Legal 500
Country Comparative Guides 2026

Brazil

Restructuring & Insolvency

Contributor

Scardoa Del Sole Advogados

Renato Scardoa

Partner | renato.scardoa@sdsadv.com.br

Ricardo Chabu Del Sole

Partner | ricardo.delsole@sdsadv.com.br

Esther Ortuño

Associate | esther.ortuno@sdsadv.com.br

Vitória de Andrade Bolsarin

Associate | vitoria.bolsarin@sdsadv.com.br

This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Brazil.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

Brazil: Restructuring & Insolvency

1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

Brazilian law recognises a range of security instruments over both real and personal property, governed primarily by the Civil Code (Law No. 10.406/2002), the Fiduciary Assignment Law (Law No. 9.514/1997) and Decree-Law n. 911/1969.

For immovable property the most common are the mortgage ('hipoteca') and the fiduciary transfer of real estate ('alienação fiduciária de bem imóvel'). The fiduciary transfer has become the preferred instrument in financing transactions: upon default, the creditor may extrajudicially consolidate title and sell the property without going to court, which makes enforcement considerably faster. A third instrument, antichresis ('anticrese'), whereby the creditor takes possession of the property and assumes its administration, satisfying the debt with the income derived therefrom, exists under Brazilian law but is rarely used in commercial transactions.

For movable property, the principal instruments are the pledge ('penhor'), the fiduciary transfer of chattels ('alienação fiduciária de bem móvel') and the fiduciary assignment of receivables ('cessão fiduciária de créditos'). Under the fiduciary structure, legal title passes to the creditor, which means the asset or receivable falls outside the debtor's insolvency estate from the outset. This is meaningfully different from a conventional lien, where the creditor is just a secured party. Receivables are perfected either by registration or by notice to the underlying debtors, depending on how the credit rights arise.

Proper registration of security interests that require registration is essential to their validity against third parties and the insolvency estate. Mortgages and fiduciary transfers over real estate must be registered at the Real Estate Registry Office (Cartório de Registro de Imóveis) in the district where the property is located. Pledge and fiduciary transfer of chattels over movable assets must be registered at the Registry of Titles and Deeds (Cartório de Registro de Títulos e Documentos). Pledge in the case of vehicles, with the traffic authority (DETRAN) and the Registry of Titles and Deeds.

Two specialised forms of pledge deserve particular mention in the Brazilian context. The rural pledge ('penhor rural'), which encompasses the agricultural pledge ('penhor agrícola') over crops and agricultural products, and the livestock pledge ('penhor pecuário') over animals and the industrial and mercantile pledge ('penhor industrial e mercantil'), covering machinery, equipment, raw materials and finished goods, must both be registered at the Real Estate Registry Office of the district where the assets are located, rather than at the Registry of Titles and Deeds applicable to ordinary pledges.

Failure to register where registration is required and not effected remains valid as between the parties but does not produce effects against third parties and is unenforceable against the insolvency estate. In such cases, the creditor's claim will not be recognised as secured in judicial reorganisation or bankruptcy proceedings and will instead be treated as an unsecured (quirografário) creditor in insolvency proceedings. Law No. 14.711/2023 (the 'Legal Framework for Guarantees') introduced a centralised registry for movable security, which has started to reduce some of the friction around competing encumbrances, though the system is still being implemented in practice.

2. What practical issues do secured creditors face in enforcing their security package (e.g. timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

The enforcement experience for secured creditors in Brazil differs materially according to the type of security and the procedural route available. Holders of fiduciary security, whether over real estate or movable assets, benefit from a comparatively streamlined extrajudicial enforcement mechanism. In the case of a fiduciary transfer of real estate, following the default period for the main debt to be paid and a statutory fifteen-day cure period triggered by formal notification through the Registry Office, the creditor consolidates title and must conduct a first public auction within sixty days. If no successful bid is made at the value of the property under the contract, a second auction must be held within the following fifteen days, in which the property may be sold for any bid that covers the full amount of the debt, expenses, registration fees, taxes and condominium dues. Under the regime introduced by Law No. 14.711/2023, if no qualifying bid is made, the creditor may, at its sole discretion, accept a bid corresponding to at least half of the appraised value of the property. Should no bid meet that threshold either, the debt is deemed extinguished and the creditor is required to issue formal discharge to the debtor. In practice, this extrajudicial route is substantially faster than judicial foreclosure and is the preferred enforcement mechanism for any creditor holding fiduciary security.

Enforcement of pledges and conventional mortgages requires judicial intervention and is, in practice, substantially slower. Brazilian courts carry well-documented backlogs, and contested enforcement actions routinely take several years to resolve, particularly when debtors deploy procedural challenges at every stage. A critical concern for secured creditors is the interaction between enforcement and the automatic stay triggered upon the filing of a judicial reorganisation petition. As discussed in Question 9 below, although the Brazilian Insolvency Law (Law No. 11.101/2005, as amended by Law No. 14.112/2020) formally excludes fiduciary creditors from the stay, courts have repeatedly extended it to fiduciary-encumbered assets that are deemed 'essential' to the debtor's operations. Courts have not established a clear, predictable test nor path for determining what constitutes 'essential,' resulting in inconsistent application across lower court jurisdictions and unpredictability that lenders must price into their risk models.

