



AMERICAN
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Most Recent Experiences of Cross-Border Cases in Mexico and LATAM

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Brazilian Perspective

Innovation and Introduction of Legislative Developments through the Amendment of the Brazilian Insolvency and Bankruptcy Law

- **Processes Provided for in the Law**
 - ✓ Judicial Reorganization, Out-of-Court Reorganization and Bankruptcy
- **Legislative Evolution**
 - What has changed?
 - ✓ Brazil has substantially incorporated the **UNCITRAL Model Law on Cross-Border Insolvency**.
 - ✓ The procedure has become similar to **Chapter 15** of the U.S. Bankruptcy Code.
 - Main objectives
 - ✓ Establish a clear and efficient framework for the recognition of foreign insolvency proceedings in Brazil.
 - ✓ Strengthen judicial cooperation between Brazilian and foreign courts.
 - ✓ Preserve the rights of debtors and creditors, maximize the value of assets, and reduce jurisdictional fragmentation.
 - Limitations
 - ✓ Recognition and support measures may be exceptionally restricted when they are deemed manifestly contrary to public policy.
- Practical effects
 - ✓ Recognition no longer depends on prior approval (homologation) by the Brazilian Superior Court of Justice (STJ).
 - ✓ Possibility of granting protective measures, support measures, and coordination mechanisms in aid of foreign proceedings.
 - ✓ Creditors not subject to insolvency proceedings in Brazil are not affected by the recognition of foreign proceedings.
- Main Proceeding vs. Non-Main Proceeding
 - ✓ The distinction is based on the debtor's **COMI (Centre of Main Interests)**.
 - ✓ **Main Proceeding:** Recognition automatically triggers the effects of a stay in Brazil.
 - ✓ **Non-Main Proceeding:** Recognition does not result in an automatic stay; Brazilian courts may, at their discretion, grant protective measures to facilitate the foreign proceeding.



Cross-Border Restructuring Context

Advances in Internationalization

- **Globalization Trend**
 - ✓ Companies operate with businesses, assets, and creditors spread across multiple jurisdictions. Supply chains have become increasingly internationalized.
 - ✓ Growing interdependence of credit and capital markets.
 - ✓ Insolvency laws have often proven inadequate to address situations involving multiple jurisdictions.
 - ✓ Application of different legal systems across countries.
- **Challenges**
 - ✓ Commencement of multiple parallel proceedings in a fragmented manner and without coordination or communication among them.
 - ✓ Individual creditor race: uncoordinated enforcement actions and premature liquidation of assets.
 - ✓ Risk of conflicting decisions issued by courts in different countries.
 - ✓ Violation of the principle of *par conditio creditorum* (equal treatment of creditors).
 - ✓ "Ring-fencing" of local assets to satisfy local creditors.
 - ✓ Higher costs.
- **Impact on Restructuring**
 - ✓ Destruction of asset value.
 - ✓ Hindrance to the free flow of cross-border capital.
 - ✓ Greater difficulty in achieving the debtor's successful rehabilitation and restructuring.



Historical Evolution and Theoretical Models

Territorialism vs. Universalism

- **Territorialism**
 - ✓ Each country exercises exclusive jurisdiction over the assets located within its territory.
 - ✓ Possibility of multiple parallel, independent, and uncoordinated proceedings.
 - ✓ Emphasis on the protection of local creditors and state sovereignty.
- **Universalism**
 - ✓ Existence of a single global proceeding conducted before a single forum.
 - ✓ Uniform application of one law to all assets and creditors.
 - ✓ Greater economic efficiency and equal treatment of creditors.
- **Intermediate Solution: Modified Universalism**
 - ✓ Model adopted by UNCITRAL and Brazil.
 - ✓ Based on cooperation, communication, and coordination among jurisdictions.
- **Early Examples of Coordination**
 - ✓ Ad hoc coordination and the doctrine of international comity.
 - ✓ Bilateral or regional treaties.
- **UNCITRAL Model Law**
 - ✓ Recognition of foreign proceedings, whether **main** or **non-main**.
 - ✓ Determination of the debtor's Centre of Main Interests (**COMI**).
 - ✓ Automatic stay to protect local assets upon recognition of a foreign main proceeding.
 - ✓ Access to courts for a foreign representative.
 - ✓ Cooperation between judges and insolvency administrators from different countries.
- **EU Insolvency Regulation**
 - ✓ Automatic recognition of insolvency proceedings in another Member State.
 - ✓ Bilateral or regional treaties.
 - ✓ Main proceedings are opened in the country where the debtor has its **COMI**.
 - ✓ Secondary proceedings may be opened in countries where the debtor has an establishment.



