a consensual agreement with debtors (must be done within 90 days or less depending on the automatic stay period) — Creditors who acquire a claim within 30 days of start of insolvency proceedings are prohibited from participating — Debtor can contest an involuntary liquidation petition filed by a creditor

Key Indicators

EXPERIENCE LEVEL

- Multiple established precedents of successful in-court restructurings over a significant period of time involving international bond or bank debt

- Some established precedents of successful in-court restructurings involving international bond or bank debt or multiple established precedents but mostly occurring more than 10 years ago

- Limited established precedents of successful in-court restructurings or significant cultural resistance to resolution of insolvency through court proceedings **X**

- Recently approved law or no established precedents

KEY PROCEDURAL ISSUES

- Can bondholders/lenders participate directly (*i.e.*, do they have standing to individually participate in a proceeding or must they act through a trustee/agent as recognized creditor?) Unclear

- Involuntary reorganization proceeding that can be initiated by creditors? No; Creditors can file for liquidation only

- Can creditors propose a plan? No

— Can a creditor-proposed plan be approved without consent of shareholders?	N/A
— Absolute priority rule?	No
— Are <i>ex parte</i> proceedings (where only one party participates and the other party is not given prior notice or an opportunity to be heard) permitted?	Yes (but not recognized by in-court proceedings)
— Are corruption / improper influence issues a common occurrence?	Less than in comparable jurisdictions
— Viable prepackaged proceeding available that can be completed in 3-6 months	Yes available, completed in 3-6 months TBD
— Secured creditors subject to automatic stay?	Yes (but secured creditors can enforce non-essential assets)
— Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so)	Yes (but no significant precedent)
— Bond required to be posted in case of involuntary filing or challenge to fraudulent/suspect transactions?	No
— Labor claims can be addressed through a restructuring proceeding	No
— Grants super-priority status to DIP Financing?	Yes

— Restructuring plan may be implemented while appeals are pending	No precedent
— Does the restructuring plan, once approved, bind non-consenting (or abstaining) creditors?	Yes
— Does the debtor have the ability to choose which court in which to file the insolvency proceeding (or is it bound to file where its corporate domicile is)?	Yes, with limitations. (If Chilean, any court in Chile with jurisdiction, if not a Chilean co., any court with jurisdiction over civil matters where the assets of the debtor in Chile are located).
— Other significant exclusions from automatic stay?	Labor & lease claims
— Prevents voting by intercompany debt?	Yes (Related Persons to the debtor have no vote)
— Strict time limits on completing procedure?	Yes (90 days)
— Management remains in place during proceeding?	Yes

Precedents and Sources

Recent Significant Cross-Border Insolvency **Out-of-Court:**

<p>and/or Debt Restructuring Cases:</p>	<p>— Automotores Gildemeister (2015-16)</p> <p>In-Court:</p> <p>— PescaChile (ongoing)</p> <p>— Subus (2015)</p> <p>Foreign Court:</p> <p>— Edelnor (2001)</p> <p>— Alsacia & Express (2014)</p>
<p>Key Statutes:</p>	<p>Ley de Insolvencia y Reemprendimiento, effective October 2014 (the “<u>LIRE</u>”)</p>
<p>Recent Significant Amendments:</p>	<p>N/A</p>
<p>Additional Materials:</p>	<p>— Cooper, Brenneman & McBride, “Proceeding with Caution”, International Financial Law Review, 2014</p> <p>— Pedro Jimenez, Rodolfo Pittaluga Jr., Pablo Herrera, “Chile’s New Insolvency Law: Restructured for Corporate Restructurings”, INSOL International Special Report, 2014</p>



General

<p>Overview:</p>	<p>In 2006, Colombia significantly amended its insolvency regime through the adoption of Law 1116 of 2006 (“Law 1116”). This law, which governs reorganization and insolvency proceedings of companies, merchants, branches of foreign companies and certain other entities, grants the Superintendency of Companies jurisdiction over most of these proceedings. Law 1116 seeks to promote creditor participation in the reorganization process, as well as to preserve viable companies and normalize their commercial and creditor relationships.</p> <p>Law 1116 contemplates the following proceedings: (a) reorganization proceedings (<i>proceso de reorganización</i>), (b) out of court reorganization agreements validated by an insolvency judge (<i>validación judicial de acuerdos extrajudiciales de reorganización</i>), (prepackaged reorganization plan), (c) judicial liquidation proceedings (<i>proceso de liquidación judicial</i>), and (d) cross-border insolvency proceedings recognized by a Colombian insolvency judge (<i>insolvencia transfronteriza; reconocimiento de proceso extranjero</i>).</p> <p>Insolvency proceedings carried out before the Superintendency of Companies are not subject to appeal. Only in certain exceptional events in which a civil judge in the debtor’s corporate domicile has jurisdiction, an appeal will be admissible in limited circumstances</p>
<p>Cleary Rating:</p>	<p>B</p>
<p>World Bank Doing Business Ratings¹²:</p>	<ul style="list-style-type: none"> — <i>Average Recovery rate</i> (cents on the dollar): 68.7% — <i>Average Cost</i> (% of estate): 8.5% — <i>Average Proceeding Time</i>: 1.7 years

¹² World Bank, Doing Business 2017, *Resolving Insolvency in Colombia*, available at https://www.doingbusiness.org/en/data/exploreconomies/colombia#DB_ri.