Out-of-court enforcement also faces a specific litigation risk: debtors frequently seek emergency injunctions to suspend enforcement steps, sometimes successfully, at least temporarily. This creates delays even for fiduciary creditors who are theoretically outside the stay. Sophisticated lenders now routinely include arbitration clauses and try to structure around fiduciary instruments precisely to limit this exposure, though it cannot be eliminated entirely.

3. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

Brazilian law provides two principal restructuring procedures under the Brazilian Insolvency Law: the judicial reorganisation ('recuperação judicial') and the out-of-court restructuring ('recuperação extrajudicial'). Both are debtor-in-possession procedures, in which management retains operational control throughout the proceedings, distinguishing them from English administration, where control passes to a licensed insolvency practitioner. A simplified judicial reorganisation regime for micro and small enterprises was also introduced by the 2020 amendments to the Insolvency Law.

To file for judicial reorganisation, the debtor must be a business entity ('empresário' or 'sociedade empresária') with at least two years of continuous operating history and must not have been through a judicial reorganisation in the preceding five years nor have a bankruptcy conviction. Generally, access is restricted to such business entities. However, following the enactment of Law No. 14.193/2021 (the 'SAF Law'), football clubs organised as non-profit associations ('associações') are also eligible to file for judicial reorganisation, regardless of whether they choose to adopt the Football Corporation ('Sociedade Anônima do Futebol' or 'SAF'). The threshold for access is a showing of economic-financial crisis ('crise econômico-financeira'), a documental statement that encompasses both current cash-flow difficulty and prospective inability to meet obligations, without requiring technical balance sheet insolvency. Once the case is processed, the debtor remains in possession of the business during the proceeding (debtor-in-possession model), and management usually continues to operate the company. However, the debtor is supervised by a court-appointed expert ('administrador judicial'), that is nominated by the Judge when the reorganisation proceedings begins. The administrador judicial does not displace management, unlike a trustee appointed for cause in a US Chapter 11 case, but monitors the debtor's affairs, reviews financial information, convenes creditor meetings and reports regularly to the court. Management keeps operational control throughout, unless fraud or serious misconduct is established, in which case the court may appoint a judicial manager to take over.

The debtor has sixty days from the processing order to file a reorganisation plan. The plan may include measures such as debt rescheduling, taking haircuts, asset sales, operational restructuring, conversion of debt into equity, or new financing arrangements and is made available to all creditors subjected to the reorganisation for a thirty-day objection period.

After presenting the reorganisation plan, the administrador judicial convenes a general meeting of creditors ('Assembleia Geral de Credores') to deliberate and vote if they will approve the plan. Creditors vote are accounted by class: (i) labour creditors; (ii) secured creditors; (iii) unsecured creditors; and (iv) micro and small enterprise creditors. Plan approval requires, for classes (i) and (iv), more than half of the total members of the class to be present and voting for the approval and, for classes (ii) and (iii), more than half of the members of the class cumulated with more than half of the amount of the credit owed to each class. Nonetheless, the plan must also be approved in at least two of the three principal voting classes. Where the requisite majority is not achieved, the 2020 amendments introduced a statutory cram-down mechanism, referred to as 'alternative approval', that allows the court to impose the plan on a dissenting class in certain conditions, broadly modelled on the US approach. If no creditor objects in the 30-day period, the plan is deemed approved without a vote, which is a Brazil-specific mechanism.

The out-of-court restructuring (recuperação extrajudicial) operates on a pre-negotiated basis: the debtor pre-negotiates a plan with creditors holding more than 50% of the affected claims and then seeks judicial ratification, which binds non-consenting creditors of the same class. Once ratified, the plan binds dissenting creditors of the same class. Tax claims are excluded from this procedure. Labour claims may be included, but only with the prior approval of the relevant trade union representing the affected employees. In practice, the extrajudicial route is used less often, but it can be the right tool when the creditor base is concentrated, and a deal can be reached quickly.

4. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

Under Brazilian law, a debtor in judicial reorganisation may obtain new financing during the proceedings. The Law No. 14.112/2020 introduced an explicit statutory framework for debtor-in-possession, DIP finance, modelled in part on the DIP regime under the US Bankruptcy Code, contained in articles 69-A to 69-F of the Brazilian Insolvency Law. Before that, DIP lending existed in practice but had no solid statutory footing, which created real legal risk for lenders (the OAS case, where a USD 800 million facility fell apart after judicial appeals altered the agreed terms, illustrates what was at stake).

