Pratt's Journal of Bankruptcy Law

LEXISNEXIS® A.S. PRATT® JULY/AUGUST 2018

LexisNexis

Pratt's Journal of Bankruptcy Law

VOLUME 14 NUMBER 5 JULY/AUGUST 2018

LexisNexis®

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call:

Kent K. B. Hanson, J.D., at 415-908-3207
Email: ..... kent.hanson@lexisnexis.com
Outside the United States and Canada, please call . . . . . (973) 820-2000

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at . . . . . (800) 833-9844
Outside the United States and Canada, please call . . . . . (518) 487-3385
Fax Number . . . . . (800) 828-8341
Customer Service Website . . . . . http://www.lexisnexis.com/custserv/

For information on other Matthew Bender publications, please call

Your account manager or . . . . . (800) 223-1940
Outside the United States and Canada, please call . . . . . (937) 247-0293

Library of Congress Card Number: 80-68780

ISBN: 978-0-7698-7846-1 (print)
ISBN: 978-0-7698-7988-8 (eBook)
ISSN: 1931-6992

Cite this publication as:

[author name], [*article title*], [vol. no.] PRATT'S JOURNAL OF BANKRUPTCY LAW [page number] ([year])

Example: Patrick E. Mears, *The Winds of Change Intensify over Europe: Recent European Union Actions Firmly Embrace the "Rescue and Recovery" Culture for Business Recovery*, 10 PRATT'S JOURNAL OF BANKRUPTCY LAW 349 (2014)

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW BENDER

(2018–Pub.4789)

Editor-in-Chief, Editor & Board of Editors

PRATT'S JOURNAL OF BANKRUPTCY LAW is published eight times a year by Matthew Bender & Company, Inc.

Direct any editorial inquires and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, No. 18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 646.539.8300. Material for publication is welcomed—articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher. POSTMASTER: Send address changes to *Pratt's Journal of Bankruptcy Law*, LexisNexis Matthew Bender, Attn: Customer Service, 9443 Springboro Pike, Miamisburg, OH 45342-9907.

Oi S.A.: The Saga of Latin America's Largest Private Sector In-Court Restructuring

By Richard J. Cooper, Francisco L. Cestero, and Jesse W. Mosier*

Oi S.A. ("Oi") is one of the most important companies in Brazil, and is one of the largest Brazilian integrated telecommunications providers. Creditors of Oi and certain of its subsidiaries approved a plan of reorganization to restructure nearly US$20 billion in claims, the largest corporate restructuring in the history of Latin America. The authors of this article review some of the more interesting aspects of the reorganization and provide an update on pending matters.

After a nearly two-year long process, creditors of Oi S.A. ("Oi") and certain of its subsidiaries approved a plan of reorganization at a creditors meeting on December 19, 2017, held in a former Olympic boxing venue on the outskirts of Rio de Janeiro, to restructure nearly US$20 billion in claims, the largest corporate restructuring in the history of Latin America (and potentially any emerging market), and the first truly public Brazilian company to go through judicial reorganization since Brazil reformed its insolvency laws in 2005.

Oi is one of the most important companies in Brazil, and is one of the largest Brazilian integrated telecommunications providers, with over 60 million customers throughout Brazil and over 138,000 direct and indirect employees. Oi also has operations in a number of other Portuguese speaking countries around the world, including Angola, Cape Verde, and Timor Leste.

The size and complexity of Oi's reorganization resulted in a number of interesting and precedent setting aspects, and has been extensively litigated in Brazil, the Netherlands, and New York. Among the more interesting aspects of the reorganization are:

- potential limits to the trend in Brazil towards substantively consolidated reorganization plans;
- the attempt (ultimately abandoned) by certain creditors to use the

