Insolvency Proceedings in Venezuela: A 19th Century Statute is Ill-Equipped to Navigate Current Times

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Venezuelan bankruptcy law has its origins in a draft 19th century Italian statute and has remained largely unchanged for more than 100 years. Bankruptcy law, as contained in the Venezuelan Code of Commerce ("C.Com" or "Code of Commerce"), is applicable to individuals as well as to business entities such as *sociedades anónimas*.

There are two insolvency procedures under Venezuelan law: (i) the moratorium or *atraso* process, and (ii) the bankruptcy or *quiebra* process. Although the regime may be used to either liquidate business enterprises or to reorganize them, recent practice seems to show that if a company is salvable, most stakeholders prefer to have an out-of-court restructuring. Leading commentators see the Venezuelan bankruptcy process as vexatious, reflecting in part the fact that there is still a social stigma attached to businesses that go bankrupt.

What About Venezuelan Public Entities?

There is much speculation these days as to whether Venezuelan public entities could be subject to this bankruptcy law. Petróleos de Venezuela, S.A. ("PDVSA") and its subsidiaries in Venezuela are organized as *sociedades anónimas* under the Code of Commerce and logic would dictate that the Code of Commerce's bankruptcy provisions should apply to them.

However, one important legal scholar has argued that the bankruptcy provisions of the Code of Commerce are not applicable to state-owned companies and more specifically to PDVSA because state-owned companies are government instrumentalities and as such they "may not assume a quality of merchants" (*no podrán asumir la cualidad de comerciantes*).[1]

Also, PDVSA's oil and gas transportation and distribution infrastructure is protected from attachments. Specifically, any provisional remedy or remedy in aid of execution of judgments rendered against PDVSA's oil and gas distribution infrastructure located in Venezuela must be automatically stayed for 45 days from the date on which the Attorney General is served with the remedy. Within this 45-day term, PDVSA itself and its regulators, such as the Ministry of Energy and Petroleum, must put together a plan that will ensure the uninterrupted supply of oil, derivatives and gas to the market[2]. This protection from attachments and provisional remedies has been regarded by scholars as a type of immunity that would complicate the application of the bankruptcy regime of the Code of Commerce to PDVSA.

Other legal commentators have taken a different view. Neither doctrine has been tested in the Venezuelan courts. If the bankruptcy regime of the Code of Commerce were to be considered as not applicable to PDVSA by the competent court, which in our view would be the Venezuelan Supreme Tribunal, there would be no other specific set of rules that would regulate PDVSA's insolvency or its liquidation.

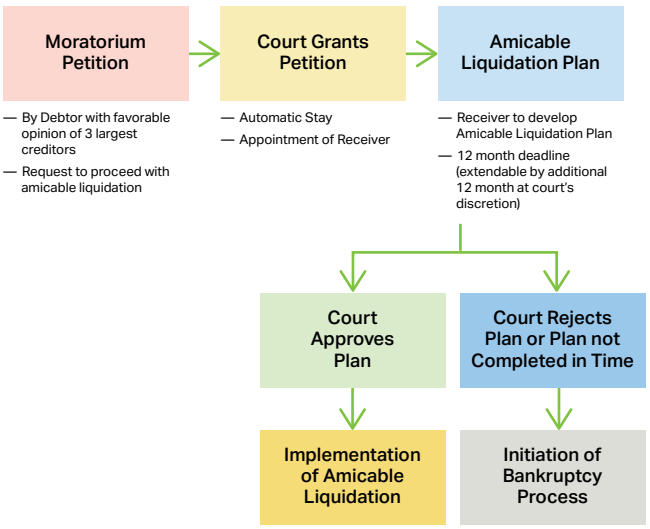
Moratorium (*Atraso*)

The moratorium or *atraso* process (i) needs to be voluntary (i.e., the debtor may not be involuntarily declared in *atraso*), (ii) does not provide for voidable preferences that allow for a claw-back of payments and transactions, (iii) automatically stays all enforcement actions against the debtor, (iv) allows for a debtor-in-possession regime whereby the management remains in charge of operations under court supervision, and (v) may only be granted for an initial one-year term (but may be extended by the court at its discretion). To be eligible for *atraso*, a debtor needs to show that its assets are greater than its liabilities.

To request the "benefit" of *atraso*, the debtor must file a petition with the commercial court with jurisdiction in its domicile. The petition must enclose the favorable opinion with respect to the *atraso* of the debtor's three largest creditors. If the *atraso* is granted, the debtor, its creditors and the court-appointed receiver must work together to prepare an amicable liquidation plan that must be approved by the court.

If the debtor is not amicably liquidated within the term approved by the court, which may last up to two years, or the debtor is not able to successfully emerge from the *atraso* proceeding (as courts have allowed in the past), then the debtor will have to undergo a bankruptcy process.