— *Strength of Insolvency Framework Index (0-16): 11.0*

Brief Description of Legal Regime:

The majority of reorganization proceedings contemplated by the Colombian insolvency regime take place before the Superintendency of Companies, where such entity acts as judge in the proceeding. A reorganization proceeding may be initiated in the following circumstances: (a) in the event of default in payments¹³, or (b) in the event of imminent inability to pay¹⁴.

A request to initiate a reorganization proceeding may be made (a) by the debtor, by one or more creditors to whom the debtor has defaulted, or *ex officio* by the Superintendency that supervises the debtor, in the event of payment default, (b) by a two or more creditors that are not affiliated with the debtor or its shareholders, in the event of imminent inability to pay, (c) by the foreign representative of a foreign insolvency proceeding, or (d) *ex officio* by the Superintendency of Companies.

The filing of a reorganization petition before the Superintendency of Companies will result in an automatic stay of all enforcement actions or proceedings against the debtor, certain restrictions on the debtor’s activities and on its transfer or disposition of assets¹⁵, the revocation of certain acts executed prior to the filing of the reorganization petition for fraudulent conveyance (*acción revocatoria y de simulación*)¹⁶, restrictions on payments to creditors, and granting of, and enforcement of, guarantees by creditors. In certain circumstances, creditors will be able to enforce their collateral even if a reorganization proceeding has commenced. For example, under the *Ley de Garantías Mobiliarias*, certain movable assets that are granted as security interests which are not assets that are crucial to the operation of debtor’s business, may be enforced by the creditor in whose benefit these were granted. The judge of

¹³ This event will occur when the debtor (i) defaults for more than 90 days in two or more of its obligations (acquired in the exercise of its activity) towards two or more creditors, or (ii) has two or more enforcement proceedings against it, initiated by two or more creditors. In either case, the aggregate amount of the obligations in default or subject to enforcement proceedings must represent at least 10% of debtor’s total liabilities.

¹⁴ This is the case in which the proceeding is initiated because the debtor is in a situation where it is imminent that it will be unable to pay its debts, whether because there is a circumstance in the relevant market or within the debtor’s organization or structure, that affects, or that may reasonably affect, in a grave manner, debtor’s normal compliance with its short-term obligations.

¹⁵ Law 1116 grants the judge of the reorganization proceeding powers to protect, safeguard and recover assets in the debtor’s estate, with certain exceptions contained in the law. For example, the judge may authorize the anticipated payment of debts that do not exceed, in the aggregate, 5% of the debtor’s external liabilities; it may also authorize the termination of agreements in an effort to achieve the objective of the reorganization process.

¹⁶ The look-back period for revocation for fraudulent conveyance will depend on the types of acts being challenged.

the reorganization proceeding may also authorize the enforcement of guarantees granted under the *Ley de Garantías Mobiliarias* when, at the request of the creditor, she determines that such assets are not necessary for debtor's economic activity or when she believes the assets run the risk of being lost or deteriorated. In addition, creditors may enforce on certain collateral granted in derivative transactions entered into with financial institutions.

A reorganization plan (the objective of a reorganization proceeding) will be approved with either (a) the affirmative vote of a simple majority consisting of two or more creditors, which must (i) represent the simple majority of admissible votes, and (ii) include the affirmative vote of at least three categories of creditors¹⁷ (or two if only three of them exist in the relevant proceeding), or (b) the favorable vote of at least 75% of the votes, regardless of the creditors' categories. In addition to these majorities, when internal creditors or one or more creditors that belong to the same organization or corporate group, make up the required majority, then the additional vote of two or more creditors representing at least 25% of the remaining votes will be required.

Reorganization plans must respect creditor rankings and priority of payments as set forth in the Colombian Civil Code and Law 1116. However, in a reorganization agreement the priority of payments may be modified if (a) the decision is adopted by a more than 60% of admissible votes, (b) its objective is to facilitate the purpose of the reorganization proceeding, (c) it does not worsen a creditor class but improves the category of creditors who have provided new resources or that generally adopt conducts that contribute to improve debtor's working capital and recovery, (d) does not affect the priority of labor, pension, social security and workers' housing claims.