---

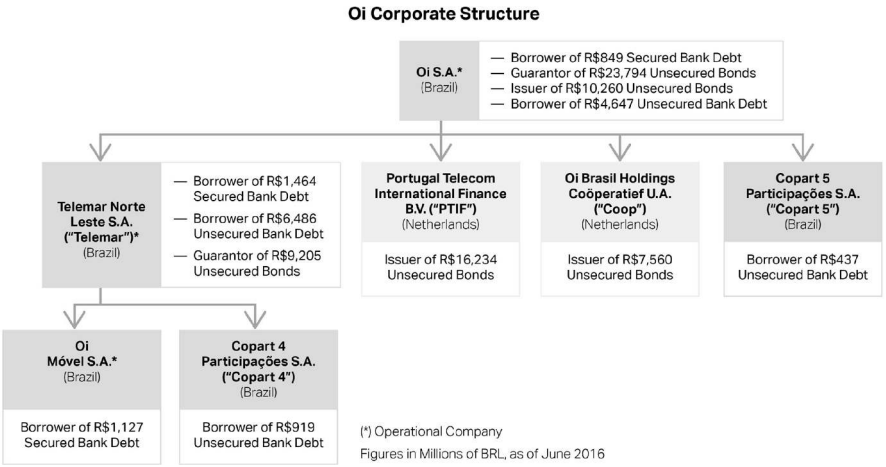
* Richard J. Cooper, a partner based in the New York office of Cleary Gottlieb Steen & Hamilton LLP, focuses his practice on domestic and international restructurings. Francisco L. Cestero, a partner based in the firm's São Paulo office, focuses his practice, among other things, on corporate and financial transactions, including corporate restructurings. Jesse W. Mosier, an associate based in the firm's São Paulo office, focuses on international corporate and financial transactions, particularly cross-border restructurings, mergers and acquisitions and capital markets offerings, with an emphasis on Latin America. The authors may be contacted at rcooper@cgsh.com, fcestero@cgsh.com, and jmosier@cgsh.com, respectively.

existence of intercompany claims by off-shore finance subsidiaries to improve their recoveries;

- potential limits on abusive behavior by Brazilian shareholders and their board representatives; and
- the treatment of regulatory claims in Brazilian reorganization proceedings.

BACKGROUND

In the wake of problems resulting from Oi's acquisition, and subsequent sale, of Portugal Telecom, structural problems resulting from its concessions, substantial underinvestment in its assets and a general downturn in the Brazilian economy, by early 2016 Oi was facing an unsustainable debt burden. Oi and its subsidiaries' debt consisted of nearly US$15 billion in financial debt, including approximately US$10 billion in New York and English law governed bond debt,[1] in addition to sizeable regulatory fines and tax and other contingencies.



After initially considering an attempted out-of-court exchange in the spring of 2016, Oi and certain of its subsidiaries filed for judicial reorganization in Brazil in June 2016, and the Brazilian reorganization court accepted jurisdiction

[1] Oi's bond debt consisted of the Brazilian *reais* equivalent of approximately R$16.2 billion in notes issued by Portugal Telecom International Finance B.V. ("PTIF") and guaranteed by Oi, R$7.6 billion in notes issued by Oi Brasil Holdings Coöperatief U.A. ("Coop") and guaranteed by Oi, R$9.2 billion in notes issued by Oi and guaranteed by Telemar Norte Leste S.A. ("Telemar"), and R$1.0 billion in notes issued by Oi without a guarantee. Oi's other financial debt consisted mostly of debt owed to banks and export credit agencies, and its only secured creditor was the Brazilian Development Bank ("BNDES").

over each of the debtors, including Oi's two Dutch finance subsidiaries, Oi Brasil Holdings Coöperatief U.A. ("Coop") and Portugal Telecom International Finance B.V. ("PTIF"). Shortly thereafter, Oi and/or certain other of the debtors in Brazil filed for additional protection in ancillary proceedings in New York and the United Kingdom, as well as separate "suspension of payments" restructuring proceedings in the Netherlands.

SUBSTANTIVE CONSOLIDATION

In Brazil, as in most countries, the bankruptcy law respects the corporate separateness of debtors, and therefore it is the general rule that, within a corporate group restructuring, creditors' claims will not be aggregated for recovery purposes with those of creditors of other members of the corporate group. However, particularly since the *Rede Energia S.A.* reorganization in 2014, Brazilian courts have increasingly confirmed reorganization plans for Brazilian corporate groups that substantively consolidate creditor claims, even over the objections of creditors. Oi's initial proposed reorganization plan, presented in September 2016, took a substantively consolidated approach. Various creditor groups opposed such substantive consolidation (albeit for different reasons), and filed motions against substantive consolidation with the reorganization court.