Moratorium *(Atraso)* Process



Moratorium v. Bankruptcy v. Out-of-Court Liquidation

Feature	Moratorium	Bankruptcy	Out-of-Court Amicable Liquidation
Petition	Voluntary (by debtor)	Voluntary (by debtor) or Involuntary (by creditors)	Voluntary (by debtor)
Court Involvement	Yes	Yes	No
Automatic Stay	Yes	Yes	No
Voidable Preferences	Does not provide for voidable preferences	Provides for voidable preferences of transactions occurring after the suspect period date	Does not provide for voidable preferences
Management of Debtor's Assets	Allows for debtor-in-possession management	Receiver appointed to manage the debtor's assets and operations	Allows for debtor-in-possession management
Timing	May only be granted for an initial one-year term, extendable at the court's discretion for another year	Can last from a few months to several years	Can last from a few months to several years
Outcome	Amicable Liquidation (by liquidators appointed by court)	Restructuring Agreement or Liquidation	Amicable Liquidation (by liquidators designated by debtor)

Out of Court Amicable Liquidation (*Disolución Anticipada*)

The *atraso* process was conceived to facilitate an orderly liquidation of a business that is undergoing liquidity problems but that is solvent. On the other hand, the Code of Commerce contains two provisions dealing with the amicable winding down of business entities (*disolución anticipada*)[3] that do not entail a court procedure, court oversight or the designation of a receiver. Under the Code of Commerce's winding down rules, the shareholders may resolve to wind down a company for any reason, before the expiration of its duration as set forth in its bylaws, and designate one or several liquidators that will undertake all actions necessary to wind down the company. This may explain why the *atraso* process has not been used in recent history. If a company can be amicably liquidated out of court, it does not make practical sense to go through a court proceeding that may turn vexatious. However, the *disolución anticipada* rules of the Code of Commerce do not provide for an automatic stay.

Bankruptcy (*Quiebra*)

The bankruptcy or *quiebra* regime (i) may be voluntary (requested by the debtor) or involuntary (required by an unpaid commercial creditor of any kind), (ii) provides for voidable preferences (described below) and (iii) automatically stays all collection actions against the debtor. It is not entirely clear if the Venezuelan bankruptcy regime would allow a debtor-in-possession arrangement.

Even though a bankrupt company may emerge from bankruptcy and be rehabilitated, both the legal regime and recent practice seem to suggest that the bankruptcy regime in Venezuela is largely used as a means to liquidate failing enterprises. However, this does not mean that failing enterprises may not be voluntarily liquidated by their owners without court intervention, using the *disolución anticipada* regime of the Code of Commerce, which is more common in practice.

Commencement of Bankruptcy Proceedings and Cessation of Payments

Bankruptcy proceedings begin with a petition that is made with a Venezuelan commercial court of the debtor's domicile (the "bankruptcy judge"). In Venezuela there are currently no specialized bankruptcy courts. Bankruptcies are heard by the ordinary commercial courts with subject matter jurisdiction in the debtor's domicile. The petition may be filed by the debtor company ("voluntary bankruptcy") or by any of its commercial creditors ("involuntary bankruptcy"). The debtor company is required to file a voluntary bankruptcy petition within three days after it is faced with a "cessation of payments" situation.[4]

Any single commercial creditor may file a bankruptcy petition against a debtor even if its credit has not yet become due and payable.[5] The creditor's petition must demonstrate with factual and circumstantial evidence that there is a cessation of payments situation.[6]

Venezuelan law does not define what constitutes a cessation of payments, however, Venezuelan commentators have identified a number of indicators of a cessation of payments situation. The primary and normal (but not exclusive) external

manifestation of the cessation of payments is the debtor's default of its obligations as they become due (*impotencia patrimonial*).[7] Other manifestations include the debtor's own confession of a cessation of payments situation, unsatisfied judgments, closure or transfer of the business, transfers of assets to creditors, fraudulent transfers, insolvency (liabilities in excess of assets or balance sheet test), the continuation of payments through sales of assets or through ruinous or fraudulent means, hiding of assets and so on.[8]

The determination of whether there is a cessation of payments situation is a factual analysis made by the bankruptcy judge who will have broad discretion on the issue. Generally, Venezuelan courts have tended to accept the commentators' definitions of cessation of payments and have used a debtor's default of its obligations as the primary (but not exclusive) element to determine if the debtor has in fact incurred in cessation of payments.[9]

Admission to Trial; Provisional Remedies

The bankruptcy judge must decide whether to admit the bankruptcy petition for trial. This order does not involve an analysis of the substance of the petition, and is generally rendered within one week or one month following the bankruptcy petition.[10]

If the bankruptcy judge admits the petition for trial, the judge may also issue provisional remedies to safeguard the debtor's assets, but is not required to do so, unless the debtor avoids service of process of an involuntary bankruptcy petition.[11] The injunctions may include the judicial occupation of all the debtor's assets, ledgers, mail and other records, and the prohibition to receive payments and deliveries of goods.[12] The bankruptcy judge has broad discretion to issue these provisional remedies.[13]

