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Expedited Debt Restructuring in Latin America

A Regional Overview

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Inter-American Development Bank

Legal Department

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Inter-American Development Bank
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Abstract

The aim of this paper is to provide a comparative analysis of out-of-court alternatives in Latin America. It focuses on the importance of these alternatives to restore financial viability to troubled companies in a scenario of recurrent regional instability. The importance of out-of-court restructuring alternatives lies on their expediency and, to a certain extent, their predictability. This objective of this paper is to contribute to the discussion on expedited corporate debt restructuring in Latin America by providing a thorough up to date regional analysis on pre-packs, pre-negotiated deals and private workouts. The use of expedited debt-restructuring alternatives allows debtors and creditors to negotiate the terms of an agreement in a shorter period of time than traditional reorganization procedures, minimizing the problem of holdout creditors and avoiding long and costly procedures.

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Expedited Debt Restructuring in Latin America: A Regional Overview

Dr. Rodrigo Olivares-Caminal and Gerónimo Frigerio

1. Introduction

When trends in domestic insolvency law regimes around the world are analyzed, one point is strikingly clear: many insolvency laws have been recently amended or are currently under review. One reason is a political and institutional reaction to financial and economic cycles that have given rise to some unforgettable crises (e.g., the Asian crisis of 1997; Argentina's external debt default in 2001 and its banking crisis in 2002; and the 2008 U.S. subprime mortgage crisis and the "credit crunch" crisis). This review of insolvency laws is also a response to the global impetus focused on avoiding liquidation of troubled companies as well as to the adoption of the United Nations Commission on International Trade (UNCITRAL) Model Law on Cross-Border Insolvency.

During the last ten years, Latin America has experienced various financial crises.[3] The most relevant have been the Mexican peso crisis in 1995;[4] Ecuador's financial crisis and default

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[3] Actually, crises in Latin America have occurred throughout its history, but they have become recurrent since the beginning of the eighties due to the high level of sovereign debt being refinanced by new issuances of debt. Due to the number of crises, the decade of the eighties in Latin America is known as the "lost decade." These recurrent crises gave rise to the Baker Plan and its successful successor, the Brady Plan. Since the conception of the Brady Plan in 1989, the Latin American countries of Argentina, Brazil, Costa Rica, the Dominican Republic, Ecuador, Mexico, Panama, Peru, Uruguay, and Venezuela have been able to restructure their unsustainable debt—mostly in syndicated loans—through the issuance of Brady bonds. For more details on the Baker and Brady Plans, see L. Rieffel, *Restructuring Sovereign Debt: The Case for Ad-Hoc Machinery* (Washington: Brookings Institution Press, 2003).

Moreover, in 1989, the economist John Williamson coined the term "Washington Consensus" as a guideline of ten market-oriented reforms to be adopted in state-directed economies of Latin America that were trying to recover from the debt crises of the 1980s. The ten points of the original Washington Consensus were (i) fiscal discipline, (ii) reordering public expenditure priorities, (iii) tax reform, (iv) liberalization of interest rates, (v) a competitive exchange rate, (vi) trade liberalization, (vii) liberalization of inward foreign direct investment, (viii) privatization, (ix) deregulation, and (x) property rights. As stated by Clift, although this ten-point policy package was originally designed as a reform agenda for Latin America, it quickly came to be seen as a model for the wider developing world.

Since the aim of this paper is not to analyze the different financial crises in Latin America, *brevitatis causa,* we will refer only to the most recent ones. For an enlargement on the Washington Consensus, see J. Williamson, "A Short History of the Washington Consensus" (paper presented at the Fundación CIDOB conference "From the Washington Consensus towards a New Global Governance," Barcelona, September 24–25, 2004), available at http://www.iie.com/publications/papers/williamson0904-2.pdf (last visited October 24, 2004), and *What Washington Means by Policy Reform—Latin American Adjustment: How Much Has Happened?* (Washington: Institute of International Economics, 1990). Also see J. Clift, "Beyond the Washington Consensus," *Finance & Development* (International Monetary Fund), September 2003, p. 9, available at http://www.imf.org/external/pubs/ft/fandd/2003/09/pdf/clift.pdf (last visited October 24, 2004), and J. Williamson, "From Reform Agenda to Damaged Brand Name," *Finance & Development* (International Monetary Fund), September 2003, pp. 10–13, available at http://www.imf.org/external/pubs/ft/fandd/2003/09/pdf/williams.pdf (last visited October 24, 2004).

[4] For a detailed description of the Mexican crisis, see D. Arner and T. Slover, "The Mexican Currency Crisis of 1995," in *Financial Crises in the 1990s: A Global Perspective* (London: British Institute of International & Comparative Law, 2002).

on its external debt in 1999;[5] the devaluation of the Brazilian real in 1999;[6] Argentina's external debt default in 2001 and its banking crisis in 2002;[7] and Uruguay's banking crisis and debt reprofiling in 2003.[8] In addition, other financial crises such as the Asian crisis of 1997[9] and the Russian crisis of 1998[10] have had a direct impact on the region, either by deepening recessive periods or by contributing to the origination of the crises previously mentioned.[11]

Given this scenario, it can be said that Latin America has regularly suffered from economic distress and/or has faced financial crisis. The external debt episode of Argentina, which resulted in an acute financial and economic crisis, spurring the biggest default in history, is arguably a clear indicator of the Latin American reality.

Corporations doing business in the region are not immune to this turmoil. As Stone says, corporate restructuring on a large scale usually becomes necessary at times of systemic financial crisis, which can be defined as "a severe disruption of financial markets that, by impairing their ability to function, has large and adverse effects on the economy."[12] Crises do happen, and when they happen, they can have great magnitude.

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[5] See L. Jacome H., "The Late 1990s Financial Crisis in Ecuador: Institutional Weaknesses, Fiscal Rigidities, and Financial Dollarization at Work," International Monetary Fund Working Paper 04/12, available at http://www.imf.org/external/pubs/ft/wp/2004/wp0412.pdf (last visited October 24, 2004), or M.-L. Patiño, "Lessons of the Financial Crisis in Ecuador 1999," *Law & Business Review of the Americas,* Vol. 7 (2001), pp. 589–624.

[6] See Independent Evaluation Office, *The IMF and the Recent Capital Account Crises: Indonesia, Korea, Brazil*, Evaluation Report (Washington: International Monetary Fund, 2003), available at http://www.imf.org/external/np/ieo/2003/cac/pdf/all.pdf (last visited January 17, 2005).