Voting rights will be calculated as one vote for each Ps. \$1 of a creditor's certain credit (whether due or not yet due and without including interests, penalties, fees, or other non-principal items), updating it with the consumer price index for a specified period¹⁸. Generally, the five classes of creditors, in order of priority, include: (1) labor and tax-related creditors, (2) creditors with assets that have been properly pledged to them (in the order in which pledges were registered, and priority is only granted in respect of

¹⁷ The creditor categories are: (1) creditors with labor claims, (2) government entities, (3) national financial institutions and other entities subject to the supervision of the Superintendency of Finance (whether privately held or government owned) and foreign financial institutions, (4) internal creditors (i.e. shareholders), and (5) all other external creditors.

¹⁸ Please note that a different procedure applies for calculating the number of votes of internal creditors.

	<p>the assets pledged), (3) creditors with a security interest on real property (in the order in which mortgages were registered, and priority is only granted in respect of the mortgaged property), (4) charities and educational establishments, suppliers of raw materials and other goods necessary for the company’s rendering of services or production of goods, and (5) unsecured creditors. Furthermore, super-priority status (elevated to first class) may be granted to creditors that provide, or promise to do so during the performance of the reorganization plan, new resources to the debtor, or to investors that provide new capital to the debtor.</p> <p>Bondholders are able to act in a reorganization proceeding through their representative or agent (typically a trustee).</p>
<p>Key Features:</p>	<ul style="list-style-type: none"> — Insolvency proceedings outside courts, as they are overseen by an administrative authority (Superintendency of Companies), and only in limited circumstances by a judge; — Decision of the administrative authority is not subject to appeal; — Expedited prepackaged proceedings; and — Revocation of certain acts executed prior to the reorganization proceeding for fraudulent conveyance.
<p>Key Creditor Issues/Risks:</p>	<p>Secured creditors may fall to the last place in the creditor ranking if:</p> <ul style="list-style-type: none"> — after admittance into the reorganization proceeding, they try to enforce early termination provisions or acceleration clauses (or similar provisions entered into with the debtor the seek to hinder or prevent the reorganization process) when such are not expressly permitted by law, or — when a creditor has not been included in the rating and ranking project prepared prior to the approval of the reorganization plan, and such creditor does not object during the 3-day period following the public notification of debtor’s admittance into a reorganization proceeding.

Key Indicators

EXPERIENCE LEVEL

- Multiple established precedents of successful in-court restructurings over a significant period of time involving international bond or bank debt

- Some established precedents of successful in-court restructurings involving international bond or bank debt or multiple established precedents but mostly occurring more than 10 years ago

- Limited established precedents of successful in-court restructurings or significant cultural resistance to resolution of insolvency through court proceedings **X**

- Recently approved law or no established precedents

KEY PROCEDURAL ISSUES

- Can bondholders/lenders participate directly (*i.e.*, do they have standing to individually participate in a proceeding or must they act through a trustee/agent as recognized creditor?) Yes (Lenders) No (Bondholders)¹⁹

- Involuntary reorganization proceeding that can be initiated by creditors? Yes

- Can creditors propose a plan? Yes

¹⁹ In the case of bondholders, they must act in the proceeding through an agent (*representante legal de los tenedores de bonos*). If the bonds are issued outside Colombia, the rules that will govern bondholders' representation are those of the jurisdiction in which the bonds were issued.

— Can a creditor-proposed plan be approved without consent of shareholders?	Yes (but not in all cases)
— Absolute priority rule?	Yes
— Are <i>ex parte</i> proceedings (where only one party participates and the other party is not given prior notice or an opportunity to be heard) permitted?	No
— Are corruption / improper influence issues a common occurrence?	Yes
— Viable prepackaged proceeding available that can be completed in 3-6 months	Yes
— Secured creditors subject to automatic stay?	Yes, with exceptions
— Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so)	Yes
— Bond required to be posted in case of involuntary filing or challenge to fraudulent/suspect transactions?	Yes (in certain circumstances)
— Labor claims can be addressed through a restructuring proceeding	Yes
— Grants super-priority status to DIP Financing?	Yes
— Restructuring plan may be implemented while appeals are pending	N/A
— Does the restructuring plan, once approved, bind non-consenting (or abstaining) creditors?	Yes

— Does the debtor have the ability to choose which court in which to file the insolvency proceeding (or is it bound to file where its corporate domicile is)?	No
— Other significant exclusions from automatic stay?	Yes (Guarantees granted under the <i>Ley de Garantías Mobiliarias</i> that are not crucial to debtor's business)
— Prevents voting by intercompany debt?	No
— Strict time limits on completing procedure?	Yes
— Management remains in place during proceeding?	Yes

Precedents and Sources

<p>Recent Significant Cross-Border Insolvency and/or Debt Restructuring Cases:</p>	<p>In-Court:</p> <ul style="list-style-type: none"> — Interbolsa (2012)²⁰ <p>Foreign Court:</p> <ul style="list-style-type: none"> — Pacific Rubiales (2016)²¹ — Avianca (2003)²²
<p>Key Statutes:</p>	<ul style="list-style-type: none"> — <u>Law 1116 of 2006</u> (<i>Régimen de Insolvencia Empresarial de Colombia</i>), and all amendments thereto (contains the Colombian insolvency regime) — <u>Colombian Civil Code</u>, and all amendments thereto (includes, among other things, creditor rankings and priority of payments)

²⁰ Interbolsa S.A. was the holding company of a Colombian broker-dealer with the same name that was regulated by the Superintendency of Finance. In 2012, the Superintendency of Companies initiated a reorganization proceeding at the request of the Superintendency of Finance, and in 2013 the Superintendency of Companies ordered the termination of the reorganization proceeding and the opening of a judicial liquidation proceeding against it, resulting in the dissolution of the company.