Bankruptcy Declaration and its Effects

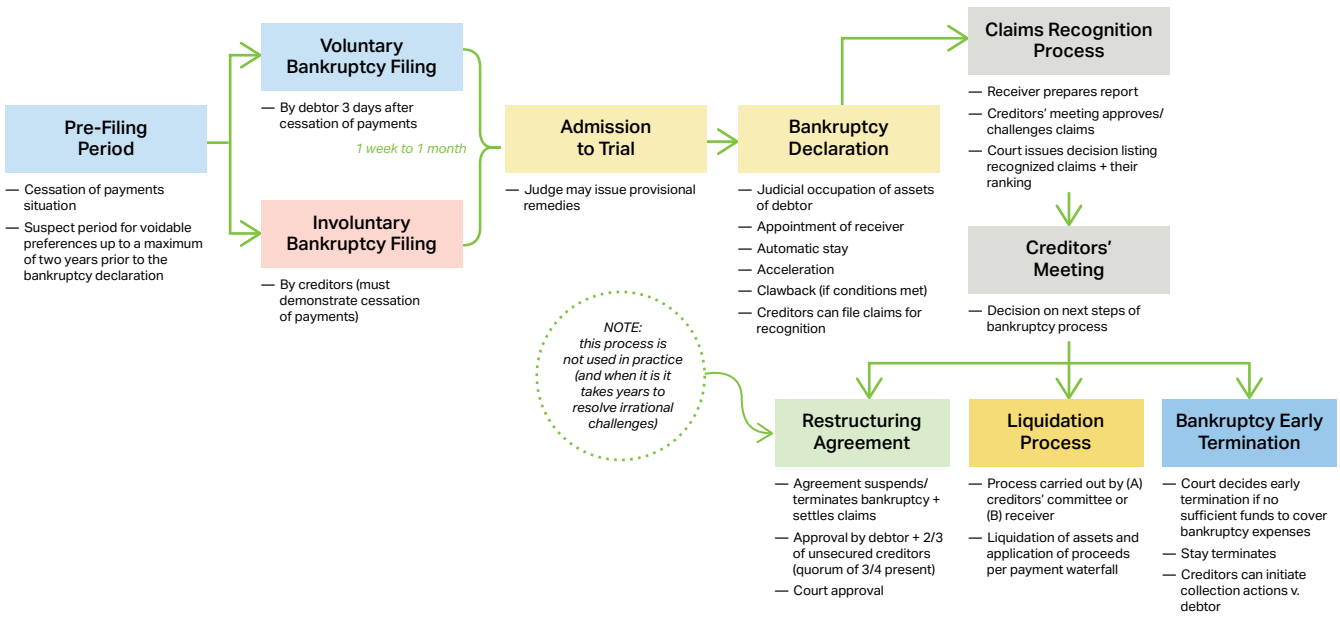
If the bankruptcy judge admits the petition for trial, the judge may also issue provisional remedies to protect the creditors' claims and the debtor's assets, but is not required to do so.[14] The provisional remedies may include the judicial occupation of all the assets of the debtor, its accounting books, correspondence and other records, and the prohibition to receive payments and goods.[15] The bankruptcy judge has broad discretion to issue provisional remedies.[16]

In an involuntary bankruptcy proceeding, the order to admit the petition for trial and the provisional remedies, if any, may be issued *ex parte*, before the debtor is served; however, the debtor has the right to challenge the involuntary bankruptcy petition itself and any provisional remedies.[17]

Upon admission of the involuntary bankruptcy petition for trial, the bankruptcy judge will issue a summons to be served on the debtor.[18] The debtor company must appear before the bankruptcy judge within five judicial working days after the summons has been served.[19]

The debtor company may only assert the following defenses against the involuntary bankruptcy petition: (a) lack of jurisdiction, (b) lack of standing of the petitioner (i.e., that the petitioner is not a creditor), (c) defects in the power of attorney

Bankruptcy *(Quiebra)* Process



of petitioner's counsel, (d) lack of standing of the debtor company (i.e., that the debtor is not a commercial entity), or (e) that the debtor company is not in cessation of payments.[20] In addition, the debtor company may also file a motion for the granting of a moratorium (*atraso*) as a defense against the involuntary bankruptcy petition.

After the hearing, the parties to the proceeding will have an eight-day discovery period to produce evidence in support of the petition and the defense, respectively.

Upon termination of the discovery period, the bankruptcy judge must decide whether or not to declare the bankruptcy. The timing for the declaration of bankruptcy will depend on the complexity of the case and the workload of the bankruptcy judge. The bankruptcy judge may take several months and even years to render its bankruptcy declaration.