Under article 69-A, the court may, after hearing the creditors' committee, authorise the debtor to enter financing contracts guaranteed by the encumbrance or fiduciary transfer of assets belonging to the debtor's non-current assets or by assets of third parties. Judicial authorisation is required where the financing involves the encumbrance of non-current assets; financing of current activities within the ordinary course of business does not require separate court approval. DIP financing authorised under this framework carries super-priority (extraconcursal) status: the DIP claim is not subject to the reorganisation plan, and in the event of bankruptcy, is preceded only by the costs of administering the bankruptcy itself and by wage-priority labour claims of up to five minimum wages.

Article 69-B is arguably the most important provision: it prevents a superior court from reversing the super-priority nature of the credit or the guarantees once the funds have been disbursed. This addresses the OAS-type problem directly. Article 69-C allows subordinated guarantees over already-encumbered assets without needing the original creditor's consent, but only outside the fiduciary modalities (alienação and cessão fiduciária), which limits its practical usefulness given that fiduciary structures dominate the market. Articles 69-E and 69-F open DIP lending to any person, including creditors, shareholders and group affiliates.

In practice, DIP facilities have grown materially since the 2020 reform. Within the first year of the Law No. 14.112/2020 entering into force, eight companies had obtained judicial authorisation for DIP financing totalling approximately BRL 3.1 billion, while barely one or two companies a year opted for the DIP financing solution across the fifteen years of the preceding regime.

5. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

Brazilian restructuring proceedings do not automatically discharge non-debtor parties from liability. The Law No. 14.112/2020 expressly provides that the approval of a judicial reorganisation plan does not extinguish claims against guarantors, co-obligors or jointly and severally liable parties unless those parties individually agree to the release. This is a foundational feature of the Brazilian framework and represents a clear point of contrast with the third-party release mechanisms available under US Chapter 11.

In practice, this means creditors regularly will file claims against guarantors, co-obligors or jointly severally liable parties and such claims will not be suspended by the reorganization proceedings.

The 2020 amendments allow the plan to address guarantor obligations to a limited extent, but only with explicit creditor consent.

6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?

The Brazilian Insolvency Law allows creditors in a judicial reorganisation to form a creditors' committee ('Comitê de Credores'), with up to three representatives per class (secured, unsecured, labour). The committee monitors the judicial administrator, reviews accounts and issues opinions on matters referred to it. Formation is optional and in most proceedings it does not happen. Creditors' committees tend to emerge in cases where institutional creditors are sufficiently organised and motivated to drive the process, a not very common occurrence.

In larger and more complex cases, particularly those involving capital markets debt, ad hoc creditor groups have become increasingly common. These groups operate outside the formal committee structure, retain their own advisers and negotiate directly with the debtor on plan terms. The Brazilian Insolvency Law contains no provision requiring the debtor to fund ad hoc creditor advisers; but in practice reimbursement of reasonable legal and financial costs is often agreed as a condition of creditor engagement. What 'reasonable' means tends to be a negotiation point. The judicial administrator's own fees are set by the court and by the debtor and shall be paid with utmost priority, before all creditors.

7. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency proceedings upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

Under Brazilian law, insolvency is not determined by a balance sheet test alone. Access to judicial reorganisation requires the debtor to demonstrate a state of 'economic-financial crisis', a concept broad enough to encompass both cash-flow insolvency (inability to meet obligations as they fall due) and prospective financial difficulty, without requiring technical balance sheet insolvency. The bankruptcy liquidation can be triggered by failure to pay an undisputed debt above 40 minimum wages, by certain acts of bankruptcy ('atos de falência'), or by the debtor's own voluntary petition.

There is no mandatory filing obligation. Directors are not required to petition for insolvency when the company becomes distressed, and there is no wrongful trading liability equivalent under Brazilian law. The risk directors face is not from delayed filing per se, but from what happens if the company simply stops operating without going through a formal process. Irregular dissolution ('dissolução irregular') is the most common trigger for personal liability: if the company ceases activity without a proper insolvency filing, creditors and tax authorities can pierce the corporate veil and go after directors personally through the tax execution redirect mechanism ('redirecionamento da execução fiscal'). That is a real and frequently used tool in practice.

8. What insolvency proceedings are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

The Brazilian Insolvency Law provides three main procedures: the judicial reorganisation ('recuperação judicial'), the out-of-court restructuring ('recuperação extrajudicial') and bankruptcy liquidation ('falência'). The 2020 amendments also introduced a simplified reorganisation regime for micro and small enterprises.

In a judicial reorganisation, the debtor's management retains full operational control throughout the proceedings. There is no automatic displacement of directors comparable to the appointment of an administrator under English law; the court will only remove management and appoint a court-supervised trustee where fraud or serious misconduct is established. The judicial administrator, typically a lawyer, accountant or specialist firm appointed by the court, oversees the proceedings without supplanting management: it reviews financial data, convenes and chairs creditor meetings, opines on the plan and reports regularly to the court. The court's role is pervasive, from processing the petition and ruling on the stay to presiding over key procedural steps and ratifying the approved plan. Creditors participate primarily through the general meeting of creditors.