[7] For an enlargement on this issue, see U.S. Congress, Joint Economic Committee, *Argentina's Economic Crisis: Causes and Cures* (June 2003), available at http://www.house.gov/jec (last visited January 17, 2004).

[8] One of the main reasons for Uruguay's crisis was the Argentine crisis. As stated by the Bureau of Western Hemisphere Affairs of the U.S. Department of State in August 2004, "[s]tarting in late 2001, an economic crisis in Argentina undermined Uruguay's economy. . . . In mid-2002 Argentine withdrawals from Uruguayan banks started a bank run that was overcome only by massive borrowing from international financial institutions. This, in turn, led to serious debt sustainability problems" ("Background Note: Uruguay," available at http://www.state.gov/r/pa/ei/bgn/2091.htm, last visited August 7, 2004). In the same line of thinking, see The Economist Global Agenda, "Playing Dominoes," *The Economist*, June 27, 2002, available at http://www.economist.com/research/backgrounders/displaystory.cfm?story_id=1200071 (last visited September 27, 2004).

[9] The countries affected by the 1997–98 Asian economic, currency, and financial crises were Indonesia, Hong Kong, Malaysia, the Philippines, South Korea, and Thailand. For an enlargement on the Asian crisis, see G. Corsetti, P. Pesenti, and N. Roubini, "What Caused the Asian Currency and Financial Crises? Part I: A Macroeconomic View," available at http://www.rgemonitor.com/AsianCrisis.pdf (last visited October 2, 2004), and "What Caused the Asian Currency and Financial Crises? Part II: The Policy Debate," available at http://www.rgemonitor.com/asiacri2.pdf (last visited October 24, 2004). For a comprehensive list of papers on the topic available electronically, see http://www.rgemonitor.com/asian_crisis/basic_readings.html (last visited October 2, 2004).

[10] See B. Pinto, E. Gurvich, and S. Ulatov, "Lessons from the Russian Crisis of 1998 and Recovery," Chapter 9 in J. Aizenman and B. Pinto, eds., *Managing Volatility and Crises: A Practitioner's Guide* (London: Cambridge University Press for the World Bank, 2005), and H. Huang, D. Mark. and C. Xu, "Financial Crisis, Economic Recovery, and Banking Development in Russia, Ukraine, and Other FSU Countries," International Monetary Fund Working Paper 04/105, available at http://www.imf.org/external/pubs/ft/wp/2004/wp04105.pdf.

[11] For example, one of Argentina's leading economic newspapers stated in 2004 that "the Russian Crisis of 1998 originated the declining process in Argentina that finished at the end of 2001 with the default and the subsequent devaluation" (Infobae, *Rusia ensaya una crisis Argentina*, July 8, 2004, available at http://www.infobae.com.ar).

[12] M. Stone, *Corporate Sector Restructuring: The Role of Government in Times of Crisis,* Economic Issues No. 31 (Washington, DC: International Monetary Fund, 2002), available at http://www.imf.org/External/Pubs/FT/issues/issues31/index.htm (last visited January 27, 2005).

During periods of economic stability, corporations invest and try to expand. During recessive periods, corporations try to maintain their market share and develop new lines of business. In both cases, corporations have recourse to different financing techniques to raise the required capital and to achieve their objectives.

Debt grants its holders a right to collect money. Therefore, a corporation is obliged to repay the agreed sums of money, and the fulfillment of this obligation can be enforced by courts, which can eventually lead to a bankruptcy. In the case of equity financing, technically there is no liability. Holders of equity have a residual right over the assets of the company.

Since some corporations operating in the Latin American region usually have an international presence to target different markets either inside or outside the region, they are able to take advantage of financing that can be obtained from other financial markets in foreign currency with better terms, resulting in lower costs. On the other hand, if a corporation does not have international presence and it tries to obtain finance/funding from abroad, the debt will be denominated in a strong foreign currency in order to avoid any currency risk. In both cases, the corporation will end up being indebted in foreign currency, as its income is normally denominated in the local currency of the country where it is based.

Latin American corporations usually raise funds in the capital markets of the United States. Debt will normally be incurred by means of loans or bonds. Equity can be raised by means of initial public offerings or American Depositary Receipts (ADRs), though it is usually the latter. Both equity (stock and ADRs) and debt (bonds or notes) are normally issued through Rule 144-A and Regulation S to target the U.S. market.[13]

As a result of the financing practices described above, when Latin American corporations issue debt, they are usually indebted in foreign currencies. When the economies of the countries of these indebted corporations are going through a recessive period, they are faced with low rates of return. Upon the occurrence of a crisis, Latin American currencies of legal tender—unless they are pegged to the U.S. dollar (USD), as was the case in Argentina between 1991 and early 2002, or unless the USD is the legal tender, as in Ecuador since 2000—are usually devalued, resulting in even lower rates of return (in USD values). While its income is reduced, the burden to repay the principal of and/or pay the interest on the corporation's debt in a foreign and "strong" currency increases. This mismatch in many cases has ended in restructuring episodes. As Rieffel stated, a sharp depreciation of the domestic currency in the course of a crisis causes companies to default on their loans from domestic banks as well as from foreign creditors, rendering a large segment of the corporate sector insolvent.[14]

Upon a slowdown in the economy, overleveraged companies might be faced with distress scenarios in which severe actions would be taken. Depending on the seriousness of the situation, these companies will be illiquid or insolvent.

[13] Rule 144-A is a safe harbor for private resales of securities issued outside the United States to holders within U.S. territory (QIBs) during the seasoning period without the need of registration with the U.S. Securities and Exchange Commission. After a two-year holding period, restricted securities can be freely resold to nonqualified investors in the United States. Regulation S includes the rules governing offers and sales made outside the United States without registration under the Securities Act of 1933. For an in-depth analysis of the interaction of Rule 144-A and Regulation S, see M. I. Steinberg and D. Lansdale, "Regulation S and Rule 144A: Creating a Workable Fiction in an Expanding Global Securities Market," *International Lawyer,* Spring 1995.

[14] Rieffel, *Restructuring Sovereign Debt*, pp. 43–44.

2. The Dynamics of Corporate Debt Restructuring

Liquidity problems are evidenced when a debtor fails to meet its obligations when these obligations are due (liquidity test). Nevertheless, an illiquid debtor might still be solvent despite the fact that it is not able to meet its obligations. However, if the amount of the debtor's obligations exceeds the value of its assets (assets test), and this cannot be reversed in the course of business, irrespective of whether it meets its obligations on time, eventually, the debtor will become insolvent.