The bankruptcy judge must dismiss the bankruptcy petition if there is not sufficient evidence that the debtor company is in cessation of payments. In this case, the bankruptcy proceeding will be terminated together with any provisional remedies.[21]

The bankruptcy judge should only declare the bankruptcy if (a) there is sufficient evidence of the cessation of payments, (b) the petitioner is a commercial creditor (in case of involuntary bankruptcy), and (c) the defenses and objections of the debtor company are rejected.

Effects on the Business

Upon a declaration of bankruptcy the debtor company loses its ability to manage its affairs, transfer its assets and incur new obligations.[22] Management of the assets and the business is transferred to the receiver, who is under the oversight of the bankruptcy court and the creditor's meeting (*junta de acreedores*).[23]

While the law does not expressly allow a bankruptcy court to permit all or part of the company's management to remain in place or have some power to manage the business, we see no legal reason why the court could not allow part of company's managers that have the operational and technical skills necessary to run the business, to remain in place, at least temporarily. The receiver, if the liquidation is to be carried out by the receiver; or a creditor-liquidator, if the liquidation will be carried out by the creditors, may be allowed by the creditors meeting to continue the debtor's business.

Automatic Stay

Upon the declaration of bankruptcy, litigation relating to the assets of the debtor company will be handled by the receiver.[24] All pending litigation against the debtor company that may affect its assets will be automatically stayed and consolidated into the bankruptcy proceeding.[25] It is not clear whether arbitration proceedings are also accumulated into the bankruptcy proceeding, but the receiver may take control of any such arbitration proceedings on behalf of the bankruptcy estate. Also, as a result of the automatic stay, all creditors are barred from individually enforcing their claims while the bankruptcy process is pending.

Effects on Debts and Contracts

Upon the declaration of bankruptcy, all debts of the debtor company are accelerated,[26] interest on unsecured debt will cease to accrue, and unmatured debt that does not contractually

accrue interest will suffer a principal reduction equivalent to six percent per annum until its maturity date.[28] Interest on secured or privileged debt will continue to accrue, but will only be payable out of the proceeds of the assets covered by the security or privilege.

Clawback

Certain transactions made by the debtor during the suspect period (or ten days before the beginning of the suspect period) may be void or voidable. The suspect period starts on the date on which the cessation of payments occurred (the "suspect period date"), as determined by the court.[29] The bankruptcy judge has broad discretion to set the suspect period date; however, the bankruptcy judge can backdate the suspect period date only up to a maximum of two years prior to the bankruptcy declaration[30]. It is not uncommon for bankruptcy judges to set the suspect period date to precisely the day that is two years before the declaration of bankruptcy, even if the cessation of payments effectively occurred at a later date.

In addition, in at least two cases, bankruptcy judges determined that they had the power to backdate the suspect period date up to a maximum of two years counted from the date of filing of the bankruptcy petition (as opposed to the date of bankruptcy declaration),[31] even though this interpretation was later reversed by the Civil Chamber of the Supreme Court (in one case with a dissenting opinion that concurred with the interpretation of the bankruptcy judges).[32] Under article 945 of the Code of Commerce, the following transactions of the debtor ("art. 945 transactions") are null and void if made on or after the suspect period date (the "suspect period") or during the 10 days preceding the suspect period date:

— transfers of assets (movable assets or real estate) with no consideration for the debtor (gifts);

— granting of security (or other preferences in payment) on assets of the debtor to secure debt incurred before the suspect period;

— payments of non-matured debt; and

— payments of matured debt made in any matter other than cash or negotiable instruments, if the debt was payable in cash.

Under article 946 of the Code of Commerce, other payments of matured debt by the debtor or all other transactions with consideration ("art. 946 transactions" and together with art. 945 transactions, "suspect transactions") made by the debtor during the suspect period (after the cessation of payments date) are voidable if the payees or other parties to such transactions had knowledge of the cessation of payments of the debtor at the time of such payments or transactions.

To void a suspect transaction, the receiver must request to bring an action with the bankruptcy judge against the debtor and the third party to the suspect transaction. Note, however, that at least in two cases bankruptcy judges declared the nullity of suspect transactions in the judgment declaring the bankruptcy, without allowing the other parties to such transactions to exercise their right of defense,[33] although in one of these cases the Civil Chamber of the Supreme Court reversed the lower court's decision for due process violation.[34]

The statute of limitations to seek the nullity of suspect transactions is one year from the date on which the debtor and its creditors cannot agree on a restructuring agreement (*convenio*) to emerge from the bankruptcy process (as described further below).[35]