In a bankruptcy, management is displaced immediately upon the court's declaration of bankruptcy. A trustee (administrador judicial) takes control of the estate, collects and realises assets, investigates antecedent transactions and distributes proceeds in the statutory order of priority.

Timelines vary materially. The Observatório da Insolvência, a joint initiative of the Brazilian Jurimetrics Association (ABJ) and the Insolvency Studies Centre at Pontifical Catholic University of São Paulo, has produced the most comprehensive empirical data on the Brazilian system. In its São Paulo studies (base period 2010-2017 for judicial reorganisations and through 2020 for bankruptcies), the median time from commencement of judicial reorganisation to final closure was approximately 3 years. Bankruptcy proceedings remain considerably longer: the median time from the bankruptcy decree to the first asset valuation alone was 5 years and 3 months.

Although these figures predate the 2020 amendments and no equivalent empirical study has yet been published for the post-reform period, in our practical experience, the broader trends appear to remain consistent: judicial reorganisation proceedings typically run between two and four years from filing to plan completion, though conglomerate cases have gone well beyond that. A bankruptcy may take five to ten years, depending on the volume of claims, the complexity of asset realisations and the frequency of challenges to estate decisions. In addition, market data published by Serasa Experian confirms that the instrument is being used at historical highs, with 977 filings in 2025, the highest volume since 2016, involving 2,466 corporate debtors. The combination of high volume, lengthy proceedings and low creditor recovery rates in bankruptcy remains one of the principal systemic challenges of the Brazilian framework.

9. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Upon the granting of the order processing a judicial reorganization an automatic stay takes effect immediately. The Brazilian Insolvency Law sets the initial term at 180 days, extendable by the court for another 180 days under the 2020 amendments, which introduced this second period to try to impose more discipline on extensions. In practice, courts grant extensions routinely and stays well beyond 360 days are common.

The Brazilian Insolvency Law expressly excludes certain creditor categories from the stay: tax enforcement actions continue notwithstanding the proceedings, workplace accident claims and fiduciary creditors are formally excluded.

The stay is territorial and does not extend to proceedings or enforcement actions outside Brazil. As to cross-border recognition, the Brazilian Insolvency Law introduced a dedicated chapter on cross-border insolvency (articles 167-A to 167-V), which establishes a recognition framework for foreign proceedings broadly modelled on the UNCITRAL Model Law on Cross-Border Insolvency. Under this framework, a foreign representative may seek recognition of a foreign main or non-main proceeding before the competent Brazilian court, with different legal consequences depending on the classification. Brazil has not formally adopted the UNCITRAL Model Law as a standalone instrument, and recognition of foreign proceedings through the Superior Court of Justice validation route remains an alternative path, though one that is slower and less predictable in practice.

10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorganisation plan (if any)?

After the processing order, the judicial administrator publishes notice calling all creditors to submit claims for verification. Creditors not appearing on the debtor's list of creditors ('relação de credores') must file a request for inclusion on the debtors list ('habilitação de crédito'), within fifteen days of the publication. If the creditor or debtor does not agree with the debtors list verified by the Judicial Administrator, it is possible to file a legal claim before the court that has jurisdiction over the reorganization proceedings. The inclusion or classification of any claim may be contested through the formal verification and dispute procedure.

The debtor must file its reorganisation plan within sixty days of the processing order. The plan must address the treatment of all in-scope claims and describe how the debtor proposes to overcome its economic-financial crisis. Once filed, the plan is made available to creditors for a thirty-day objection period. If objections are received, the judicial administrator convenes a general meeting of creditors to deliberate and vote on the plan. The general meeting of creditors is the principal governance forum of the proceedings; voting proceeds by class, with the majority requirements described in Question 3 above. Where no written objections are received within the thirty-day period, the plan is deemed approved. Once the court ratifies the plan, it binds all in-scope creditors, including those who voted against.

11. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities, DIP financing)? Could the claims of any class of creditor be subordinated (e.g. recognition of subordination agreement)?

In a bankruptcy, the Brazilian Insolvency Law prescribes the following order of priority for the distribution of estate assets:

Super-priority (extraconcursal) claims are paid first, in the following internal order under article 84 of the Brazilian Insolvency Law: (i) amounts deemed indispensable for the estate's management; (ii) labour wages due during the three months prior to the bankruptcy declaration, limited to five minimum wages per employee; (iii) DIP financing granted during a prior judicial reorganisation and authorised by the court; (iv) restitution in cash, which covers amounts held by the debtor that legally belonged to third parties and must be returned before any distribution; (v) fees payable to the judicial administrator; (vi) court costs; (vii) sums provided to the estate by creditors during the proceedings; and (viii) expenses with asset recovery and distribution.

Once super-priority (extraconcursal) claims are paid, the debts that are subject to the insolvency proceedings (concursal) have a waterfall priority, provisioned under article 83: (i) labour claims arising from employment relationships, capped at one hundred and fifty brazilian minimum wages per creditor, with any excess ranking as unsecured, and claims arising from workplace accidents; (ii) secured claims, up to the value of the encumbered asset; (iii) tax claims of federal government, states and municipalities; (iv) claims with special statutory privilege, including certain statutory liens; (v) general privilege claims ('privilégio geral'); (vi) unsecured claims ('quirografários'); and (vii) contractually subordinated claims.

