

# III NextGen Leadership Program - Class XIV

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# Restructuring in Brazil



# Brazilian Bankruptcy Law

- The Brazilian Bankruptcy Law (BBLaw No. 11,101/2005) was enacted in 2005, and underwent a significant reform in 2020, which came into effect in January 2021.

# Brazilian Bankruptcy Law

- The reform introduced significant changes that have made investing in distressed companies safer.
- In addition, the reform strengthened creditors' rights by allowing greater influence over the structure and terms of the reorganization.

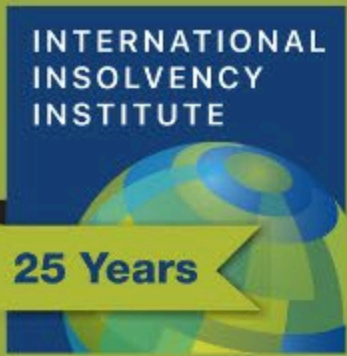
# Key Features

- It establishes reorganization proceedings, which are broadly comparable to those under U.S. Chapter 11.
- It also provides for liquidation proceedings, similarly aligned with the U.S. Chapter 7 framework.
- Following the 2021 reform, Brazil adopted the UNCITRAL Model Law on Cross Border Insolvency, with only minor modifications.



# Restructuring in Brazil

## Reorganization Proceedings



- In Brazil, there are two distinct types of reorganization proceedings: judicial and extrajudicial. The latter is similar to the U.S. prepackaged Chapter 11.
- Both types of reorganization are provided for under the BBL, which sets forth different rules for each.

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## Mediation

- The debtor may file for an injunction requesting a stay period of up to 60 days in order to mediate with creditors, either to avoid judicial reorganization or to reach preliminary agreements on key terms, thereby reducing potential litigation.

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## Who may file

- Only the debtor is allowed to initiate reorganization proceedings; creditors are limited to filing for the debtor's liquidation into bankruptcy.



# Restructuring in Brazil

## Affected Claims

- Many claims are not affected by restructuring proceedings in Brazil, such as tax claims, claims secured by chattel mortgage, and claims arising from foreign exchange advance agreements, among others.

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## Affected Claims

- These creditors may continue enforcement actions, provided they do not target assets essential to the company's ongoing operations.

# Restructuring in Brazil

## Reorganization Plan

- The debtor has an exclusivity period to submit a reorganization plan. If the debtor fails to do so, or if the submitted plan is rejected by creditors, creditors may propose their own plan—provided that the legal requirements are satisfied.

# Restructuring in Brazil

## Reorganization Plan

- In addition to new forms of payment—such as discounts and modifications to grace periods, maturities, interest rates, and fees—the plan may include a range of reorganization measures, including asset sales, new financing, the creation of new entities or dissolution of existing ones, and changes to the corporate ownership or governance structure.

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## Reorganization Plan

- For the plan to be valid and binding on all affected creditors, it must be approved by the legal majorities—according to the applicable procedure—and subsequently confirmed by the reorganization court.



# Restructuring in Brazil

## Reorganization Plan

- Court confirmation may be granted through a cram-down mechanism if the plan is rejected by one class of creditors, provided that: (i) it is approved by creditors representing more than half of the total amount of voting claims; and (ii) within the dissenting class, the plan receives the approval of 1/3 in both number of creditors (headcount) and claim amount.

# Restructuring in Brazil

## Sale of Assets

- After the reform the law now clearly states that acquisitions provided for in the BBL are free and clear of liabilities of any kind, adding legal certainty to the purchase.
- Any asset may benefit from this protection, provided the sale complies with the applicable legal requirements.

# Restructuring in Brazil

## Sale of Assets

- The sale may be carried out through an auction, a competitive process, or a direct sale, depending on the terms of the reorganization plan or court authorization.
- The BBL also now allows for the sale of the company as a whole as a means of restructuring.

# Restructuring in Brazil

## DIP Financing

- Following the reform, the BBL now includes specific provisions on DIP Financing, which had previously been implemented solely based on case law.

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## DIP Financing

- The BBL establishes that once the financing is approved and disbursed, no subsequent court decision may alter the nature of the credit or the collateral granted, thereby ensuring the necessary protection for the investor.



# Restructuring in Brazil

## Cross-Border



- After the reform, the BBL adopted the UNCITRAL Model Law on Cross-Border Insolvency almost in its entirety, with a few adjustments to align it with Brazilian legislation.

# Restructuring in Brazil

## Cross-Border

- One notable adjustment is that the stay period granted in other jurisdictions applies in Brazil only to claims that would be impaired by a restructuring under Brazilian law—meaning that unimpaired claims may still be enforced in Brazil, even if they are subject to the main proceeding.