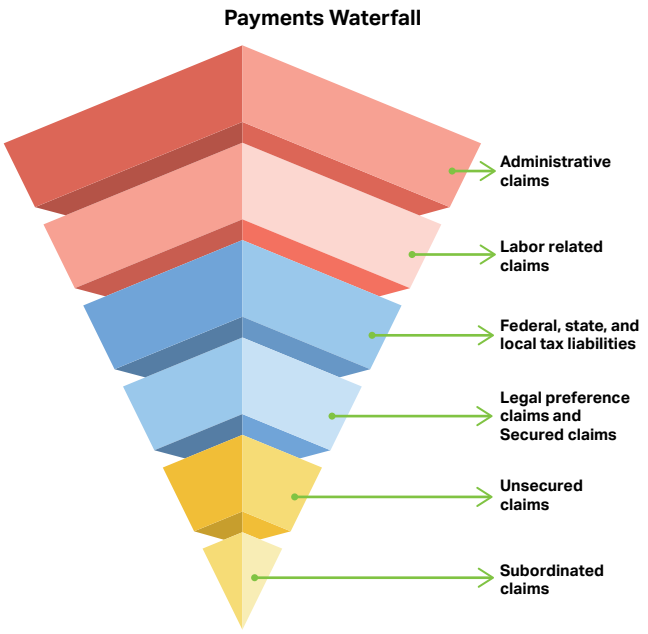
Recognition of Claims

To be eligible for a distribution from the bankruptcy estate, claims must be recognized by a creditors' meeting where the receiver presents all the claims filed by the creditors. All the claims that are not challenged by any of the other creditors present at the meeting will be recognized.

From the date of the bankruptcy declaration by the court, all creditors may file with the court their requests for recognition of their claims, together with supporting evidence. After the receiver has been designated by the court, the requests for recognition must be made directly with the receiver.

The receiver has the duty to prepare a report to the creditors' meeting describing all the claims submitted for qualification, including a description of any security interests granted to secure the claims or rights of preference. The receiver's report is presented to the creditors' meeting for its discussion at a meeting which must be held on the place, date and time set by the court, regardless of the number of creditors that attend the meeting. The purpose of this creditors' meeting is to review all the claims filed with the court or the receiver. During this review process, all creditors and the debtor will be able to challenge the claims filed by creditors.

After the creditors' meeting completes the recognition process, the court will render a decision listing all the recognized claims as well as their ranking. After the recognition process is completed, the creditors' meeting may decide to either (i) liquidate the debtor and if so, designate one or more liquidators or (ii) enter into a restructuring agreement (*convenio*) with the debtor.



Liquidation and Payments Waterfall

The liquidation of the debtor may be carried out either (i) by a liquidator-creditor under the oversight of a creditors' committee (*comisión de acreedores*) formed by three creditors elected in a creditors' meeting by creditors that represent 2/3 of the qualified claims, or (ii) by the receivers if the liquidation by the creditors is not approved.

In the liquidation phase, either by the creditors or by the receivers, the settlement of all claims will be made collectively from the bankruptcy estate pursuant to the status of creditors decision rendered by the court. Pursuant to Venezuelan law, the payments waterfall should be made in the following order:

— *First*, to the receiver and other court-appointed or court-approved support contractors (auditors, experts, depositaries, security personnel, among other), this amount has a statutory cap of 10% of the value of the debtor's assets;

— *Second*, employees for any unpaid salaries and labor benefits arising from the law or any individual or collective bargaining agreements[36];

— *Third*, the federal, state and local treasuries for any unpaid taxes and interest;

— *Fourth*, creditors that have a legal preference or that have a valid security interest over the debtor's property;

— *Fifth*, all unsecured creditors; and

— *Sixth*, creditors who have voluntarily agreed, by contract or otherwise, to subordinate their claims.

Restructuring Agreement. Required Majority. Early Termination of Bankruptcy

The debtor and the required quorum and majority of qualified creditors may enter into a restructuring agreement (*convenio*) (i) to suspend or terminate the bankruptcy proceedings, and (ii) setting forth the terms and conditions of the settlement of the qualified claims.

The *convenio* needs to be approved in a creditors' meeting called by the bankruptcy judge. Secured creditors and creditors that have a legal preference are allowed to participate in the creditors meeting that will decide on the *convenio* but their presence will not be considered to determine the required quorum and majority, unless they waive their security interest or rights of preference. To approve a *convenio* (i) qualified creditors that represent 2/3 of the aggregate of qualified claims must vote in favor of the *convenio* in a creditors' meeting in which 3/4 of the aggregate of qualified claims are present, or (ii) qualified creditors that represent 3/4 of the aggregate of qualified claims vote in favor of the *convenio* in a creditors meeting in which 2/3 of the aggregate of qualified claims are present.[37]

The *convenio* must be approved by the bankruptcy court which may do so as long as the bankruptcy is not found to be fraudulent by the criminal court in charge of making such determination.

The practical difficulties in achieving a definitive *convenio* typically arise from challenges made by irrational stakeholders and creditors, the resolution of which generally takes years.