12. Can a debtor's pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

The Brazilian Insolvency Law establishes two separate look-back frameworks. The first, under article 129, renders certain transactions automatically ineffective against the estate without requiring proof of intent. The general look-back window is the suspicious period ('termo legal'), which the bankruptcy decree fixes at up to 90 days before the earliest of: the bankruptcy petition, the first protest for non-payment, or the filing of a prior judicial reorganisation. For gratuitous transfers and transfers for nominal consideration, article 129 extends this window to two years before the bankruptcy declaration. The second framework, under article 130, is the insolvency avoidance action proper: it requires proof of fraudulent intent and has no fixed look-back period, meaning it can reach transactions regardless of when they occurred. It is worth noting that the aforementioned fraud must be intended to prejudice the bankruptcy estate, through collusion between the debtor and the third party with whom the transaction was carried out. The three-year prescription period under article 132 is the deadline to file the action after the bankruptcy decree, not a limitation on how far back the court can look.

Under the Brazilian Insolvency Law, the judicial administrator in a bankruptcy and, in defined circumstances, individual creditors and the public prosecutor, may seek to void or unwind pre-insolvency transactions through the insolvency avoidance action ('revocatória falimentar').

Transactions susceptible to challenge include gratuitous transfers, early payment of non-matured debts, granting security over previously unsecured debts and non-arm's-length transactions with related parties. A successful challenge renders the transaction ineffective against the estate, and the assets or their value must be returned. Third parties who acted in good faith, for value and without knowledge of the debtor's situation have a defence, though the burden of proof depends on the transaction type. Courts have been increasingly rigorous in scrutinising pre-filing conduct, particularly dividend payments, intercompany transfers and asset transfers to affiliates in the period leading up to a filing.

13. How are existing contracts treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

Under Brazilian law, existing contracts are not automatically terminated by the filing of a judicial reorganisation or the declaration of bankruptcy. In judicial reorganisation the debtor's contracts remain in force, and the debtor is expected to continue performing its obligations.

Termination clauses triggered solely by the debtor's entry into reorganization are generally treated as unenforceable under Brazilian contract principles. Brazilian courts have not developed this doctrine as precisely as English or US courts, but the practical result is similar. In a bankruptcy, the judicial administrator decides whether to continue or abandon contracts based on what is best for the estate. Counterparties may not unilaterally terminate on grounds of the bankruptcy filing alone.

Retention of title clauses ('cláusula de reserva de domínio') are enforceable in Brazil and recognised as effective against the estate where the goods remain identifiable and have not been consumed in the ordinary course of business.

Set-off rights ('compensação') are generally preserved in insolvency proceedings. However, a creditor may not apply in set-off a claim acquired after the opening of insolvency proceedings. This restriction is designed to prevent creditors from purchasing other creditors' distressed claims at a discount specifically to deploy them as set-off currency against amounts owed to the debtor, thereby achieving a preferential recovery outside the ordinary distribution framework.

The Brazilian Insolvency Law contains no express disclaimer mechanism equivalent to the rejection of executory contracts under US Chapter 11; however, in a bankruptcy the judicial administrator may opt to refrain from performing onerous contracts, and the counterparty's resulting damages claim is treated as an unsecured claim against the estate.

14. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

The Brazilian Insolvency Law doesn't forbid the sale of assets or entire business, either in a judicial reorganisation or even in a bankruptcy. The sale of non-current assets, however, requires prior judicial authorisation save where expressly contemplated in the reorganisation plan. The 2020 amendments significantly improved the framework for selling productive units ('Unidades Produtivas Isoladas') in both judicial reorganisation and bankruptcy proceedings.

The amendments have codified and expanded this framework, enabling the debtor or judicial administrator to execute total or partial sales of the business as a going concern, free and clear of pre-existing liabilities, including tax debts, labour claims and other encumbrances, with the sale proceeds constituting the exclusive recourse of affected creditors in respect of the transferred assets. This free-and-clear principle had already been established in pre-2020 case law, but the amendments gave it a clearer statutory basis and resolved some of the prior uncertainty about the extent of the liability carve-out.

In judicial reorganisation, asset sales require court authorisation and, where the reorganisation plan so establishes, creditors' approval. In a bankruptcy, sales are conducted by public auction or through court-approved competitive processes; the 2020 amendments expressly permit procedures modelled on investment bank-managed M&A processes.

Credit bidding, the application by a secured creditor of the face value of its claim as acquisition consideration, is permitted under the Brazilian Insolvency Law, subject to court approval and the requirements of a competitive sale process. Pre-packaged restructurings, in which a reorganisation plan is substantially negotiated with key creditors before filing, are well-established in Brazilian practice and are accommodated within the Brazilian Insolvency Law framework, though the statute provides no formal pre-pack mechanism equivalent to the English model. The out-of-court restructuring is, by its nature, a pre-negotiated restructuring and is most closely analogous to the English pre-pack.

15. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor and if so can they be covered by insurances?

Directors and officers of a distressed company are bound by the general duties of loyalty, good-faith and diligence under the Brazilian Corporate Law (Law No. 6.404/1976), together with the specific obligations and prohibitions applicable during judicial reorganisation and bankruptcy proceedings under the Brazilian Insolvency Law. Directors must act in the best interests of the company and must not engage in transactions that will lead to prioritizing some creditors in detriment of others creditors . During reorganisation, the debtor cannot pay pre-petition plan claims, distribute dividends or dispose of assets outside the ordinary course without court authorisation. Breach of these rules can result in personal liability for the directors.

Directors may incur liability in several situations: fraud or wilful misconduct in the management of the company; irregular dissolution; breach of the statutory restrictions applicable during insolvency proceedings; and, in the tax context, the tax execution redirect mechanism, enabling tax authorities to pursue directors and officers personally where corporate taxes remain unpaid and the company has been fraudulently or abusively managed.

The Brazilian Insolvency Law also establishes specific criminal liability for directors and managers in the insolvency context. Articles 168 to 178 set out a range of bankruptcy-related offences, including fraudulent conduct in insolvency proceedings, concealment or dissipation of assets, falsification of accounting records and obstruction of the proceedings. Fraudulent bankruptcy covers acts such as concealing assets, simulating liabilities, destroying or falsifying accounting records, and making preferential payments to certain creditors in the period preceding the filing. The statute also criminalises certain forms of grossly negligent management contributing to insolvency.

Shareholders of limited liability companies and corporations are generally shielded from personal liability for the company's debts, although subject to the doctrine of piercing the corporate veil, invocable on evidence of fraud, asset commingling or abuse of the corporate form. Where such conduct is established, the shareholders may be held personally liable for the company's debts, with recourse to their assets. Directors' and officers' liability may, in certain circumstances, be covered by D&O insurance policies, particularly for listed companies and those active in capital markets, though fraud and criminal conduct are typically excluded from coverage.

16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

The ratification of a judicial reorganisation plan or the conclusion of a bankruptcy does not constitute a general release of directors or other stakeholders from civil or criminal liability for pre-proceeding or in-proceeding conduct. The Law No. 14.112/2020 imposes on the judicial administrator an affirmative obligation to investigate the causes of the debtor's insolvency and identify any fraudulent or unlawful conduct giving rise to potential claims against directors, managers, shareholders or third parties. Where evidence of criminal conduct is found, including fraudulent bankruptcy, embezzlement or misappropriation, the administrator must refer the matter to the public prosecutor.

Director liability may be pursued across several distinct judicial means: civil claims brought by the judicial administrator or individual creditors for breach of fiduciary duty or fraudulent management; tax claims redirected against directors through the tax execution mechanism; labour claims following a successful application to pierce the corporate veil; and criminal prosecution for insolvency-related offences. Brazilian courts have developed a substantial body of case law on director liability in the insolvency context, having consistently demonstrated receptiveness to claims that pre-filing asset stripping or value extraction by insiders was detrimental to the general body of creditors. A reorganisation plan may incorporate provisions releasing specific director from civil liabilities, but only with the express consent of the affected creditors, and any such releases remain subject to judicial scrutiny.

17. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

Brazilian courts may recognise foreign restructuring and insolvency proceedings involving a debtor with assets, creditors or operations in Brazil. The legal framework for cross-border insolvency is the dedicated chapter inserted in 2020 into the Brazilian Insolvency Law (articles 167-A to 167-V), which establishes a recognition regime broadly modelled on the UNCITRAL Model Law on Cross-Border Insolvency. However, Brazil has not formally adopted the Model Law as a standalone instrument and cross-border recognition continues to operate within a hybrid statutory and judicial framework.

Under this framework, a foreign representative may file a request for recognition before the competent Brazilian court. The court examines whether the foreign proceeding qualifies as a foreign proceeding under the statute and whether the formal documentation requirements are satisfied. Recognition may be granted as either a foreign main proceeding, where the debtor's centre of main interests (COMI) is located in the foreign jurisdiction, or a foreign non-main proceeding where the debtor has an establishment but not its COMI there. The classification determines the scope of relief available, with foreign main proceedings generally attracting broader protective effects.

COMI operates as the central connecting factor for classification, in line with UNCITRAL principles. However, its application under Brazilian law remains in development and has yet to be consolidated and supported by a fully settled body of case law. The governing law of the underlying debt is not relevant to the recognition test, although it may be considered in assessing international coordination and jurisdictional comity. Recent practice illustrates a growing maturity of the cross-border framework in both directions. Brazilian judicial reorganisations involving Light, Oi and Americanas have obtained recognition as foreign main proceedings under Chapter 15 of the US Bankruptcy Code, reflecting greater predictability and increased judicial cooperation between Brazilian and US courts.