Chapter 11 and Brazilian Judicial Reorganization Compared

Concept	Chapter 11	Brazilian Judicial Reorganization
Automatic stay	Immediate upon filing	Starts after court approval; 180 + 180 days
DIP financing	Superpriority and priming liens available	Superpriority; a new lien over already encumbered assets depends on other creditors' consent
Asset sales	Assets may be sold free and clear; specific court approval may be necessary	Court/plan approval; UPI sales free of liabilities
Voting requirements for plan approval	2/3 in value + 1/2 in number per class	Quorum varies by creditor class
Absolute priority rule	Applies primarily in a non-consensual cramdown. A dissenting unsecured class must generally be paid in full before junior creditors.	No direct equivalent



Why Brazilian Airlines Have Chosen U.S. Chapter 11

- **Context: an emerging pattern**
 - ✓ Brazilian and Latin American airlines have increasingly used U.S. Chapter 11 proceedings to implement financial and operational restructurings while continuing regular flight operations.
 - ✓ The trend accelerated following the COVID-19 crisis, which caused a sudden collapse in passenger demand and aggravated pre-existing exposure to high leverage, U.S. dollar-denominated costs, fuel-price volatility and aircraft lease obligations. LATAM filed in May 2020, GOL in January 2024 and Azul in May 2025.
- **Why Chapter 11?**
 - ✓ **Aircraft leases are the decisive factor:** Article 199 of the Brazilian Bankruptcy Law excludes aircraft leases from the stay and from the effects of judicial reorganization. Lessors may therefore exercise repossession rights even during a Brazilian proceeding.
 - ✓ **Specialized aviation framework:** Section 1110 of the U.S. Bankruptcy Code provides an initial 60-day negotiating period while preserving lessors' ultimate repossession rights—creating a predictable framework for fleet-wide negotiations.
 - ✓ **Fleet optimization:** Chapter 11 permits airlines to assume, amend or reject aircraft and engine leases, return uneconomic aircraft and renegotiate maintenance reserves, deposits and legacy claims.
 - ✓ **Access to deep restructuring capital:** LATAM obtained US\$2.45 billion in approved DIP financing, GOL approximately US\$1 billion and Azul US\$1.6 billion—amounts difficult to replicate in the Brazilian restructuring-finance market.
 - ✓ **Broader restructuring toolkit:** debtor-in-possession control, automatic stay, contract rejection, debt-to-equity conversion, class voting and cram-down provide tools for both operational and balance-sheet restructuring.
- **Cross-border qualifications**
 - ✓ Chapter 11 does not displace Brazilian law: ANAC regulation, airport concessions, employment, tax, consumer and other local matters remain subject to Brazilian jurisdiction.
 - ✓ U.S. orders are not automatically self-executing in Brazil: recognition or judicial cooperation under Chapter VI-A of the Brazilian Bankruptcy Law may be necessary to extend stays and other restructuring effects to Brazilian assets and proceedings.



Recognition of Foreign Proceedings in Brazil

Landmark Cases

- **Prosafe Case**
 - ✓ Recognition of a restructuring proceeding in Singapore as a foreign main proceeding.
 - ✓ Granting of a stay in Brazil and protection of strategic assets.
- **Gutmen Investment Corp Case**
 - ✓ Recognition of a foreign liquidation proceeding in the British Virgin Islands initially granted.
 - ✓ Recognition was subsequently annulled due to procedural issues.
- **Mercon Coffee Case**
 - ✓ U.S. Chapter 11 proceeding recognized as the main proceeding in Brazil.
 - ✓ Discussion regarding the limits of the stay and the treatment of claims excluded from the insolvency proceeding (claims arising from ACCs (Advance Contracts on Foreign Exchange)).
 - ✓ Tension between deference to the foreign proceeding and the application of Brazilian domestic law.
- **Casino Case**
 - ✓ French restructuring proceeding recognized as the main proceeding in Brazil and subsequently under Chapter 15 in the United States.
 - ✓ Extinguishment of a contingent obligation of Casino toward GPA, subject to a Brazilian court decision.
 - ✓ Risks associated with two arbitration proceedings pending in Brazil.
 - ✓ Shares held by Segisor in GPA constitute the Casino Group's most significant asset in Brazil.



Insolvency Proceedings Involving Foreign Entities in Brazil

Landmark Cases

- **OAS Case**
 - ✓ One of the first cross-border insolvency cases in Brazil.
 - ✓ Inclusion of foreign financing vehicles within the Brazilian proceeding based on their integration into the group's financial and corporate structure.
 - ✓ Subsequent recognition proceedings under Chapter 15 in the United States.
- **Oi Case**
 - ✓ Attempt to terminate the Chapter 15 proceeding to enable a new Chapter 11 filing in the United States.
 - ✓ Global restructuring strategy involving coordination across multiple jurisdictions.
- **Unigel Case**
 - ✓ Structure with a significant international component, including the issuance of bonds through a foreign vehicle (Unigel Luxembourg).
 - ✓ Filing of a Chapter 15 proceeding in the United States to obtain recognition of the Brazilian restructuring plans and extend their effects to debt governed by New York law.
 - ✓ Tension between deference to the foreign proceeding and the application of Brazilian domestic law.



Insolvency Proceedings Involving Foreign Entities in Brazil

Landmark Cases

- **Intercement Case**

- ✓ Creditors challenged the inclusion of foreign entities in the Brazilian judicial reorganization proceeding.
- ✓ Allegations that the entities lacked an establishment and a sufficient connection with Brazil.
- ✓ Existence of main insolvency proceedings already underway in foreign jurisdictions (Spain and the Netherlands).