²¹ In 2016, Pacific Exploration and Production initiated a reorganization proceeding before the Ontario Superior Court, under the Companies Creditors Arrangement Act (“CCAA”). Shortly thereafter, the company filed a petition before the Superintendency of Companies in Colombia for the recognition of its cross-border insolvency proceeding.

²² This is one of the most successful reorganization cases of Colombian companies. This proceeding was initiated in a New York court under Chapter 11. Its recognition in Colombia was made under Colombia’s prior insolvency regime. Currently, the company is operating successfully.

	<ul style="list-style-type: none"> — <u>Decree 1730 of 2009</u>, and all amendments thereto (regulates certain provisions of Law 1116) — <u>Decree 1074 of 2015</u> (<i>Decreto Único Reglamentario del Sector Comercio, Industria y Turismo</i>), and amendments thereto (regulates certain provisions of Law 1116 and Law 1676 of 2013)
<p>Recent Significant Amendments:</p>	<p>Important amendments to Law 1116 of 2006 include:</p> <ul style="list-style-type: none"> — Law 1429 of 2010 — Law 1380 of 2010 — Law 1173 of 2007
<p>Other Relevant Statutes or Rules:</p>	<p>The following statutes or rules contain special rules that are relevant for the insolvency process:</p> <ul style="list-style-type: none"> — <u>Decree 2555 of 2010</u>, and amendments thereto (contains provisions governing rights of holders of local bonds; governs reorganization and other insolvency proceedings of financial institutions) — <u>Law 1676 of 2013</u> (<i>Ley de Garantías Mobiliarias</i>) and <u>Decree 1835 of 2015</u> (which regulates the <i>Ley de Garantías Mobiliarias</i>), and all amendments thereto (provide a process for granting certain security interests that may be enforced outside insolvency proceedings) — <u>Article 74 of Law 1328 of 2009</u> and <u>Decree 4765 of 2011</u>, and all amendments thereto (provide for cases in which certain collateral, early termination and close-out netting provisions granted within the context of derivative transactions may be enforced outside the insolvency process)

	<p>— <u>Law 550 of 1999</u>²³, and all amendments thereto (regulates insolvency proceedings of territorial government entities, decentralized government entities and state universities at the territorial and national levels).</p>
<p>Additional Materials:</p>	<p>— Law 1116 of 2006 in English</p> <p>— Felipe Cuberos, <i>Colombia's Insolvency Revolution</i>, International Financial Law Review, September 23, 2013.</p> <p>— Daniel Posse Velasquez, <i>International Insolvencies of Latin American Companies, The National and International Insolvency Regime in Colombia</i>, International Insolvency Institute, Eleventh Annual International Insolvency Conference, Columbia University, New York, June 13-14, 2011.</p> <p>— Talero Castro, Diana Lucia, et al., <i>Global Forum on Law, Justice and Development (GFLJD) Community of Practice, Questionnaire on Insolvency Law and Company Law, Colombia</i>.²⁴</p>

²³ Please note that Law 550 of 1999 regulated bankruptcy and insolvency proceedings of companies under the old regime. Such law no longer applies to the majority of entities (as Law 1116 of 2006 is the one that does); however, it still applies to certain government and government-owned entities and state universities.

²⁴ Available on February 19, 2017 at <http://www.globalforumljd.org/sites/default/files/docs/cop/Questionnaire%20Colombia.pdf>. Please note this document was published prior to the adoption of the *Ley de Garantías Mobiliarias*, so it does not make reference to such law.