The difference between an illiquid and an insolvent company is quite remarkable. The former could resort to some type of reorganization procedure to restore its solvency, while the latter will have to face liquidation. Although there are different shades of grey as a result of the different insolvency laws in Latin America, the liquidation process is straightforward, and some general guidelines applicable to the whole region can be outlined. In a liquidation, the court—with the assistance of a liquidator—will dispose of the assets of the insolvent company and will distribute the proceeds among the company's creditors according to their ranking of priority to collect their claims. An illiquid company, on the other hand, can resort to a restructuring procedure in order to achieve debt sustainability by reducing its debt burden in an orderly manner. Such restructuring procedures can be performed under the auspices of a court or out of court.

Court-supervised procedures are usually lengthy and demand disclosure of detailed financial and commercial information about the company. This could be a recipe for disaster, since many times bad publicity resulting from the disclosure requirements and the time that elapses from the beginning to the end of the restructuring can worsen the state of affairs. If this happens, the situation can change dramatically from illiquidity to insolvency, from a viable company to an unviable one, from restructuring to liquidation, from hope to death penalty.

Out-of-court restructuring procedures are known as "workouts," that is, private arrangements between the parties involved. The main difference between court-supervised and out-of-court procedures is the binding element. In court-supervised procedures, the debtor enjoys the features of a court order that makes the restructuring binding on all creditors involved in the restructuring whether they have accepted the offer or not. For this purpose, the threshold required by the applicable insolvency law has to be achieved.

However, there is a third option that can be interpreted as a combination of court-supervised and out-of-court workouts. Although technically speaking, this third alternative is also court supervised, since it combines features of both court-supervised restructurings and private workouts, it has commonly been referred to as an out-of-court restructuring alternative. The most salient features of this option are the binding effect of a court-supervised restructuring and the expedited attribute of private workouts. This third alternative includes what are known as prepackaged and prenegotiated deals.

Norton[15] states that, besides the court-supervised reorganization, if a corporation is financially troubled and decides to restructure its debt to find its way to recovery, it will be faced with other alternatives that, for the most part, are negotiated and implemented out of court, that is, (1) out-of-court reorganization or nonbankruptcy private workouts, (2) prepackaged reorga-

[15] See W. L. Norton Jr., *Norton Bankruptcy Law and Practice*, 2nd ed. (Eagan, MN: Thomson-West, 1999), sec. 86:1.

nization plans, and (3) prearranged or prenegotiated reorganization plans. These three alternatives can be defined and characterized as follows:[16]

(1) An *out-of-court reorganization* or *nonbankruptcy workout* is a financial restructuring of a company by means of an understanding between the debtor and its creditors without the intervention of any court or regulatory authority. It is a contractual voluntary agreement in which the terms and conditions are agreed between the parties.

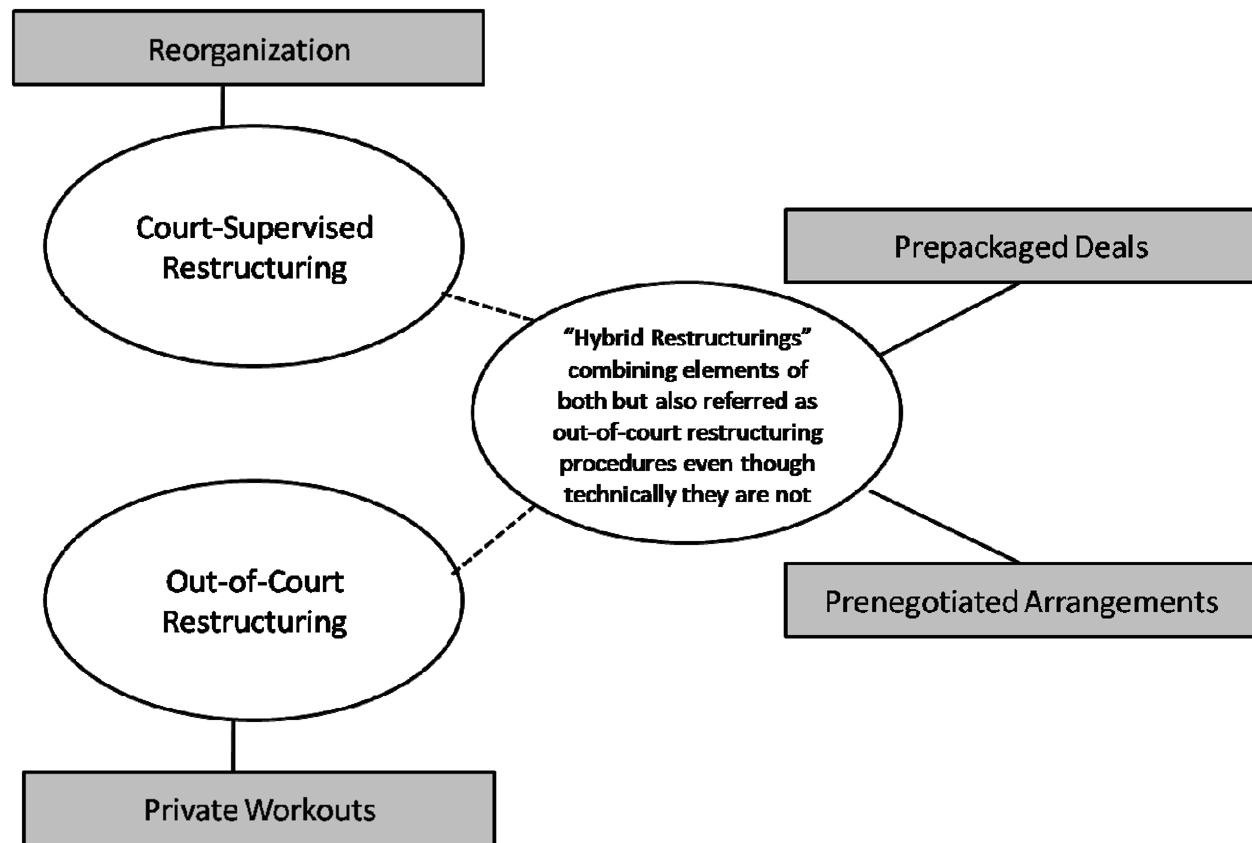
(2) A *prepackaged reorganization plan* (or simply "prepack") is a procedure that a company can have recourse to if it either is in default or has general economic or financial difficulties. Through this procedure a company can design and negotiate a settlement with its creditors without having to file a full court-supervised reorganization procedure. The aim of prepackaged reorganization plans is to enhance the efficiency of the insolvency procedures by permitting a fast recovery from a situation that might lead to a bankruptcy and its implications. Upon the filing of the agreement reached by the parties (evidencing the required degree of creditors' participation), the court or regulatory authority reviews whether the agreement fulfills the minimum requirements set forth by law and proceeds to homologate it. If the agreement is approved by the court, it becomes binding on all creditors affected by the said agreement even though they may have not participated, rejected it, or abstained from voting on it.