The bankruptcy judge may terminate the proceedings if there are insufficient funds to cover bankruptcy-related expenses. In which case, each creditor recovers its right to bring individual collection actions against the debtor company.[38]

Timing of Bankruptcy Proceedings — A Case for Out-of-Court Restructurings

Overall timing of Venezuelan bankruptcy proceedings depends on the number of creditors, the complexity of the case, the quantity and type of assets and liabilities, the number of employees and any political implications of the case. Depending on these factors, the proceedings may last from several months to several years.

The *Sudamtex* bankruptcy and the resulting liquidation process is currently still going on after eleven years.

On the other hand, the Siderúrgica del Orinoco, C.A. ("Sidor") restructuring was successfully completed out-of-court in eleven months.

The Sidor Case

Sidor, Venezuela's largest steel producer, restructured more than US$1.8 billion of financial debt, the largest financial restructuring by a Venezuelan private company.

The First Restructuring (2000)

Sidor was privatized in 1998 and the Amazonia Consortium, a group of Latin American steel producers led by Argentina's Siderar, purchased 70% of Sidor's capital, while the Venezuelan government retained 30%. As part of the privatization, the Venezuelan government continued to be a financial creditor of Sidor for US$734 million.

As a result of the plunge in steel prices in 2000-2001, Sidor experienced significant financial losses and cash flow problems leading up to its first debt restructuring in 2000. Under the 2000 financial restructuring, Sidor's shareholders agreed to make a combined US$100 million capital contribution, and the banks agreed to refinance their debt. Sidor pledged most of its assets to its creditors pursuant to a security trust structure (fideicomiso).

The Second Restructuring (2003)

The adverse market conditions in the steel market continued after the 2000 restructuring, and led to the need of the second 2003 restructuring, under which:

- Sidor's financial debt with foreign financial institutions (including Citibank and Deutsche Bank) was reduced to US$745.4 million (with substantial discounts exceeding 50%), and was restructured in three tranches, each with a one year grace period: US$350.5 million to be repaid over 8 years; US$26.3 million to be repaid over 12 years; and the remaining tranche of US$368.6 million, to be repaid over 15 years.
- The Venezuelan government capitalized 50% of Sidor's financial debt with the government and increased its equity participation from 30% to 40% (half of the equity was distributed to Sidor's employees), and agreed to reschedule the remaining financial debt to be repaid over 15 years with a one-year grace period.
- The Amazonia Consortium contributed US$133 million in cash, a portion of which (approx. US$40 million) was used for the repurchase of a portion of Sidor's financial debt at a substantial discount.
- Sidor's US$45.4 million commercial debt with its main state-owned suppliers (Edelca, PDVSA Gas and Ferrominera), was refinanced to be repaid over the next three to five years.
- Sidor provided additional collateral for the benefit of its creditors, and the Amazonia Consortium pledged its shares in Sidor to Sidor's creditors.
- The parties of the restructuring arrangement agreed that Sidor's excess cash would be used to prepay financial debt and to repay capital contributions made by Sidor's shareholders (the Amazonia Consortium and the Venezuelan government).

What Happened Next

After the 2003 restructuring, Sidor continued its operations and increased steel production to almost 5 million tons, prepaid financial debt and repaid capital contributions to its shareholders on an expedited basis.

In 2008, the Venezuelan government decided to nationalize Sidor, and in June 2009 the Venezuelan government agreed to pay the Amazonia Consortium US$1.97 billion as compensation for the nationalization.

Conclusion

Venezuelan bankruptcy law needs to be brought into the 21st century. The extremely long suspect period creates uncertainty and unpredictability so much that the in-court bankruptcy process in Venezuela ultimately results in business liquidations. From a creditor perspective, a bankruptcy proceeding should be initiated only when all other alternatives have failed. As the only successful restructurings to date have been negotiated and implemented out-of-court, one obvious evolution of the bankruptcy law would be to allow for a pre-packaged type of bankruptcy reorganization process for salvable businesses. ■

Scorecard of Venezuela's Current Insolvency Regime

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

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?)	No - But individualization should be allowed if contemplated in applicable indenture/credit documents
Involuntary reorganization proceeding that can be initiated by creditors?	Yes
Can creditors propose a plan?	Yes - But it is not an established or successful practice
Can a creditor-proposed plan be approved without consent of shareholders?	Yes - But it is not an established or successful practice
Absolute priority rule?	Yes
Are ex parte 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	No
Secured creditors subject to automatic stay?	Yes - But interest continues to accrue
Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so)	Yes - Challenges are common
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?	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?	Labor claims
Prevents voting by intercompany debt?	No
Strict time limits on completing procedure?	No
Management remains in place during proceeding?	No