General

<p>Overview:</p>	<p>Mexico has a well-tested (by emerging markets standards) bankruptcy system, with multiple precedents dating back to 2003, shortly after the <i>Ley de Concursos Mercantiles</i> was approved. Although shareholders remain in the driver’s seat (unsecured creditors cannot approve a reorganization plan without Company/Shareholder approval and shareholders are permitted to remain unimpaired even if creditors are haircut), secured creditors enjoy robust rights and the procedure for approving a plan is clear. The key concern in this jurisdiction is institutional weakness (corruption issues and lack of transparency), but creditors have been able to gain significant recoveries within 3-6 months (in the case of a prepackaged proceeding) or 1-2 years (in a regular proceeding). Clear rules on the treatment of credits have also created an active market in out-of-court restructurings.</p>
<p>Cleary Rating:</p>	<p>B</p>
<p>World Bank Doing Business Ratings²⁵:</p>	<ul style="list-style-type: none"> — <i>Average Recovery</i>: 63.9% — <i>Average Cost</i>: 18% — <i>Average Proceeding Time</i>: 1.8 years — <i>Strength of Insolvency Framework Index (0-16)</i>: 11.5
<p>Brief Description of Legal Regime:</p>	<p>The Concurso Law provides the legal means for a commercial debtor and its creditors to restructure the debtor’s obligations under state supervision. All indebtedness may be addressed through a <i>concurso</i> proceeding, although secured debt may opt out of a proceeding and tax and labor claims are exempt. In a standard proceeding, the first step, the inspection phase, occurs prior to the declaration of <i>concurso mercantil</i> by a court. The purpose of the inspection phase is to determine whether or not the debtor meets</p>

²⁵ World Bank, Doing Business 2020, *Resolving Insolvency in Mexico*, available at https://www.doingbusiness.org/en/data/exploreconomies/mexico#DB_ri.

the requirements to be declared in *concurso*. A specialist is appointed as an overseer (*visitador*) to analyze the company’s financial position and advise the court as to whether the debtor meets these requirements.

In a standard in-court *concurso mercantil*, there are two subsequent stages: (i) the reorganization phase, during which a court-appointed mediator (*conciliador*) makes proposals to the judge to recognize or reject claims against the company and, together with the debtor and its court-recognized creditors, seeks an agreement on the restructuring of the debtor’s debt with a view towards preserving the existence of the company and its operations; and (ii) the liquidation phase, which typically follows an unsuccessful reorganization phase and during which a court-appointed receiver liquidates the debtor and repays creditors from any proceeds, with the goal of maximizing the return to creditors on the sale of the debtor’s assets. A standard in-court *concurso mercantil* process can be lengthy, as the reorganization phase alone has an initial term of 185 days with up to two 90-day extensions.

A debtor can request and initiate a pre-packaged proceeding if it has obtained the agreement of a single majority of the overall debt before filing for court protection. In a pre-packaged proceeding, no *visitador* is appointed and the proceeding moves directly to the reorganization phase. There are precedents for prepackaged proceedings to be completed in 3-6 months.

A plan can be approved with the vote of a majority of the outstanding amount of unsecured debt and the outstanding amount of secured debt held by creditors who choose to participate in the plan. Once this vote is obtained, a debtor must also overcome any attempts by creditors to veto the plan, which will occur upon the negative vote of a majority of unsecured creditors, either in number or in amount of unsecured debt.

Although Mexico does not have a procedure akin to the U.S. Chapter 15 proceeding (i.e., to recognize insolvency proceedings against Mexican companies brought outside of Mexico), the recent insolvency filing of Abengoa Mexico suggests that the *concurso* law can be used for foreign affiliates of multinational companies.

Key Features:

- Insolvency proceeding overseen by judge;
- Expedited prepackaged proceedings;

	<ul style="list-style-type: none"> — Filing may be made before company is insolvent if insolvency is imminent; — Priority status granted to DIP lenders; — Secured creditor friendly provisions such as right to participate in <i>concurso</i> plan without having to release collateral, right to foreclose on unessential assets and right of set-off of certain secured claims involving derivatives; — Regulations in place to facilitate joint <i>concurso</i> filing when dealing with the potential insolvency of a corporate group, but no regulations to make the parent or affiliated companies responsible for the liabilities of its subsidiaries or affiliates (no substantive consolidation); — Revocation of certain acts executed prior to the reorganization proceeding for fraudulent conveyance; and — No prohibition under the <i>concurso</i> law on the trading of and among verified claims.
<p>Key Creditor Issues/Risks:</p>	<ul style="list-style-type: none"> — Lack of transparency / corruption in courts — Ability of shareholder to influence outcome of proceeding in a manner adverse to creditors (through power to approve or veto <i>concurso</i> plan or, in certain cases, intercompany claims) — Recent decisions (Geo) suggesting that a <i>concurso</i> proceeding could be reopened following appeals

Key Indicators

EXPERIENCE LEVEL

- Multiple established precedents of successful in-court restructurings over a significant period of time involving international bond or bank debt

- Some established precedents of successful in-court restructurings involving international bond or bank debt or multiple established precedents but mostly occurring more than 10 years ago X

- Limited established precedents of successful in-court restructurings or significant cultural resistance to resolution of insolvency through court proceedings

- Recently approved law or no established precedents

KEY PROCEDURAL ISSUES

- Can bondholders/lenders participate directly (*i.e.*, do they have standing to individually participate in a proceeding or must they act through a trustee/agent as recognized creditor?) Yes