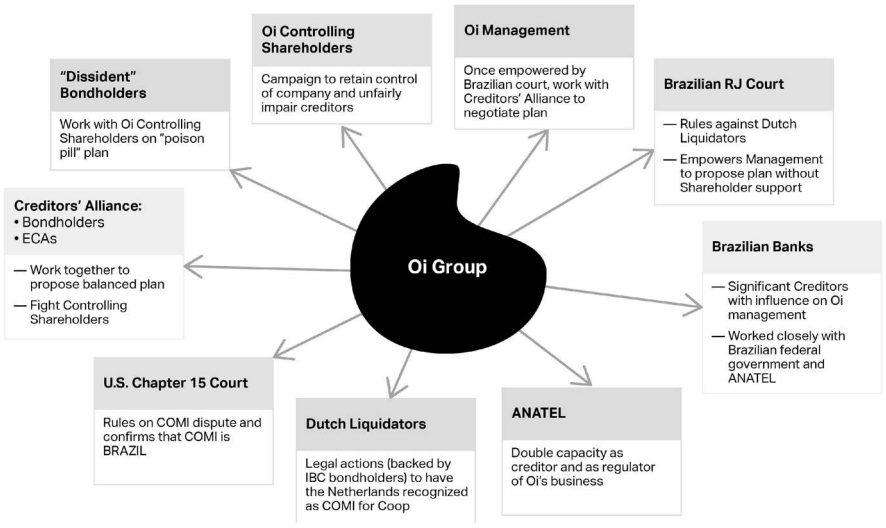
An appeals court in Rio de Janeiro ultimately decided that the question of substantive consolidation was one that should be determined by creditors by vote at a creditors meeting. Importantly, the judge ruled that this vote should occur on an entity-by-entity basis, thereby providing the creditors of Oi and its debtor-subsidiaries with an important protection by ultimately leaving the decision on whether to accept substantive consolidation in the hands of creditors of each group entity—if creditors at any particular entity were to reject substantive consolidation, it would result in significant difficulties for the rest of the Oi Group to restructure on a substantively consolidated basis. If this decision is adopted more widely as precedent in Brazil, it could represent an important step in the right direction towards protecting creditors' interest against unfettered substantive consolidation. In Oi's case, a consensual deal with creditors was eventually reached, and creditors of each debtor entity voted in favor of substantive consolidation.[2]

---

[2] For a comparative discussion on how various jurisdictions limit abusive uses of substantive consolidation, *see, e.g.*, Richard J. Cooper, Francisco L. Cestero, Jesse W. Mosier and Daniel J. Soltman, *The Brazilian Insolvency Regime: Some Modest Suggestions—Part II*, Pratt's Journal of Bankruptcy Law, April/May 2016. In the United States, for example, precise and more creditor-focused standards prevent substantive consolidation in most circumstances: "Because of

It is, however, worth mentioning that in the course of deciding that the substantive consolidation vote should be counted on an entity-by-entity basis, the court also determined that guarantees on the bonds (e.g., Oi S.A.'s guarantee of bonds issued by Coop or PTIF, and Telemar Norte Leste S.A.'s ("Telemar") guarantee of bonds issued by Oi S.A.) should not be counted for voting purposes, despite being due and payable at the time, and therefore should not be entitled to vote on whether to accept substantive consolidation. We understand that this ruling is not only inconsistent with existing Brazilian law, but if it is followed more widely in Brazil could have negative implications on the Brazilian financing markets.