1. See: MUCI ABRAHAM, José, *Consideraciones sobre la aplicabilidad a Petróleos de Venezuela, S.A. y a sus empresas filiales de las disposiciones del Código de Comercio relativas a la quiebra*, (1992). This doctrine is based on article 7 of the Code of Commerce which says that the state may not take the form of a merchant (*comerciante*).
2. Pursuant to article 111 of the Law of the Office of the Attorney General of Venezuela (*Ley Orgánica de la Procuraduría General de la República*) any provisional remedies or remedies in aid of execution of judgment, rendered on properties located in Venezuela that are used to the render a public service, such as oil and gas distribution and transportation, must be stayed for a period of 45 days after notice is given to the Attorney General. The Venezuelan government entity in charge of rendering the public service may take any action to avoid the interruption of the services, including, according to commentators, taking possession of the assets if such remedies endanger the continuity, quality or security of the public services provided. If the Attorney General does not notify the court about the provisional measures taken by the Venezuelan government to avoid discontinuance of the service entity within such 45-days notice, the court may continue with the enforcement.
3. Arts. 340(6), 341 and 342, Code of Commerce.
4. Art. 925, Code of Commerce.
5. Art. 931, Code of Commerce.
6. Art. 932, Code of Commerce.
7. A company may be in default and not be in cessation of payments, for example, if the defaulted debt is being contested by the debtor in good faith. See opinion of the former Supreme Court dated June 9, 1948 and opinion of the Civil Chamber of the former Supreme Court dated May 7, 1986 (Barlovento Line de Venezuela S.A. vs. Importadora Laura, Justice Carlos Trejo Padilla).
8. See Luis Cova Arria (Interpretación del Concepto de Cesación de Pagos en el Derecho Mercantil Venezolano, Revista de la Facultad de Derecho 32, Caracas, Universidad Central de Venezuela, 1965); Manuel Simón Egaña (Notas sobre la Cesación en los Pagos, Revista de la Facultad de Ciencias Jurídicas y Políticas 20, Caracas, Universidad Central de Venezuela, 1960); Hernán Giménez Anzola (El juicio de Atraso, Caracas, 1963); Alfredo Morles Hernández (El régimen de la crisis de la empresa mercantil, Centenario del Código de Comercio Venezolano de 1904, Caracas, Academia de Ciencias Políticas y Sociales, 2004); Oscar Pierre Tapia (La Quiebra según el Código de Comercio Venezolano, Caracas, Editorial Sucre, 1983); and Hernan Jimenez Anzola (El Juicio de Atraso, Caracas, Librería Moderna, 1963).
9. Juzgado Segundo de Primera Instancia en lo Mercantil del Distrito Federal y Estado Miranda, opinion dated August 10, 1959 (bankruptcy of Constructora Tamare, C.A., Judge Gonzalo Parra Aranguren); Juzgado Segundo de Primera Instancia en lo Mercantil del Distrito Federal y Estado Miranda, opinion dated February 20, 1961 (bankruptcy of M. Lustgarten, Judge Gonzalo Parra Aranguren); Juzgado Segundo de Primera Instancia en lo Mercantil del Distrito Federal y Estado Miranda, opinion dated July 7, 1962 (moratorium of Seguros La Nacional, Judge Gonzalo Parra Aranguren); Civil Chamber of former Supreme Court, opinion dated June 9, 1948; Civil Chamber of the former Supreme Court, opinion dated May 7, 1986 (Barlovento Line de Venezuela S.A. vs. Importadora Laura, Justice Carlos Trejo Padilla); Juzgado Noveno de Primera Instancia en lo Civil y Mercantil Bancaria con Competencia Nacional y Sede en la Ciudad de Caracas, opinion dated July 19, 2003 (bankruptcy of Sudamtex de Venezuela, C.A.).
10. If the bankruptcy judge does not admit the petition for trial, the bankruptcy process will not commence.
11. Art. 932, Code of Commerce.
12. Art. 932, Code of Commerce.
13. Constitutional Chamber of the Venezuelan Supreme Court (Tribunal Supremo de Justicia), opinion dated December 4, 2001 (bankruptcy of C.A. Cervecería Nacional, Justice Jesús Delgado Ocando).
14. Art. 932, Code of Commerce.
15. Art. 932, Code of Commerce.
16. Constitutional Chamber of the Venezuelan Supreme Court (Tribunal Supremo de Justicia), opinion dated December 4, 2001 (bankruptcy of C.A. Cervecería Nacional, Justice Jesús Delgado Ocando).
17. The debtor may appeal the order to admit the petition for trial and the order of preliminary injunctions before a superior court, but the filing of the appeal will not suspend the bankruptcy proceedings or the enforcement of the preliminary injunctions. The appeal process could take considerable time (several months).
18. If the bankruptcy proceeding directly or indirectly affects the interests of the Bolivarian Republic of Venezuela, the bankruptcy judge must also notify the Attorney General (*Procuraduría General de la República*) so that it has the opportunity to participate in the bankruptcy process. In this case, the bankruptcy process will be suspended for a period of 90 days following the receipt by the bankruptcy judge of evidence of the notice to the Attorney General (art. 96, Organic Law of the Attorney General of the Bolivarian Republic of Venezuela).