- Involuntary reorganization proceeding that can be initiated by creditors? Yes

- Can creditors propose a plan? Yes

— Can a creditor-proposed plan be approved without consent of shareholders?	No
— Absolute priority rule?	No
— Are <i>ex parte</i> proceedings (where only one party participates and the other party is not given prior notice or an opportunity to be heard) permitted?	Yes
— Are corruption / improper influence issues a common occurrence?	Yes
— Viable prepackaged proceeding available that can be completed in 3-6 months	Yes
— Secured creditors subject to automatic stay?	Yes, subject to exceptions
— Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so)	Yes
— Bond required to be posted in case of involuntary filing or challenge to fraudulent/suspect transactions?	Yes with respect to filing; no with respect to challenge of transactions, subject to exceptions
— Labor claims can be addressed through a restructuring proceeding	No
— Grants super-priority status to DIP Financing?	Yes, subject to exceptions
— Restructuring plan may be implemented while appeals are pending	Yes

— Does the restructuring plan, once approved, bind non-consenting (or abstaining) creditors?	Yes
— Does the debtor have the ability to choose which court in which to file the insolvency proceeding (or is it bound to file where its corporate domicile is)?	Yes
— Other significant exclusions from automatic stay?	Labor
— Prevents voting by intercompany debt?	Yes subject to exceptions
— Strict time limits on completing procedure?	Yes (365 days)
— Management remains in place during proceeding?	Yes

Precedents and Sources

Recent Significant Cross-Border Insolvency and/or Debt Restructuring Cases:

Out of Court:

— Gruma (2009)

In-Court:

— Vitro (2012)

— Comercis (CCM) (2010)

— Durango (2005)

	<ul style="list-style-type: none"> — Iusacell (2011) — Geo/Urbi/Homex (2014) <p>Foreign Court:</p> <ul style="list-style-type: none"> — MaxCom (2013) — Industrias Unidas (IUSA) (2011)
Key Statutes:	<ul style="list-style-type: none"> — Ley de Concursos Mercantiles, 2000
Recent Significant Amendments:	<ul style="list-style-type: none"> — 2007 (added prepack proceeding) — 2014 (addressing intercompany claims and DIP financing)
Additional Materials:	<ul style="list-style-type: none"> — Cooper, Moss & Brenneman, “Expedited Restructurings in the U.S. and Select Latin American and Caribbean Jurisdictions”, Pratts Bankruptcy Law Journal 2012 — Cooper, Brenneman & McBride, “A New Role for Latam Creditors: Insolvency Reform in Latin America”, Pratts Bankruptcy Law Journal 2015



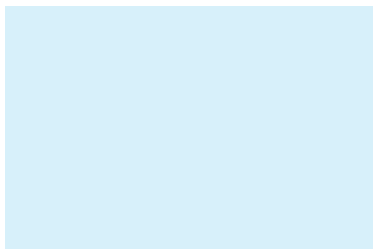
General

<p>Overview:</p>	<p>Despite the adoption of its General Insolvency Law in 2002, Peru has one of the least tested insolvency systems compared to its Latin American peers.</p> <p>There are few cases of successful restructurings and none of which involve cross-border matters. In fact, the vast majority of insolvency cases in Peru result in liquidation proceedings than restructurings. Creditors by far prefer the liquidation approach and in few instances assess the possibility of restructuring the debtor.</p> <p>A key concern in this jurisdiction is the lengthy proceedings, which commonly take well over a year to provide meaningful recoveries to creditors. True prepackaged proceedings, as used in the U.S., are not contemplated under the General Insolvency Law and, as a result, are not available to creditors as a method to expedite the proceedings.</p> <p>The proceedings available to creditors (ordinary and preventative proceedings) do place them in the driver’s seat, however. Creditors with “verified” claims have the right to initiate involuntary ordinary proceedings and broad powers as voting members of the Creditors’ Meeting to change the debtor’s constitutive documents, replace its officers and directors and approve a merger, among others.</p> <p>Regardless of whether creditors or the debtor initiates the proceeding, all insolvency cases are handled by an administrative agency of the executive branch, the National Institute for the Defense of Free Competition and the Protection of Intellectual Property (or “INDECOPI”). Judicial courts do not participate directly in the proceedings though they may be involved in certain aspects in extraordinary circumstances (such as appeals by creditors against any final decisions from INDECOPI’s tribunal and reviews of actions or transactions by management during the prior year (the “suspect” period) which may be voided if they are deemed to be out of the ordinary course business and have a negative effect on the net worth of the company).</p>
<p>Cleary Rating:</p>	<p>B-</p>