Oi Restructuring — Key Players and Their Roles



ATTEMPT BY CERTAIN CREDITORS TO USE THE EXISTENCE OF INTERCOMPANY CLAIMS TO IMPROVE THEIR RECOVERIES

Like companies in many emerging markets, Brazilian companies routinely issue bonds in the international markets using off-shore finance subsidiaries, for

---

the dangers in forcing creditors of one debtor to share on a parity with creditors of a less solvent debtor, we have stressed that substantive consolidation is no mere instrument of procedural convenience . . . but a measure vitally affecting substantive rights, to be used sparingly . . . [in considering whether substantive consolidation is appropriate, we consider] two critical factors: (i) whether creditors dealt with entities as a single economic unit and did not rely on their separate identity in extending credit or (ii) whether the affairs of the debtors are so entangled that consolidation will benefit all creditors." *In re Augie/Restivo Banking Co., Ltd.*, 860 F.2d 515, 518 (2d Cir. 1988) (internal citations omitted).

tax and other reasons. In Oi's case, it has two Dutch finance subsidiaries, Coop and PTIF, which were used to issue a majority of Oi's bond debt. Such offshore financing arrangements gave rise to intercompany loans between the finance subsidiaries, on the one hand, and Oi and/or some of Oi's operating subsidiaries in Brazil, on the other hand (and guarantees of the bonds by Oi), so that the cash obtained from the sale of bonds could be on-shored to Brazil and used in operations. At the time of payment, cash would then be off-shored back to the finance subsidiaries, for payment to the bondholders in a tax efficient manner. Generally, and in the case of Coop and PTIF, the ability of finance subsidiaries to repay bonds depends fully on the credit worthiness of the operating companies that are counterparties to the intercompany loans and that guarantee the bonds. In Oi's case, as is market practice, this was made abundantly clear in the disclosure documents related to the bonds.

Brazilian reorganization law provides no specific treatment for intercompany claims (other than prohibiting debtors from voting such claims at any creditors meeting), and as a matter of practice in Brazilian reorganization plans, intercompany claims are generally either ignored entirely or treated as subordinated to third-party debt.

Nevertheless, the existence of certain intercompany claims of Coop against Oi and Oi Móvel S.A., another Brazilian operating company (but not other intercompany loans or transactions among other Oi Group companies) became the focus of a group of bondholders known as the International Bondholder Committee ("IBC"), who sought to use the existence of these intercompany loans to improve the recoveries of creditors of the finance entities. The strategy manifested itself in a litigation strategy that the IBC pursued in the Netherlands, Brazil and the U.S.

In particular, in the U.S., Coop's judicial administrator for its Dutch proceedings, at the urging of the IBC, petitioned the U.S. Chapter 15 court to find that Coop's Dutch proceedings, rather than the Brazilian proceedings, should be considered Coop's foreign main proceeding, despite the Chapter 15 court having previously recognized the Brazilian proceedings as Coop's foreign main proceeding nearly one year earlier. If the Coop judicial administrator were successful, he could replace Coop's foreign representative (at that point, an Oi appointee) in the Chapter 15 proceedings, and generally control Coop's actions in the Chapter 15 proceedings going forward. He could also use his status as judicial administrator for Coop to seek to block the Chapter 15 court from recognizing any plan of reorganization for Coop confirmed in Oi's Brazilian proceedings.

Coop's judicial administrator (and the IBC in supporting filings) contended, *inter alia*, that the conversion from Dutch suspension of payments proceedings

(a debtor-in-possession regime) to bankruptcy liquidation proceedings (where the administrator would have increased control) shifted Coop's "center of main interest" or "COMI" from Brazil to the Netherlands.[3] The IBC had, through litigation in the Netherlands, supported the conversion from suspension of payments to bankruptcy liquidation.[4]

Oi, supported by the Steering Committee of an Ad Hoc Group of Bondholders (the "AHG Steering Committee"),[5] opposed the requested relief. After extensive discovery and depositions, and an expedited four-day bench trial, Judge Sean H. Lane of the U.S. Bankruptcy Court for the Southern District of New York, in early December 2017, issued an opinion in favor of Oi and the AHG Steering Committee's position, finding that Coop's COMI remained in Brazil, and therefore that the Brazilian proceedings remained the foreign main proceeding for Coop. The decision took issue with the attempt by creditors to "weaponize Chapter 15 to collaterally attack" legitimate ongoing foreign restructurings to serve their own purposes, undermining "the goals of maximizing the chapter 15 debtors' assets and assisting in the rescue of their financially troubled business."[6] As is further described in the table below, the decision is also likely to have an important precedential effect, as it may also provide more certainty for creditors and debtors alike regarding Chapter 15 courts' COMI analysis with respect to finance subsidiaries in multi-jurisdiction restructurings, and in particular their willingness to revisit earlier COMI determinations.[7] The decision is currently subject to appeal at the U.S. Court of Appeals for the Second Circuit by Aurelius Capital Management (one of the IBC members).