(3) A *prearranged* or *prenegotiated plan* (*prenegotiated agreement*) is similar to a prepackaged reorganization plan, since it is also negotiated between the debtor and its creditors on an out-of-court basis and then is filed with a court to obtain the benefits of its approval. Although the parties conduct substantial negotiations prior to the filing, there is no formal solicitation of votes. As stated by Jacoby,[17] the difference between the prepackaged reorganization plan and the prearranged or prenegotiated plan lies in whether the agreement is "prevoted" or "postvoted."

The diagram at the top of the next page summarizes the different options available to a company facing liquidity problems: (1) court supervised: a reorganization plan; and (2) out of court: (a) private workouts, (b) prepackaged deals, and (c) prenegotiated arrangements.

[16] Ibid.

[17] M. B. Jacoby, "Prepacks and the Deal-Litigation Tension," *American Bankruptcy Institute Journal* 23(2) (March 2004), p. 34.



A report produced on Argentine corporations after that country's latest crisis stated that restructurings worth more than USD 31.5 billion have taken place, involving 95 percent of the stock of corporate bonds.[18] Therefore, the aim of this paper is to perform a comparative analysis of these out-of-court alternatives in Latin America,[19] focusing on their importance for restoring financial viability of troubled companies, which due to the instability in the region is required on a regular basis. The importance of the out-of-court restructuring alternatives lies in their expediency and to a certain extent, their predictability. In short, the idea is to provide the reader with an up-to-date description of the situation in the Latin American region regarding corporate debt restructuring by means of so-called out-of-court reorganization alternatives (prepacks, prenegotiated deals, and private workouts).

[18] See A. Milne, A. Panton, and B. Saez, "Argentina Corporates 2003–2004: From Ashes to APEs" (unpublished, Deutsche Bank, 2003).
[19] As noted in footnote 1, the analysis in this paper includes neither the Latin American countries of Central America nor those in the Caribbean.

3. Prepackaged Reorganization Plans in Latin America[20]

Recently, many Latin American countries have amended their bankruptcy laws, and a new push has been given to the use of prepacks (e.g., in Argentina) or the inclusion of this alternative in insolvency legislation for the first time (e.g., in Brazil or Mexico). A brief reference to out-of-court restructuring alternatives of each Latin American country is provided in the following subsections.

3.1. Argentina (prepack deals)

On May 15, 2002, as a result of the financial and economic crisis of 2001–2002, Law No. 25,589 was passed to amend Argentine Bankruptcy Law No. 24,522, as previously amended and restated by Law No. 25,563. Among other things, the provisions of the prepackaged reorganization plan (*Acuerdo Preventivo Extrajudicial,* or APE) were amended to boost the use of this tool as a mechanism to solve the debt imbalance that many Argentine companies were facing.

A debtor that suspends its payments or has economic or financial difficulties may reach an agreement with its creditors and submit the agreement for judicial homologation. For judicial homologation of the agreement to be requested, Argentine Bankruptcy Law (ABL) states that it is necessary to attain a double threshold: approval by (1) an absolute majority (more than 50 percent) of unsecured creditors on a head-count basis (i.e., numerosity), and (2) holders of at least two-thirds (66⅔ percent) of the aggregate amount of unsecured liabilities.[21] Upon the filing with the court to obtain the judicial approval or homologation, all actions against the debtor involving monetary claims are stayed as of that date.[22]

So far, Argentine courts have applied by analogy certain provisions of the reorganization procedure (*concurso preventivo*) to clarify or fill in certain gaps in the APE regime. The most relevant provision is Section 45bis of the Argentine Bankruptcy Law, which deals with the voting system for securities issued in series (e.g., notes or bonds). Section 45bis, as applicable to the APE, provides that (1) a meeting summoned by the trustee appointed by the Court, or when pertinent by the Court, shall be held; (2) at the meeting, the creditors that attend will approve or reject the proposed agreement (in the event there are options and the proposal is approved, and shall state which alternative they support); and (3) the consent shall be calculated by the capital representing all those who have accepted the proposal and as though granted by one single

[20] This section draws from an article by the first author, "Corporate Debt Restructuring in Latin America: New Developments—New Opportunities?" *International Company and Commercial Law Review* no. 6 (2005), pp. 254–62. Substantial amendments have since been introduced in the legal systems of the region, and therefore a revised version is required.

[21] See Law 24,522, art. 73. Moreover, according to the general reorganization rules under Argentine law, in the event of securities issued in series, the voting system is as follows: (i) a meeting summoned by the trustee appointed by the Court or, when pertinent by the Court, shall be held; (ii) at the meeting, the creditors that attend will approve or reject the proposed agreement (in the event there are options and the proposal is approved, and shall state which alternative they support); and (iii) the consent shall be calculated by the capital representing all those who have accepted the proposal and as though granted by one single person; rejections shall also be calculated as one single person.

[22] Litigation as to condemnation matters and actions based on family relationships are exempt from the stay. See sec. 21, par. 2, of the ABL. Additionally, no new actions involving monetary issues against the debtor on account of any cause or title prior to the filing shall be brought. See sec. 21, par. 3, of the ABL.

person; rejections shall also be calculated as one single person.[23] Each series is counted as a single person, and if, among creditors in a particular series, there are votes in favor and against the proposal, the series will be considered as tendered twice, once in favor and once against, representing both capital in favor of and against the proposal. In a hypothetical situation: if, for example, there were five creditor banks and five bond series, then there would be ten votes, five for the banks (one per bank) and five for the bond series (one per series). However, if, in a particular bond series, there were both creditors voting for and creditors voting against the proposal, there would be two votes for that series (i.e., one covering the creditors voting in favor, the other covering the creditors voting against). Therefore, there could potentially be a maximum of fifteen votes in this scenario: five from each bank; five in favor of the proposal, one from each bond series; and five against the proposal, one from each bond series.

The following table illustrates with an actual example how votes (in numerosity) of a series of debt instruments are calculated.

Votes Tendered in the Multicanal Case

Aggregate Amount of Unsecured Liabilities		
Type of Creditor	**In Favor**	**Against**
Noteholders	USD 318,599,001	USD 159,083,024
Bank Loans	USD 18,542,827	---
Total	USD 337,141,828	USD 159,083,024
Percentage	68%	32%
ABL Requirement	66⅔%	n.a.