In parallel, foreign insolvency decisions may also be subject to homologation before the Superior Court of Justice (Superior Tribunal de Justiça) under Brazil's general rules on recognition of foreign judgments. This dual-track structure means that, in practice, recognition outcomes may vary depending on the procedural route adopted and the level of judicial deference afforded in each case.

18. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.

Not applicable.

19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?

Access to Brazilian judicial reorganisation and bankruptcy proceedings is generally restricted to entities qualifying as "empresário" or "sociedade empresária" under Brazilian law, which in practice requires registration with the competent commercial registry in Brazil. As a result, a foreign company without a formally registered branch or subsidiary in Brazil would not ordinarily be eligible to file for judicial reorganisation as a debtor. Brazilian subsidiaries of foreign parent companies are, however, routinely eligible and regularly avail themselves of the Brazilian Insolvency Law framework.

Cross-border issues most commonly arise in cases involving Brazilian entities that have issued debt under New York or English law, where foreign restructuring tools such as schemes of arrangement or Chapter 11 plans seek to produce effects on Brazilian assets or creditors. In these scenarios, the central practical constraint is that foreign insolvency proceedings are not automatically effective in Brazil. Recognition and enforcement require a separate process before the Superior Court of Justice (STJ), which operates under general rules for homologation of foreign judgments. This introduces an additional procedural layer that can materially affect timing, cost and predictability of cross-border restructurings.

In practice, the United States and the United Kingdom are the jurisdictions with the highest volume of cross-border interaction with Brazil, reflecting the predominance of New York and English law-governed instruments in Brazilian international capital markets transactions and the resulting need for coordination between foreign restructuring proceedings and Brazilian insolvency proceedings.

20. How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?

Under Brazilian law, each legal entity within a corporate group is treated as a separate debtor for purposes of the Brazilian Insolvency Law, and there is no general statutory regime providing for substantive consolidation of group insolvencies. The legal framework nonetheless allows members of the same corporate group to file for judicial reorganisation jointly and to present a coordinated restructuring plan covering multiple entities within a single set of proceedings and under unified judicial supervision in lieu of multiple proceedings concerning the exact same matters.

Notwithstanding the principle of legal separateness, Brazilian courts have, in limited and occasion-specific circumstances, applied the doctrine of substantive consolidation ('consolidação substantiva'), effectively merging assets and liabilities where there is clear evidence of asset commingling, patrimonial confusion or abuse of the corporate structure. The doctrine remains exceptional in nature and has been applied inconsistently across cases, reflecting its discretionary and highly contextual character.

The 2020 amendments introduced procedural consolidation ('consolidação processual') as an express statutory mechanism, formally regulated by Article 69-J of the Brazilian Insolvency Law, allowing for the coordinated administration of affiliated proceedings before a single court while preserving the separate legal identity and patrimonial autonomy of each debtor estate. In practice, this mechanism has become the principal tool for managing group restructurings in Brazil, with substantive consolidation remaining a narrowly applied judicial exception.

21. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Brazil has not adopted the UNCITRAL Model Law on Enterprise Group Insolvency, nor is there currently a legislative proposal specifically aimed at its incorporation. The Brazilian framework, therefore, continues to operate without a dedicated cross-border or enterprise-group insolvency regime aligned with the Model Law.

However, Brazilian Insolvency Law has substantially evolved towards improved coordination of group restructurings, particularly following the enactment of Law No. 14.112/2020, which introduced procedural mechanisms allowing for the joint administration of insolvency proceedings involving affiliated companies. These developments remain domestic in scope and do not extend to a formalised group insolvency regime comparable to the UNCITRAL Model Law framework.

22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

The most significant and recent reform to the Brazilian insolvency framework remains Law No. 14.112/2020, which substantially amended Law No. 11.101/2005 (Brazilian Insolvency Law) and modernised key aspects of the restructuring regime, including the introduction of an express statutory framework for DIP (debtor-in-possession) financing, enhanced rules for the sale of assets through sale of assets (Unidades Produtivas Isoladas), codification of the cram-down mechanism, and revisions to the extrajudicial restructuring procedure.

A more significant prospective reform is currently contained in PLP 33/2020 (the "Marco Legal do Reempreendedorismo"), which, as a legislative bill, remains under consideration. The proposal seeks to introduce a dedicated and simplified restructuring and liquidation regime for micro and small enterprises, operating within a distinct framework alongside the existing insolvency regime under Law No. 11.101/2005 and the Micro and Small Business Statute (Complementary Law No. 123/2006). The initiative reflects a policy shift towards a more accessible and less formalistic insolvency environment for smaller debtors.

Beyond these developments, there is currently no comprehensive reform of the Brazilian Insolvency Law under formal legislative discussion. The 2020 reform introduced by Law No. 14.112/2020 remains the most substantial and structurally relevant amendment to the regime, and the framework has since evolved primarily through case law and incremental legislative adjustments rather than any overarching reform initiative.