Coop's judicial administrator also made several attempts to intervene in the Brazilian reorganization proceedings. In particular, the judicial administrator

---

[3] A Chapter 15 debtor can only have one "foreign main proceeding," which must be located in the same jurisdiction as its COMI.

[4] Indeed, prior to petitioning the U.S. Chapter 15 court for recognition of Coop's Dutch proceedings, Coop's judicial administrator, together with the IBC, commenced and successfully litigated in the Netherlands, including at the Dutch Supreme Court, to have Coop's suspension of payments regime proceedings converted to bankruptcy liquidation proceedings. And so, the Dutch judicial administrator and the IBC were at least partly responsible for bringing about the change in facts they then sought to use to litigate in the Chapter 15 proceedings.

[5] Cleary Gottlieb is international counsel to the AHG Steering Committee in connection with the Oi Group's restructuring. Pinheiro Neto Advogados and Moelis & Company served as Brazilian counsel and financial advisors, respectively, to the AHG Steering Committee.

[6] *See In re Brasil Holdings Coöperatief U.A.*, 578 B.R. 169 (Bankr. S.D.N.Y. 2017).

[7] The Oi Group still needed to comply with Dutch reorganization law in order to allow Coop and PTIF to exit Dutch bankruptcy liquidation proceedings.

attempted to have Coop's proceedings removed from Brazilian court, essentially asking Brazilian courts to abandon jurisdiction over Coop. The judicial administrator also made the argument in Brazilian courts that by having Coop's Dutch proceedings converted to bankruptcy liquidation proceedings, and thereby allowing him to take increased control over Coop's actions, Coop should effectively be considered a non-affiliate of Oi for Brazilian bankruptcy law purposes. The judicial administrator claimed this should therefore allow him to vote Coop's intercompany claims against Oi, leading to increased leverage and, presumably, recoveries for Coop's creditors. Brazilian courts were not receptive to the judicial administrator's arguments or actions, and eventually issued a decision enjoining him from interfering in the Brazilian bankruptcy proceedings or acting on behalf of Coop in Brazil.

Ultimately, the IBC and the AHG Steering Committee agreed that their respective claims against the various Oi Group entities would receive *pari passu* treatment, which agreement helped cement a coalition of creditors that managed to negotiate a consensual reorganization with Oi.

OTHER KEY TAKEAWAYS FROM OI CHAPTER 15 DECISION

Creditor Behavior and COMI Manipulation

- Chapter 15 court found that creditors' behavior can be taken into account in the Chapter 15 COMI manipulation analysis
- Previous decisions had focused only on the behavior of debtors and their representatives

Standard for Modifying Existing Recognition Order

- Chapter 15 court found that the appropriate standard for modifying or terminating an existing recognition order is that the court may do so, in its discretion, upon a finding that the grounds for its entry were fully or partially lacking or have ceased to exist

Independent Obligation to Make COMI Determination

- Even where foreign jurisdictions (such as the Netherlands) have comprehensive restructuring regimes, where such jurisdictions have *not* adopted the UNCITRAL Model Law (basis for Chapter 15), the findings of such foreign courts do *not* replace the Chapter 15 court's obligation to make an independent COMI determination

LIMITS ON ABUSIVE BEHAVIOR BY SHAREHOLDERS AND THEIR BOARD REPRESENTATIVES

Brazil's reorganization law does not, on its face, afford creditors the right to

formally propose alternative reorganization plans, instead leaving that power in the hands of a company's board and its management.[8] That said, the basic premise of the law is that debtors and creditors will negotiate in good faith in order to approve a reorganization plan that is in the best interest of the debtors and creditors in an expeditious manner,[9] and that creditors have the right to reject any proposal put forward by the debtors and eventually have reorganization proceedings converted into liquidation proceedings. However, in general, Brazilian reorganization proceedings are considered more debtor-friendly than in many jurisdictions, and recent court decisions in Brazil, notably the *Grupo Schahin* case, have determined that creditors can have their right to vote on a reorganization plan disregarded if they are found to have acted "abusively" during the reorganization negotiations.[10] Shareholders also typically play a large role in Brazilian reorganizations, particularly given that most Brazilian companies do not have independent boards.[11]