Numerosity		
Type of Creditor	**In Favor**	**Against**
Noteholders	5	5
Bank Loans	5	---
Total	10	5
Percentage	66.6%	33.3%
ABL Requirement	>50%	n.a.

The main effects of the homologation of the agreement are (1) the novation of all the obligations having an origin or cause prior to the agreement and (2) its applicability to claims with respect to all general creditors included in the agreement, even if they have not participated in the restructuring or if they are opposed to it.[24]

[23] See sec. 45bis of the ABL.
[24] See Law 24,522, art. 56.

3.2. Bolivia (prenegotiated plans)

In 2003 Bolivia passed Law 2,495, the "Corporate Voluntary Restructuring Law," which specifically dealt with prenegotiated reorganization plans. In February 2004, Decree No. 27,384 was enacted to regulate Law 2,495.[25]

Prenegotiated reorganization plans are referred to in the law as "transactional agreements."[26] Once the debtor has negotiated a transactional agreement, it requests the approval of said agreement by the supervisory authority of the corporation (*Superintendencia de Empresas*). A trustee is appointed by the corporation's supervisory authority to oversee the whole proceeding and to summon a general meeting to decide on the transactional agreement. If the agreement is approved by the required majority, it is mandatory for all the creditors to accept it, and it results in the novation of the original obligations. The agreement can include (1) restructuring of assets, debts, and businesses of the debtor; (2) rescheduling of debts, standstills, write-offs, forgiveness, subordination of credits or capitalizations; (3) applicable interests; (4) administration regime; (5) total or partial sales, payments in kind, mergers, spin-offs and transformations of the business; (6) incurring additional debts for new investments or an increase of the working force;[27] (7) amendments to the terms of debt instruments; and (8) any other possibilities contemplated by the creditors and debtor.[28]

Resolutions can be adopted with a favorable vote by creditors holding 66⅔ percent of the capital whose owners are registered to vote.[29] The creditors' meeting quorum is met by creditors representing the majority of the total registered debt.[30] If this quorum is not achieved, a second meeting will be summoned, and a valid resolution can be adopted with any number of creditors present, regardless of the amount of capital that they represent.[31] A resolution validly adopted by the creditors' meeting is binding on the debtor and its creditors, including those that either did not attend the meeting or voted against the resolution.[32]

In addition to this prenegotiated procedure, Bolivian laws include universal liquidation procedures against debtors based on Article 1,335 of the Civil Code, which establishes that the patrimony of the debtor acts as a common guarantee to its creditors. The legal framework also provides for a different regime depending on the type of debtor, that is, personal insolvency for persons and commercial insolvency for tradesmen and corporations. Personal insolvency is regulated under the Procedure Code, and it could be necessary (or mandatory) to initiate it upon a request by the creditor(s),[33] or it can also be initiated voluntarily upon request of the debtor. Commercial insolvency is regulated under the Commercial Code and is mainly divided into two procedures: reorganization and insolvency.

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[25] It is common in certain Latin American countries that after a law is passed, the executive enacts a regulatory decree to clarify or enlarge the scope of certain aspects of the law to make it operative. These decrees are not supposed to affect or modify the essence of the law.
[26] See Law 2,495, art. 1.
[27] These new credits will rank ahead of those that are part of the restructuring under Law 2,495.
[28] See Law 2,495, art. 2.
[29] See Law 2,495, art. 15.
[30] See Law 2,495, art. 14.
[31] See ibid.
[32] See Law 2,495, art. 13.
[33] Article 1,465 of the Civil Code of Bolivia.

3.3. Brazil (prepack deals)

Brazil recently passed a new bankruptcy law (*Lei de Falências*) on December 15, 2004, after the law had been considered by the Congress for more than ten years. It replaced the previous insolvency law of 1945 (Decree Law 7,661). The main features of the new law, Law No. 11,101/05, are (1) the inclusion of an "extrajudicial restructuring" procedure to restructure debts—excluding labor and tax debts[34]—on an out-of-court basis (*Recuperação Extrajudicial,* which is similar to the prepackaged reorganizations under the U.S. Bankruptcy Code[35]); and (2) the reorganization of priority ranking, enhancing banks' lending on a real security basis.

This resulted in a substantial change in Brazil's insolvency procedures, because prior to the passage of Law No. 11,101/05, a negotiation between a debtor and its creditors could be considered an "act of bankruptcy." Therefore, despite the debtor's solvency, as a result of the existence of an act of bankruptcy, creditors were able to file a bankruptcy petition against the debtor.[36]

The law provides for two types of out-of-court reorganization procedures:

(1) Homologation of Consensus (*Recuperação Homologatória)*: This is a simple homologation by the court of an agreement reached between the debtor and those creditors that are a party to it. The homologation obligates only those parties that have entered the agreement.

(2) Enforcement of Agreement (*Recuperação Impositiva*): This is an imposition by the court of a plan agreed and signed by creditors representing at least 60 percent of the total amount of credit. The debtor can divide creditors into different classes and propose a plan for each class, however, the 60 percent threshold must be reached in each class.[37] The homologation of the plan by the court binds all the creditors affected by it.

The diagram at the top of the next page summarizes these two Brazilian out-of-court reorganization procedures. Besides these two out-of-court restructuring procedures, Law 11,101/05 also provides for a judicial reorganization (*Recuperação Judicial*) under the auspices of a court.