<p>World Bank Doing Business Ratings²⁶:</p>	<ul style="list-style-type: none"> — <i>Average Recovery</i> : 31.3% — <i>Average Cost (% of estate)</i>: 7.0% — <i>Average Proceeding Time</i>: 3.1 years — <i>Strength of Insolvency Framework Index (0-16)</i>: 9.5
<p>Brief Description of Legal Regime:</p>	<p>The General Insolvency Law provides the legal means to initiate two types of administrative proceedings with INDECOPI: an ordinary proceeding and a preventative proceeding.</p> <p>An ordinary proceeding may be filed either voluntarily by the debtor or involuntarily by the creditor(s). Any creditor or group of creditors that has over 50 UITs (approximately US\$62,500) past due for over 30 days may request the initiation of an insolvency proceeding.</p> <p>Any debtor may initiate an ordinary proceeding if it can demonstrate that (1) over one-third of its outstanding liabilities are past due for over 30 days or (2) its accumulated losses minus its retained earning exceed one-third of its paid-in capital. However, the debtor may only pursue a liquidation of the business (versus reorganization) if accumulated losses exceed <i>all</i> of its paid-in capital.</p> <p>The “bar date” is the date the insolvency proceeding is published in Peru’s official gazette and the date in which an automatic stay is imposed, which means all obligations of the debtor are temporarily unenforceable and all execution proceedings and injunctions against the debtor’s estate are stayed. The typical period to receive a formal decision from INDECOPI declaring the debtor’s insolvency and the publication of such decision in the official gazette is between 3 and 6 months from the initial filing date.</p> <p>Once the bar date is published, creditors must submit proofs of their claims with INDECOPI in order for their claims to be “verified” and to participate in the Creditors’ Meetings. There is no limit on the number of Creditors’ Meetings that may be held in ordinary proceedings. In these proceedings, there may be several meetings to approve (i) the debtor’s liquidation or reorganization, (ii) the related liquidation or reorganization plan and (iii) the debtor’s administrator or liquidator.</p>

²⁶ World Bank, Doing Business 2020, *Resolving Insolvency in Peru*, available at https://www.doingbusiness.org/en/data/exploreconomies/peru#DB_ri.

	<p>In both voluntary and involuntary ordinary proceedings, a two-thirds majority vote of verified creditors must approve the debtor’s liquidation or reorganization.</p> <p>For preventative proceedings, which is always a voluntary proceeding filed by the debtor, the debtor must show that it does not fall under the circumstances outlined under the ordinary proceeding filed voluntarily by the debtor. There is only one Creditors’ Meeting in a preventative proceeding, during which creditors and the debtors try to approve a restructuring plan with more than a two-thirds majority vote of verified creditors. Otherwise, the creditors could decide to initiate an ordinary proceeding with the vote of a majority of all the verified creditor claims eligible to vote at the Creditors’ Meeting.</p> <p>There are no special proceedings applicable to foreign creditors. Recognition and recovery for foreign insolvency proceedings is available for assets located in Peru, and treaties and the Peruvian Civil Code of 1984 may be applied where they are applicable. However, the UNCITRAL Model Law on cross-border insolvency proceeding has not been adopted.</p>
<p>Key Features:</p>	<ul style="list-style-type: none"> — Insolvency proceedings overseen by an administrative authority under the executive branch of the government; involvement of courts limited to exceptional circumstances — Creditor-friendly provisions such as the automatic stay that applies to other secured claims and the ability for verified creditors to convert their claims (excluding tax claims) into equity capital on a pro rata basis if approved by more than two-third of verified creditors — No prohibition under the General Insolvency Law on the trading of and among verified claims
<p>Key Creditor Issues/Risks:</p>	<ul style="list-style-type: none"> — No true pre-packaged plan of reorganization contemplated under current legal framework — No out-of-court restructurings available under the current legal framework — No regulations that make the parent or affiliated companies responsible for the liabilities of its subsidiaries or affiliates



- Lengthy administrative proceedings
- No priority status or special protections granted to DIP lenders
- UNCITRAL Model Law on cross-border insolvencies not adopted

Key Indicators

EXPERIENCE LEVEL

- Multiple established precedents of successful in-court restructurings over a significant period of time involving international bond or bank debt
- Some established precedents of successful in-court restructurings involving international bond or bank debt or multiple established precedents but mostly occurring more than 10 years ago
- Limited established precedents of successful in-court restructurings or significant cultural resistance to resolution of insolvency through court proceedings **X**
- Recently approved law or no established precedents

KEY PROCEDURAL ISSUES

- Can bondholders/lenders participate directly (*i.e.*, do they have standing to individually participate in a proceeding or must they act through a trustee/agent as recognized creditor?) Yes

— Involuntary reorganization proceeding that can be initiated by creditors?	Yes
— Can creditors propose a plan?	Yes
— Can a creditor-proposed plan be approved without consent of shareholders?	Yes
— Absolute priority rule?	No
— Are <i>ex parte</i> proceedings (where only one party participates and the other party is not given prior notice or an opportunity to be heard) permitted?	No
— Are corruption / improper influence issues a common occurrence?	No
— Viable prepackaged proceeding available that can be completed in 3-6 months	No
— Secured creditors subject to automatic stay?	Yes
— Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so)	Yes
— Bond required to be posted in case of involuntary filing or challenge to fraudulent/suspect transactions?	No
— Labor claims can be addressed through a restructuring proceeding	Yes
— Grants super-priority status to DIP Financing?	No