In Oi's case, it had two minority, but effectively controlling, shareholders that were actively involved throughout the reorganization process—the investment vehicles of Pharol, SGPS S.A., the legacy owner of Portugal Telecom, and Nelson Tanure, a well-known activist shareholder in Brazilian reorganizations who acquired his interests in Oi on the eve of its judicial reorganization. Pharol and Tanure exerted pressure on Oi's board throughout the process and ensured that each reorganization plan proposed by Oi's board, over the course of nearly 18 months under judicial reorganization, would have effectively resulted in existing shareholders retaining 100 percent of Oi's shares immediately post

---

[8] For a more fulsome discussion of the debtor-creditor dynamics in Brazilian restructuring proceedings, *see* Richard J. Cooper, Francisco L. Cestero & Daniel J. Soltman, Insolvency Reform in Brazil: An Opportunity Too Important To Squander, Cleary Gottlieb Emerging Markets Restructuring Journal Issue No. 4 (Fall 2017), *republished* with certain updates and modifications in PRATT'S JOURNAL OF BANKRUPTCY LAW, Jan. 2018.

[9] The Brazilian Bankruptcy Law provides for an automatic stay of 180 days, though such period is routinely extended at the request of debtors, which has had the effect of diminishing the pressure on debtors to negotiate with their creditors in a timely manner.

[10] The *Grupo Schahin* decision determined that a secured creditor should have its votes disregarded at the creditors meeting, because it was behaving "abusively"—an unclear and judicially created concept in Brazil—because the proposed restructuring plan would have provided the creditor with a higher recovery than a liquidation.

[11] Article 47 of the Brazilian Bankruptcy Law states the purposes of judicial restructuring, which explicitly does not include the interest of shareholders, but does specifically mention the interest of creditors: "The object of judicial reorganization is to make it possible for the debtor to overcome his economic and financial crisis in order to be able to maintain the production source, employment of workers and interests of the creditors, thus contributing to preserve the company and its social function and to foster economic activity."

reorganization, while forcing creditors to either take massive principal haircuts or significant maturity extensions and interest rate cuts, and effectively shouldering all of the risk of subsequent downturns.

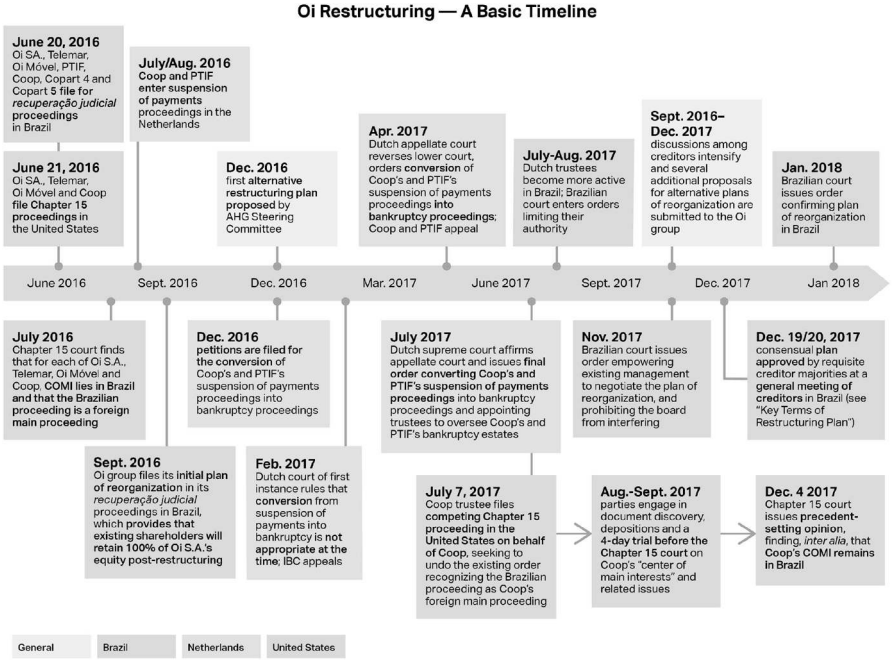
In light of the posturing by the controlling shareholders, the AHG Steering Committee, and in the later stages of the reorganization, together with the IBC, developed and publicly presented multiple alternative proposals for reorganizing Oi in a far more viable and equitable way. Each of these proposals were also supported by a group of international export credit agencies ("ECAs"). All of the alternative proposals were either ignored or rejected by Oi's board. Nevertheless, the AHG Steering Committee, the IBC and ECAs continued to attempt to engage the company's management in negotiations, and throughout the process were in regular communication with Oi's other key stakeholders, including Brazilian state and private banks and key government actors, in the hope of advancing a consensual, and viable, reorganization plan. Indeed, these alternative proposals shaped the discussions with other creditors, and eventually served as the basis of negotiations with Oi's management.