23. Is your jurisdiction debtor or creditor friendly and was it always the case?

Brazil is widely regarded as a debtor-friendly jurisdiction, a characterisation that reflects both the structural design of Brazilian Insolvency Law and its subsequent judicial interpretation. The judicial reorganisation regime prioritises business continuity and employment preservation, allows management to remain in control of the debtor's operations, and imposes an automatic stay that materially restricts creditor enforcement actions. In practice, the scope of the stay has been extended by courts to encompass even fiduciary-secured assets deemed essential to the debtor's activities, which has significantly strengthened debtor protection in practice.

Historically, Brazil operated under Decree-Law No.

7.661/1945, which governed the former concordata and bankruptcy system. That regime was predominantly liquidation-oriented and highly formalistic, with the concordata functioning more as a statutory moratorium than a genuine restructuring mechanism. Its limited effectiveness in preserving viable businesses was one of the key drivers for reform.

The enactment of Law No. 11.101/2005 marked a structural shift towards a rescue-oriented insolvency framework based on creditor coordination and negotiated restructuring. While the 2005 framework sought to balance debtor rehabilitation with creditor protection, its practical application has progressively evolved in a more debtor-protective direction, particularly through expansive judicial interpretation of the stay and enforcement rules. The 2020 amendments introduced targeted refinements, including the formalisation of DIP financing, enhanced mechanisms for asset sales through UPIs, and a more structured cram-down regime. Nonetheless, the overall system continues to favour restructuring over liquidation, with no general filing obligation and limited legal consequences for delayed recourse to formal insolvency proceedings.

24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the State play in relation to a distressed business (e.g. availability of state support)?

Sociopolitical factors have a material and often outcome-relevant influence on Brazilian insolvency proceedings, particularly in cases involving large-scale employment or sectors with perceived systemic or public importance. While the legal framework is formally creditor-oriented, in practice courts frequently consider employment preservation and broader macroeconomic considerations when assessing restructuring plans, supervising asset sales and managing the scope and duration of the automatic stay. This is reinforced by the statutory priority granted to labour claims in the insolvency waterfall, which gives employees a structurally privileged position in liquidation scenarios and indirectly shapes negotiation dynamics in judicial reorganisation proceedings.

The State is a central, albeit structurally fragmented, stakeholder in Brazilian restructurings, primarily through its role as a tax creditor. Tax claims are excluded from the effects of judicial reorganisation, which creates a persistent tension between insolvency proceedings and fiscal enforcement and has long been a key friction point in achieving comprehensive balance-sheet restructuring. Law No. 14.112/2020 introduced mechanisms for negotiating tax settlements (transação tributária), but their practical effectiveness in restructuring contexts remains uneven, with limited integration into coordinated creditor workouts.

Direct state intervention in the form of financial support, bailouts or formal rescue packages is not a systemic feature of the Brazilian insolvency regime. Intervention tends to be exceptional, reactive and sector-specific, rather than governed by a structured policy framework. As a result, distressed companies generally cannot rely on state-sponsored liquidity support, even where systemic or employment-related considerations are present, with public involvement remaining concentrated instead in regulatory oversight and tax enforcement rather than capital support.

25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

Brazil's insolvency framework is governed by Brazilian Insolvency Law. The biggest practical barriers are still procedural delay, heavy court involvement, and tax-related friction. The 2020 reform was meant to speed up bankruptcy, improve credit recovery, and promote a fresh start.

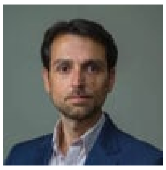
Tax claims remain one of the main obstacles. In Brazilian judicial reorganisation, pre-petition credits are generally subject to the process, but tax claims are treated separately, and Article 57 still requires proof of tax regularity for approval/confirmation of the plan. The Superior Court of Justice has, in recent decisions, mitigated the strict application of Article 57 in cases where the debtor demonstrates good-faith engagement with tax authorities, but the requirement continues to operate as a structural friction point in comprehensive restructurings.

There have also been reforms and new proposals aimed at these barriers. Law No. 14.112/2020 already improved the system by expanding DIP financing, reducing quorums for out-of-court reorganization, allowing labour claims in that procedure, and making liquidation faster through the "no-asset liquidation" route. More recently, PL 3/2024 was approved by the Chamber of Deputies and submitted to the Senate for a second round of voting to simplify bankruptcy further by adding a bankruptcy plan, a creditor-elected fiduciary manager, and faster sale of the estate's assets; another proposal, PL 5610/2025, would clarify which court decides veil-piercing issues in bankruptcy to reduce jurisdictional conflict.

Contributors

Renato Scardoa
Partner

renato.scardoa@sdsadv.com.br



Ricardo Chabu Del Sole
Partner

ricardo.delsole@sdsadv.com.br

Esther Ortuño
Associate

esther.ortuno@sdsadv.com.br

Vitória de Andrade Bolsarin
Associate

vitoria.bolsarin@sdsadv.com.br