- **Ambipar Case**

- ✓ Filing for judicial reorganization in Brazil and a Chapter 11 proceeding in the United States through a subsidiary.
- ✓ Allegations that the Chapter 11 process was being used primarily to stay enforcement actions in the United States without meaningful progress on a restructuring plan.



Atento Case

Use of a UK Restructuring Plan by a Global Group

- **Background**

- ✓ Atento, a global CRM/BPO group with significant operations in Latin America, especially in Brazil, had experienced financial difficulties since 2021 and faced an imminent liquidity shortfall by 1 December 2023, with a group-wide liquidation identified as the most likely alternative to the restructuring.
- ✓ Two group entities, Atento UK Limited and Atento Luxco 1, proposed inter-conditional restructuring plans under Part 26A of the UK Companies Act 2006 to restructure English-law governed financial liabilities.

- **Key cross-border debates**

- ✓ **Jurisdiction and sufficient connection:** although Atento Luxco 1 was a foreign-incorporated company, the Court held that the English-law governing the affected liabilities was, by itself, sufficient to establish the required connection with England.
- ✓ **Governing law as a restructuring nexus:** the case illustrates how English-law debt can provide access to the UK restructuring framework even where the group's principal business activities and assets are located outside the United Kingdom.
- ✓ **Recognition and local implementation:** the Court acknowledged that separate recognition proceedings or other local-court relief could still be necessary to give the plans full effect in relevant jurisdictions and formally validated the appointment of a foreign representative for that purpose.
- ✓ **Brazilian nexus:** Atento Brasil S.A. was a guarantor of the 2026 notes, while Brazilian operations were economically essential to the group. The plans released creditor claims against subsidiary guarantors, making their effectiveness under Brazilian law a key implementation issue.



Braskem Case

Three Proceedings, One Cross-Border Restructuring

- **Context and procedural architecture**

- ✓ Following a prolonged petrochemical downturn, the Maceió liabilities and stress at Braskem Idesa, Braskem filed a Brazilian extrajudicial reorganization covering approximately US\$10.9 billion of unsecured financial debt, initially supported by creditors holding 39.6% of the affected claims.
- ✓ The debtor perimeter includes Braskem S.A., four Dutch entities and Braskem America Finance Company, a Delaware financing vehicle. Approximately 92% of Braskem's securities were issued outside Brazil, making foreign effectiveness central to the transaction.
- ✓ The Brazilian proceeding followed a 60-day precautionary injunction and creditor mediation. In August, 2026, the São Paulo court allowed the proceeding to move forward and granted a 120-day stay.
- ✓ In parallel, the same entities filed Chapter 15 cases in New York. The U.S. court granted provisional relief in last June, but final recognition of the Brazilian proceeding remains pending.
- ✓ Separately, Mexican subsidiary Braskem Idesa filed a prepackaged Chapter 11 in Texas, supported by creditors holding approximately 75% of secured claims. The plan seeks to reduce senior debt from approximately US\$2.5 billion to US\$1.6 billion.

- **Key cross-border issues**

- ✓ **COMI and foreign-main recognition:** holders of the 2041 notes challenge the inclusion of Delaware-incorporated Braskem America Finance in the Brazilian proceeding. The dispute tests whether a U.S. financing vehicle may have its COMI in Brazil and be bound through Chapter 15.
- ✓ **Global creditor coordination:** international bondholders hold most of the financial debt and dominate the ad hoc group. Banks and non-signatory creditors have raised concerns about confidentiality, exclusive negotiations and limited influence over the final plan.



Other Cross-Border Restructuring Issues

Contemporary Challenges

- **Purdue Pharma Case (U.S.) (Third-Party Releases)**

- ✓ Landmark case arising from the opioid crisis in the United States.
- ✓ Use of third-party releases to protect shareholders and controlling parties.
- ✓ Controversy regarding the extension of protection to non-debtor parties and questions concerning the legitimacy and limits of the insolvency system.
- ✓ Restructuring debt outside the United States to avoid limitations imposed by Chapter 11 (e.g., restrictions on third-party releases).
- ✓ Seeking subsequent recognition through Chapter 15.

- **COMI and Forum Shopping**

- ✓ Companies structure their operations to influence the determination of their **Centre of Main Interests (COMI)**.
- ✓ Strategic pursuit of the most favorable jurisdiction (forum shopping).
- ✓ Conflicts between courts regarding which jurisdiction should be regarded as the "main" forum.

- **Substantive Consolidation**

- ✓ **Brazilian Approach**
 - Possibility of including foreign companies in insolvency proceedings, particularly when they are used as offshore vehicles to raise capital, do not conduct independent business activities, and belong to the same economic group as the Brazilian entities.
- ✓ **U.S. and Other Jurisdictions' Approach**
 - Different approaches to substantive consolidation depending on the applicable legal framework and judicial precedent.
- ✓ **Notable Cases**
 - OAS
 - Schahin



Thank You!

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