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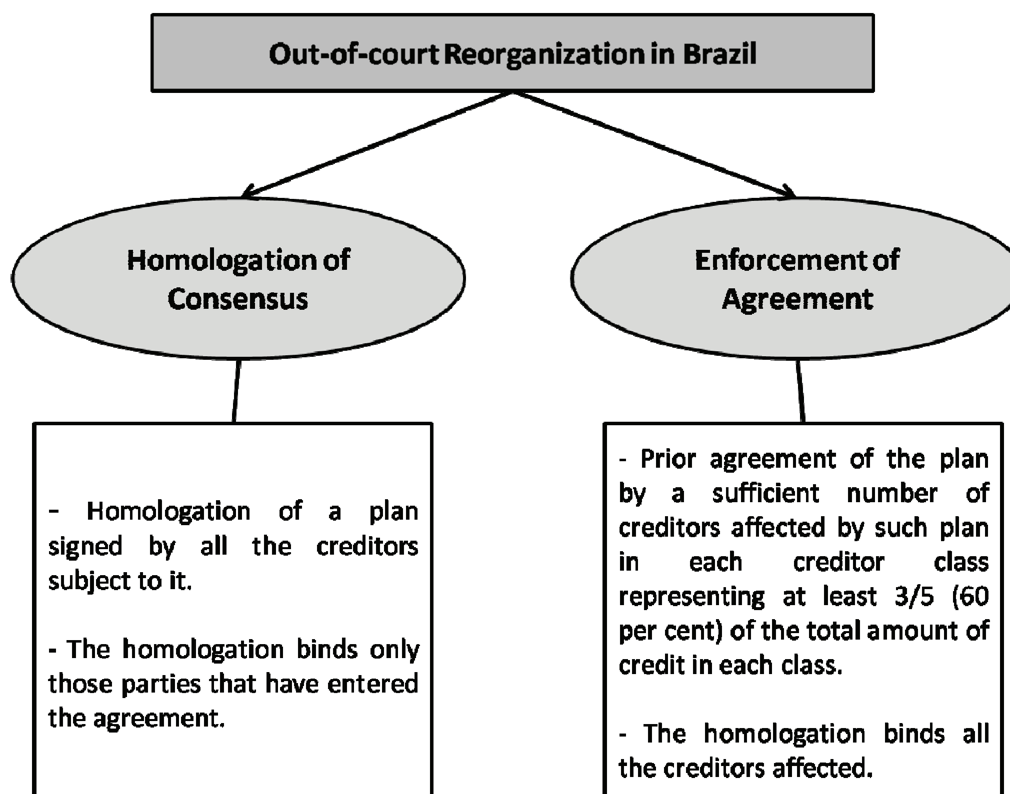
[34] See Law 11,101/05, art. 161, sec. 1, where two other specific situations are also excluded.

[35] 11 U.S.C. sec.1126 et seq.

[36] As noted by Valente-do-Paiva, the impossibility of reaching an agreement has been avoided by means of fronting, that is, involving a third party to intercede between the creditor and the debtor in the negotiations and by an assignment of credit to the third party (see L. F. Valente-do-Paiva, "Brazil's Two New Mechanisms for Out-of-Court Reorganizations: Homologation of Consensus and Enforcement of Agreement," in R. Olivares-Caminal, ed., *Expedited Debt Restructuring: An International Comparative Analysis* [Alphen aan den Rijn, the Netherlands: Kluwer Law International, 2007], p. 99).

[37] See Law 11,101/05, art. 163.



3.4. Chile (nonbankruptcy workouts)

The provisions regarding reorganization agreements in Chile are included in Bankruptcy Law No. 18,175 (as amended and restated on May 31, 2002, and March 8, 2005).

Chilean insolvency law provides two possible proceedings, namely, reorganization (*convenio judicial preventivo*) and bankruptcy (*quiebra*). Under Chilean law, there are three different types of agreements. Two types of agreement are under the supervision of the court; the one that is executed before the declaration of bankruptcy is a "preventive agreement" (*convenio judicial preventivo*), and the one that is executed after the declaration of bankruptcy is a "judicial agreement" (*convenio simplemente judicial*).[38] The difference between these two court-supervised agreements is the moment of execution; the former can be executed prior to the formal declaration of bankruptcy, and the latter after the declaration of bankruptcy.

The third type of agreement referred to in the Chilean bankruptcy law is a private agreement, which can be obtained only on a unanimous basis (i.e., involving all the creditors).[39] If a unanimous agreement is not obtained, the agreement will be binding only on those who have entered into the agreement and will be considered a contract executed only among those parties

[38] Law 18,175, art. 173.
[39] Law 18,175, art. 169.

involved without affecting the original obligations. In other words, it is a private arrangement between the parties. It can be reached at any time, but since it has to be reached with all creditors to be applicable on all creditors, it provides room for holdout maneuvers. This notwithstanding, a creditor who was not a part of the agreement can demand to be subject to it, accepting the same agreed terms.[40]

A nonbankruptcy or out-of-court agreement, that is, one that has not involved the initiation of any procedure before the bankruptcy courts, can be executed with the agreement of some or all creditors. Although only those that took part in it will be subject to its terms, it at least allows the debtor to renegotiate some of its liabilities. The difference between this "full" nonbankruptcy arrangement (i.e., not having initiated a reorganization- or insolvency-type procedure) and a private agreement after a reorganization or insolvency procedure has been initiated is that the former can be executed with a group of creditors, while the latter has to be unanimous.

3.5. Colombia (prepack deals)

The main expedited framework for bankruptcy in Colombia was established by Law No. 550, passed in December 1999. This was a temporary law in the face of a crisis period in Colombia. The validity of this law was originally limited to a period of five years from its publication date, but its validity was extended until July 1, 2007, by means of Law No. 922.[41] The expedited procedure (prepack deals) contemplated in this law proved to be very successful. Therefore, in 2006 a new insolvency law, Law No. 1,116—as amended and restated by Law 1,173 and Decree 2190/07—was passed, incorporating prepackaged expedited restructuring procedures as part of the country's main insolvency law.[42] Although as a general rule, Law 1,116 applies, Law 550 would still be applicable to restructuring agreements involving "territorial entities,"[43] political subdivisions and national universities.[44]

Under the procedures, the debtor and its creditors can execute a restructuring agreement and request a judge with personal and subject matter jurisdiction to validate the agreement.[45] Validation of the agreement will imply an analysis of its observation of the law, in other words, that it fulfills the following requirements: (1) that it involves the majorities required by law, (2) that negotiations were open and had enough publicity, (3) that all creditors of the same class have the same rights, and (4) that it is not abusive and is subject to the rule of law.[46]

The law requires an affirmative vote by a simple majority (more than 50 percent) of a plural number of internal or external creditors of the debtor company, which also must represent the simple majority of the admissible votes. Moreover, these votes must also include creditors from at least three of the creditor categories provided by the law[47] (i.e., labor creditors; public entities and social security institutions; financial institutions and other entities subject to the

[40] Law 18,175, art. 172.
[41] Published in the *Official Gazette* No. 45,776, December 29, 2004.
[42] Published in the *Official Gazette* No. 46,494, December 27, 2006.
[43] According to Article 286 of the Colombian Constitution, "territorial entities" are the provinces, administrative divisions, municipalities, and indigenous territories.
[44] Colombian Insolvency Law, art. 125.
[45] Colombian Insolvency Law, art. 84.
[46] Ibid.
[47] Colombian Insolvency Law, art. 31.

supervision of the Financial Authority; internal creditors;[48] and other external creditors).[49] However, if the votes of 75 percent of the creditors are obtained, there is no need to fulfill the requirement regarding the different classes of creditors.[50] In the event that internal creditors or corporate-related creditors represent the majority required by law, the additional vote of creditors representing 25 percent of the remaining votes will be required.[51]

If the financial terms of the credit are going to be altered (e.g., maturity extension, stay, write-offs) in such a way that as result of the restructuring, payments less than the face value of the credit are to be made, a special majority will be required. The special majority is set at 60 percent of the external creditors' admissible votes, regardless of the internal creditors' votes.[52]

Within three days after the filing of the agreement with the court, the judge will summon creditors to a hearing (to be held within a maximum of five days) to provide any arguments against the agreement.[53] The judge can suspend the hearing for a maximum term of eight days for the restructuring agreement to be amended, if needed.[54]

Once the agreement has been approved by the court, it will be binding on the debtor and its creditors, including those that did not participate in its negotiation or voted against it.