19. Art. 933, Code of Commerce. If the bankruptcy judge orders the notice of the Attorney General, the hearing will take place within five judicial days following the later of (a) the date on which the debtor is served with the summons and (b) the conclusion of the 90-day suspension period following receipt of evidence of the notice of the Attorney General.
20. Art. 933, Code of Commerce.
21. The petitioner may appeal this decision, but the filing of the appeal does not suspend the termination of the process and the lifting of the preliminary injunctions (art. 936, Code of Commerce).
22. Art. 939, Code of Commerce.
23. Art. 940, Code of Commerce.
24. Art. 940, Code of Commerce.
25. Art. 942, Code of Commerce.
26. Art. 943, Code of Commerce.
27. Art. 944, Code of Commerce.
28. Art. 944, Code of Commerce.
29. Art. 936, Code of Commerce. The bankruptcy judge may also determine the suspect period date on a separate judgment issued after the declaration of bankruptcy.
30. Art. 936, Code of Commerce.
31. Juzgado Noveno de Primera Instancia en lo Civil y Mercantil Bancaria con Competencia Nacional y Sede en la Ciudad de Caracas, opinion dated July 19, 2003 (bankruptcy of Sudamtex de Venezuela, C.A.), and Juzgado Accidental en lo Civil, Mercantil, Penal, de Tránsito y del Trabajo de la Circunscripción Judicial del Estado Yaracuy, opinion dated October 1, 1973 (bankuptcy of Carmelo Cianci). In these cases, the bankruptcy judges held that if the two-year limitation is counted from the date of declaration of bankruptcy (as opposed to the filing date of the bankruptcy petition), then in many cases the two-year limitation would have little or no practical implications to the detriment of the creditors, because in several cases the declaration of bankrupcy could take very long (even two years).
32. Civil Chamber of the Supreme Court, opinion dated May 11, 2005 (bankruptcy of Sudamtex de Venezuela C.A.), opinion of Justice Antonio Ramírez Jiménez; and Civil Chamber of the former Supreme Court, opinion dated November 14, 1974 (bankruptcy of Carmelo Cianci), opinion of Justice José Román Duque Sánchez, with dissenting opinion of Justice R. Rodríguez Méndez (the dissenting opinion agreed with the interpretation of the bankruptcy judge that the two-year limitation should be counted from the filing date of the bankruptcy petition).
33. Juzgado Superior Accidental en lo Civil, Mercantil, del Tránsito, del Trabajo con Competencia Transitoria de Protección del Niño y del Adolescente del Segundo Circuito de la Cincunscripción Judicial del Estado Portuguesa, opinion dated November 25, 2002 (bankruptcy of Fiseca, C.A.), and Juzgado Accidental en lo Civil, Mercantil, Penal, de Tránsito y del Trabajo de la Circunscripción Judicial del Estado Yaracuy, opinion dated October 1, 1973 (bankuptcy of Carmelo Cianci).
34. See Constitutional Chamber of the Venezuelan Supreme Court, opinion dated December 1, 2004, (Asociación de Productores de Semillas Certificadas de los Llanos Occidentales (Aproscello), in connection with the bankrtuptcy of Fiseca, C.A., Justice Jesús Eduardo Cabrera Romero). See also Civil Chamber of the Venezuelan of Justice, opinion dated March 29, 2005 (BPCA Tubulares Petroleros, C.A. y Lloy's Don Fundiciones C.A., Justice Carlos Alberto Vélez). In the Carmelo Cianci bankruptcy, the Civil Chamber did not reverse the decision of the bankruptcy judge on the basis of lack of evidence by the claimant (Civil Chamber of the former Supreme Court, opinion dated November 14, 1974 (bankruptcy of Carmelo Cianci, Justice José Román Duque Sánchez), with dissenting opinion of Justice Luis Loreto (the dissenting opinion indicated that the Chamber should have reversed the decision of the bankruptcy judge that declared the nullity of certain transactions without the commencement of the action by the bankruptcy receiver).
35. Art. 948, Code of Commerce.
36. Pursuant to the Venezuelan Organic Labor and Workers Law of 2012, labor courts have exclusive jurisdiction to hear all claims filed against en employeer who has been declared in bankrutcy or in *atraso* by employees with respect to salaries and other accrued labor benefits (art 150). *Prima facie*, this article reads as if labor claims are not suspended by the automatic stay and that they may go forward regardless of and in parallel to the qualification process in a separate proceeding to be carried out in a labor court. This matter is not entirely clear and we have not seen any recent precedents that clarify this issue.
37. Arts. 1,014 Et. Seq., Code of Commerce.
38. Arts. 1035 and 1036, Code of Commerce.

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