— Restructuring plan may be implemented while appeals are pending	Yes
— Does the restructuring plan, once approved, bind non-consenting (or abstaining) creditors?	Yes
— Does the debtor have the ability to choose which court in which to file the insolvency proceeding (or is it bound to file where its corporate domicile is)?	No
— Other significant exclusions from automatic stay?	No
— Prevents voting by intercompany debt?	No
— Strict time limits on completing procedure?	No
— Management remains in place during proceeding?	Yes, unless creditors exercise their rights to replace some or all of the existing management team in <i>ordinary</i> proceedings.

Precedents and Sources

<p>Recent Significant Cross-Border Insolvency and/or Debt Restructuring Cases:</p>	<ul style="list-style-type: none"> — <i>Compañía Peruana de Radiodifusión S.A.</i> (2001-2010): conversion of creditor’s claims and satisfactory conclusion of the ordinary proceeding — <i>Austral Group</i> (2004): use of Peruvian bankruptcy system by a consortium of international strategic buyers to acquire control of a debtor — <i>Doe Run Peru</i> (2010-present): liquidation as an ongoing concern — <i>Refrigerados Iny S.A.</i> (2011-2012): reorganization of a US\$50 million contingent liability by way of a preventive proceeding — <i>CFG Peru Investments and China Fishery Group subsidiaries</i> (2015-present): cross-border insolvency of multinational company with operations in Peru
<p>Key Statutes:</p>	<ul style="list-style-type: none"> — General Insolvency Law, Law No. 27809 (Ley General del Sistema Concursal, Ley No. 27809) (2002)
<p>Recent Significant Amendments:</p>	<p>Amendments to the General Insolvency Law:</p> <ul style="list-style-type: none"> — Legislative Decree No. 1050 (2008) (requiring that, on an annual basis, the debtor use at least 30% of any funds available to pay off labor claims in a reorganization plan; tightening the voting rules and recognition of claims involving creditors who are affiliated or related to the debtor; and regulating the payment of post-insolvency claims (e.g., DIP financing)) — Legislative Decree No. 1189 (2015) (extending the term for liquidation as a going concern; allowing secured creditors to initiate ordinary proceedings; establishing more stringent requirements to bodies

	<p>that act as liquidators or administrators; permitting verified creditors to revert a liquidation proceeding to a restructuring)</p> <p>— Law No. 30502 (2016) (authorizing extraordinary extensions to the term for liquidations as a going concern)</p>
<p>Additional Materials:</p>	<p>— Cooper, Brenneman & McBride, “A New World for Latam Creditors: Insolvency Reform in Latin America”, Pratt’s Journal of Bankruptcy Law, 2015</p> <p>— Cooper, Moss & Brenneman, “Expedited Restructurings in the U.S. and Select Latin American and Caribbean Jurisdictions”, Pratt’s Journal of Bankruptcy Law, 2011</p> <p>— Jiménez & Gonzales, “Is debtor-in- possession financing even possible in Peru?”, Emerging Markets Restructuring Journal, Fall 2016</p> <p>— Jiménez, “Peru”, The Restructuring Review (Third Edition), 2009</p>

Accolades

Restructuring Team of the Year

IFLR, 2015 – 2016

Tier 1: Bankruptcy

Benchmark Litigation, 2017

"A great international franchise undertaking terrific cross-border work."

Chambers USA, 2016

Global Finance Deal of the Year: Private Restructuring

The American Lawyer Global Legal Awards, 2016

Judicial Restructuring of the Year (Casas GEO restructuring)

Turnaround Atlas Awards, 2016

Restructuring Deal of the Year (Corporación GEO; Tonon Bioenergia)

International Financial Law Review, 2016

Restructuring Team of the Year

International Financial Law Review, 2015-2016

Bankruptcy Practice Group of the Year

Law360, 2014 & 2016

Global Finance Deal of the Year: Restructuring (South America) (OGX's debt restructuring)

The American Lawyer, 2015

Restructuring Deal of the Year (Overseas Shipholding Group's successful restructuring and exit from Chapter 11 bankruptcy protection)

International Financial Law Review, 2015

Restructuring Deal of the Year (Restructuring of OGX Petróleo e Gás Participações and its subsidiaries)

Latin Lawyer, 2014

Highly Commended Firm for Restructuring (OGX's restructuring and American Roads' restructuring)

Financial Times - U.S. Innovative Lawyer's Report, 2014

Commended Firm for Litigation (Complex Chapter 11 proceedings of Residential Capital)

Financial Times - U.S. Innovative Lawyer's Report, 2014

Successful Restructuring of 2014 (Overseas Shipholding Group's emergence from bankruptcy)

Turnarounds and Workouts, 2014

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