3.6. Ecuador (nonbankruptcy workouts)

Under Ecuadorian law, insolvency procedures are regulated by the Insolvency Law (*Ley de Concurso Preventivo*), published in the *Official Gazette* on May 8, 1997, and the Law for the Economic Transformation of Ecuador, Law No. 4, RO/Sup 34, dated March 13, 2000. The aim of both laws is to promote corporate rescue.

In the case of corporations, the Insolvency Law contemplates two possible scenarios: rescue or bankruptcy.[55] In both cases, the law provides for the creation of "Rescue Centers," which would be subdivisions of the Chambers of Commerce in each jurisdiction with supervisory functions to oversee the bankruptcy or rescue procedure.[56] However, the only rescue procedure is a traditional reorganization plan under the auspices of the Insolvency Law, which includes no expedited procedure. Nevertheless, Article 56 of the Insolvency Law grants the possibility of submitting a rescue agreement together with a reorganization request. This could imply that the debtor can negotiate an agreement, obtain the consent of the required majority (51 percent of each class of creditors[57]), and submit all together to the Rescue Center. This possibility, although not tested, could prove successful, but it would require a report by the Rescue Center that then has to be submitted with all the documentation to a judge for approval.[58]

[48] Internal creditors are those who hold shares, quotas, interests, and/or any other form of participation in the company. There is a special formula for calculating the right to vote of internal creditors (see art. 31, "parágrafo").
[49] If only three creditor categories are part of the agreement, the requirement is reduced to two categories. But if only two categories are applicable, the votes must be from both categories. See Law 1,116, art. 31.
[50] Colombian Insolvency Law, art. 31.
[51] A complete description of the scope of "corporate-related creditors" is provided in Colombian Insolvency Law, art. 32.
[52] Colombian Insolvency Law, art. 33.
[53] Colombian Insolvency Law, art. 35.
[54] Ibid.
[55] Ecuadorian Insolvency Law, art. 5.
[56] See Ecuadorian Insolvency Law, arts. 2 and 18.
[57] Ecuadorian Insolvency Law, art. 59.
[58] Ecuadorian Insolvency Law, art. 60.

The Rescue Center is an administrative institution created by the law to promote the understanding of the parties in favor of rescuing companies, but as an additional institution, it can prove burdensome and not as expeditious as expected.

In summary, Ecuador does not have an expedited procedure. Under the provisions of the law, something can be contrived, but the outcome is uncertain. Private workouts binding among the signatory parties are the other available option. The downside of these types of agreements is that they bind only those creditors that took part in generating them.

3.7. Mexico (prepacks)

On May 12, 2000, Mexico passed the so-called Law of Commercial Insolvency, amending its 1943 insolvency law. According to the law itself, the preservation of businesses and the avoidance of default, due to its risks to the company itself as well as to other companies, is a matter of public interest.[59] The main features of this law are that it modernizes the old insolvency law, incorporates virtually all the provisions of the UNCITRAL Model Law on Cross-Border Insolvency, and in its aim of providing transparency, creates a quasi-judicial agency (Instituto Federal de Especialistas de Concursos Mercantiles, or INFECOM) to oversee the administration of insolvency cases.[60]

Although Mexico's amendment was relatively recent, it includes neither prepackaged arrangements nor prenegotiated agreements. However, Mexico's insolvency law underwent further amendments in December 2007 to include an expedited procedure. Although this new expedited procedure strictly cannot be considered a prepackaged deal, if the required majority is achieved, it can work as a prepack.

According to the 2007 amendments, a company can request a reorganization procedure (*concurso*) with a previously existing restructuring plan.[61] There are two prerequisites:

(1) that the debtor be in a "generalized breach of payment of obligations";[62] and
(2) that a restructuring plan has already been agreed by creditors representing at least 40 percent of the total of the company's debts.[63]

A debtor is in a "generalized breach of payment of obligations" when it misses payments to two or more creditors over a thirty-day period, these missed payments represent at least 35 percent of the debtor's total debts, and the assets of the debtor do not cover 80 percent of its total outstanding debts.[64]

The new "reorganization procedure with a previously existing restructuring plan" provides that if the agreement of 40 percent of the debtor's creditors is achieved, the court will declare the procedure open and streamline certain requirements provided in the law (e.g., no need to appoint an overseer or *visitador* to review the status of the company and its various

[59] See Mexican Insolvency Law, art. 1.
[60] See J. Fernandez-McEvoy, "Mexico's New Insolvency Act: Increasing Fairness and Efficiency in the Administration of Domestic and Cross-Border Cases (Part I)," *ABI Journal* (July/August 2000), p. 16.
[61] Mexican Insolvency Law, art. 339.
[62] Mexican Insolvency Law, art. 10.
[63] Mexican Insolvency Law, art. 339.
[64] Mexican Insolvency Law, art. 10, I and II.

debts).[65] However, the debtor will still be subject to the requirements of any reorganization procedure (*concurso*) as if there were no "previously existing restructuring plan." In other words, the purpose of the "previously existing restructuring plan" is to speed up the administrative times required to approve the reorganization procedure and the analysis of the status of the company and its debts. However, it is important to stress that if 50 percent of votes of unsecured and secured or preferred creditors are obtained beforehand, the agreement can be approved.[66] Note that as stated above, 40 percent of the votes are required to open the procedure, while 50 percent are required for approval. Therefore, if 50 percent is achieved, it could work as a prepack, since the law contemplates an expedited opening of the procedure (Article 339) and the requirements to approve a restructuring plan have already been achieved (Article 157).