By November 2017, nearly 18 months after entering judicial reorganization proceedings, and immediately following some particularly egregious actions by the minority controlling shareholders and their board representatives, the AHG Steering Committee and the IBC filed a motion seeking to remove the voting rights of Pharol and Tanure and their board members in response to their abusive actions. The Brazilian court quickly ruled that the board could no longer have any role in formulating or negotiating a reorganization plan for Oi, and that instead that power was vested solely with Oi's existing management. This important and precedential decision held that shareholders (and their board representatives) could also be deemed to have acted abusively and therefore have their rights disregarded, essentially subordinating Brazilian corporate law to Brazilian reorganization law. The decision freed Oi's management to finally engage in *bona fide* negotiations with Oi's creditors, and significantly accelerated the process of agreeing on a consensual reorganization plan, using the various alternative creditor-proposed plans as a framework. Eventually, the plan that was presented to creditors for a vote, was approved by Oi's management, but was not approved by Oi's board, which would otherwise have been required under Brazilian law. The approved plan went even further, imposing on Oi specific governance structures going forward, including the appointment of a new temporary board of directors composed of a majority of independent directors.

The decision has been appealed by Pharol and Tanure, so far without success, but if it is allowed to stand, it would essentially create a shareholder-side analogue to the *Grupo Schahin* creditor abusiveness case, and potentially go a

long way towards restoring some balance between creditors and debtors in Brazilian judicial reorganization negotiations.

In addition to their appeals of the decision described above, Pharol and Tanure have made a number of attempts to nullify the approved reorganization plan or otherwise impede the implementation of the reorganization, including by instituting private arbitration proceedings against Oi (which is contemplated for shareholder disputes under Oi's bylaws), and most recently by Pharol making an unsuccessful objection in Oi's Chapter 15 proceedings. So far, Brazilian courts have resisted all attempts by Pharol and Tanure to disrupt the reorganization, and a recent decision also barred Pharol and Tanure from voting their shares at Oi's annual ordinary shareholders meeting.



TREATMENT OF REGULATORY FINES IN BRAZILIAN JUDICIAL REORGANIZATIONS

Part of the Oi Group's financial and operational difficulties resulted from the fact that Brazil's existing concession-based telecommunications regime is significantly outdated. For example, the terms of Oi's concessions impose on Oi the obligation of maintaining public phones and land-lines in some of the most remote and poorest parts of Brazil, even when residents in those areas are already overwhelmingly served by wireless service, and impose heavy fines whenever Oi is not in compliance with such requirements. As a result, when Oi

filed its initial creditors list, it included on the list approximately R$10 billion in fines levied by ANATEL, the Brazilian telecommunications regulator, resulting in part from non-compliance with its concession obligations.

Brazil's reorganization law does not explicitly allow for regulatory fines to be restructured as financial debt, nor does it explicitly disallow it. Tax claims, on the other hand, are explicitly excluded from restructuring.

ANATEL predictably took the position that its claims were not subject to restructuring, and were more properly characterized as tax-like claims, and litigated to have its claims removed from the creditors list. Both the judicial reorganization court of first instance and an appeals court sitting in Rio de Janeiro have sided with Oi, and ANATEL's claims remained on Oi's creditors list throughout the reorganization proceedings.

The reorganization plan that was ultimately approved provides specific treatment for ANATEL's claims, with crystalized amounts to be restructured and paid over a 20-year period, and gave Oi the ability to use cash sitting in judicial deposits for the initial installments. Non-crystalized amounts that are subsequently finally determined against Oi are to receive the far less generous general payment option, entailing an 85 percent haircut and no cash payments for the first 20 years.

ANATEL continues to dispute the characterization of its claims in the courts, even after the plan has been confirmed, and went so far as to describe (on the eve of the creditors meeting that approved the plan, no less), the treatment of its claims as illegal. If the treatment of ANATEL's claims is not overturned, it would be a significant development, as it would provide a framework for dealing with regulated entities with significant regulatory fines in Brazilian judicial reorganizations, potentially providing more clarity for creditors and debtors alike.

It is worth mentioning that, throughout the reorganization process, ANATEL was wearing a dual hat as a creditor and Oi's regulator, and a number of attempts were made to attempt to address ANATEL's claims outside of the reorganization proceedings, in a more viable and productive consensual manner. In particular, there were settlement negotiations that would have converted ANATEL's fines into infrastructure and technological investment obligations by Oi, thereby improving the quality of its services. Unfortunately, the Brazilian presidential administration and other government actors faced massive political pressure not to provide Oi (or its international creditors) any sort of a bailout with respect to its ANATEL claims, particularly given the dire state of the Brazilian economy. Brazilian state-owned banks, such as Banco do Brasil, Caixa Economica and BNDES were also among Oi's largest creditors, and were facing potential write-downs with respect to their Oi claims, further

exacerbating the political issues and drawing extensive coverage in the Brazilian business and popular press, and a consensual deal unfortunately was never finalized. Nevertheless, the approved reorganization plan leaves open the possibility of consensually settling some of ANATEL's claims in an alternative manner, subject to certain limitations.

KEY TERMS OF REORGANIZATION PLAN

Existing Debt	**Restructuring Consideration**
US$10 billion NY and English law bonds	• Reinstated NY Bonds w/ 80% haircut: ○ Amortization: seven-year bullet; Non-callable ○ Interest: 8% cash + 4% PIK *or* 10% cash during the first three years; then 10% cash • Shares/warrants for up to 75% of Oi's equity
US$4.2 billion unsecured Brazilian bank and foreign ECA debt	• No haircut • 17-year tenor • Non-linear amortization starting in year five • Interest: 80% of CDI for Banks; 1.75% for ECAs
US$1 billion secured Brazilian bank debt	• No haircut • 15-year tenor • Non-linear amortization starting in year seven • Interest: TJLP + 2.946%
General Payment Option	Creditors not affirmatively electing a specific payment option to receive take-back debt on the following terms: • 25-year tenor • Linear amortization starting in year 21 • Interest: TJ for R$ debt; 0% for US$ and € debt • Pre-payable at any time by Oi for 15% of principal
ANATEL Claims	• 20-year tenor • No principal haircut; 50% haircut on accrued interest; 25% haircut on accrued late charges • Non-linear amortization starting in year one • Initial payments to be made using judicial deposits • Adjusted monthly by SELIC • ANATEL claims still subject to appeal paid pursuant to General Payment Option
	Other Key Features
New Money Capital Increase	• R$4 billion new money capital increase pursuant to rights offering • Fully backstopped by large financial institutions
Governance Reforms	• Substantial changes to Oi's governance structure to improve transparency and increase independence of board

CONCLUSION

Oi's reorganization plan was approved, on a substantively consolidated basis, on December 19, 2017, after a nearly two-year process, and confirmed by the Brazilian reorganization court in January 2018. In June 2018, the reorganization plan was granted full force and effect in the United States by the Chapter 15 court, and separate creditor votes for PTIF and Coop approved the reorganization for Dutch law purposes. As of the time of writing, it is expected that bondholders will receive the replacement bonds and shares in Oi S.A. contemplated by the reorganization plan by the end of July 2018.

Oi Restructuring Across Jurisdictions