According to Article 162 of the Mexican Insolvency Law, the agreed restructuring proposal can be challenged within five days after the court makes it public. After the expiration of this five-day term, the judge will pass a resolution approving the agreement, unless there are creditors opposed to it and their arguments have merit. If the restructuring agreement is approved, it will bind (1) the debtor, (2) unsecured creditors, (3) secured and preferred creditors who had agreed to the restructuring plan, and (4) secured and preferred creditors whose credit is contemplated as part of the agreement.[67]

3.8. Paraguay (nonbankruptcy workouts)

In Paraguay, Law 154 of 1969 provides the framework for insolvency procedures. This law is now forty years old. It was conceived under a different insolvency trend, that is, one in which the priority was to sanction the nonperforming company rather than trying to rescue it. Therefore, it is a very rigid law with not much scope for reaching a restructuring agreement that could favor the rescue of a troubled entity. The only expedited alternative could be a private workout.

3.9. Peru (prenegotiated plans)

The insolvency framework in Peru was amended in October 2002 by Law No. 27,809 (*Ley General del Sistema Concursal*) and more recently in June 2008 by Decree No. 1,050. The insolvency proceedings are led and supervised by an administrative authority known by its acronym INDECOPI (National Institute for Competition and Protection of Intellectual Property). Prepacks are not an alternative in Peru, but the law contemplates the possibility of prenegotiated arrangements. Peru is a curious case because in prenegotiated agreements, the normal role of the court is performed by an administrative authority, with the role of the courts limited to certain exceptional circumstances once the administrative institution has been exhausted.

Under Peruvian law, there are two reorganization procedures (*concursos*): (1) preventive reorganization and (2) ordinary reorganization. The preventive reorganization procedure can be initiated only upon the debtor's request. It is an expedited and simplified reorganization procedure, compared to ordinary reorganization. If a debtor submits a preventive reorganization procedure request to INDECOPI and does not obtain a "global restructuring agreement" with its creditors, INDECOPI will initiate an ordinary reorganization procedure. In order to obtain the

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[65] Mexican Insolvency Law, art. 341.
[66] Mexican Insolvency Law, art. 157.
[67] Mexican Insolvency Law, art. 165.

approval of the global restructuring agreement, creditors are summoned to a general meeting.[68] The agreement can be adopted with the vote of those holding more than 66.6 percent of the total liabilities at the first meeting (first call), and with the vote of more than 66.6 percent of the liabilities present at the second meeting (second call).[69]

The approval of the global restructuring agreement obligates the debtor and all of its creditors that the debtor has included in it, whether they have agreed, or are opposed, or have not attended, or have not requested the inclusion of their credit. In other words, if the debtor has included their credit as part of the agreement and the required majority is reached, they are bound by the agreement.[70] If a global restructuring agreement is not reached, creditors can continue exercising their legal rights to collect. Creditors can decide to terminate the preventive restructuring procedure, that is, to reject the global restructuring agreement or to file an ordinary reorganization procedure. The latter requires, at the first meeting called, the favorable vote of those holding a simple majority of the total liabilities (and, at the second meeting called, the favorable vote of those holding a simple majority of the liabilities among those present at the meeting)[71] and has as a prerequisite that the debtor has requested a moratorium on the debt payments.

3.10. Uruguay (prepack deals)

On August 21, 2006, the Uruguayan Executive Branch submitted a bill to the Congress containing a new insolvency law. Law No. 18,387 was passed and duly published in the *Official Gazette* on November 3, 2008. Title XI of Law No. 18,387 contains the provisions related to expedited restructuring procedures, under the heading "Private Reorganization Agreements."

According to Section 214 of the new insolvency law, a debtor can enter into a reorganization agreement with creditors representing at least 75 percent of unsecured claims whose holders have voting rights.[72] The agreement proposal cannot be subject to any conditions.[73] If an agreement is reached, the debtor has two choices: (1) keep the agreement private, with only the requirement of involving a notary public to comply with certain formality requirements; or (2) request a judicial homologation of the agreement.[74]

If the debtor achieves the required majorities and proceeds with a private agreement, it will have to notify all the parties that have not entered into the agreement to make it enforceable in regard to them.[75] The nonsignatories have a twenty-day period in which to oppose the agreement.[76] Once the twenty-day period has elapsed, the debtor can convert the agreement and

[68] Law 27,809, art. 51.1.
[69] Law 27,809, art. 53.1.
[70] Law 27,809, art. 67.
[71] Law 27,809, art. 53.2.
[72] In the event that some creditors or a class of creditors receives a preferential offer, an aggravated majority will be required. See Law 18,387, art. 45.
[73] See Law 18,387, art. 140. This article provides for an exception in the case of reorganization of a group of companies, subject to judicial approval.
[74] See Law 18,387, art. 215.
[75] See Law 18,387, art. 216. Article 217 establishes the requirement to perform the notification.
[76] See Law 18,387, art. 216.

the evidence that all creditors have been notified of the agreement into a public deed.[77] A summary of the agreement has to be published in the *Official Gazette* for three days.[78]

Creditors may oppose to the agreement during the twenty-day window based on any of the following grounds: (1) that the agreement is contrary to the rule of law, (2) that the required majorities have not been reached (or have been reached by fraudulent or coercive means), (3) that the agreement is unviable, or (4) that the debtor has fraudulently increased or decreased its assets and/or liabilities.[79] If a creditor opposes the agreement, a competent judge will decide within ten days whether the creditor's claim will be rejected and the agreement homologated, or the agreement will be declared null and void and a court-supervised reorganization procedure will commence upon the request of a creditor.[80]

If the debtor has opted for the homologation of the agreement, the competent judge has two days to issue a court order homologating the agreement, provided that all the formal requirements have been fulfilled.[81] This court order will be registered[82] and published in the *Official Gazette.*[83] Once the agreement has been homologated and the opposition period has elapsed, the agreement will be enforceable against all creditors, and it will imply a novation of the original claims.[84]

3.11. Venezuela (nonbankruptcy workouts)

Finally, in Venezuela, the norms regarding insolvency are included in the Commercial Code (as amended and restated in 1955).[85]

In Venezuela there is no possibility of resorting to prepack or prenegotiated deals. This notwithstanding, private contractual arrangements can be achieved with creditors. A supermajority would not be able to bind a dissenting minority as is the case in other countries that have prepacks or prenegotiated plans. This country's insolvency regime appears to be outdated and out of touch with today's business practices.

4. A Regional Overview: The Challenge of Legal Reform

Since corporations that are doing business in countries undergoing financial crises are not exempt from the turmoil, it can be argued that the recently amended insolvency laws are aiming for expedited debt-restructuring procedures. Clear examples are the recently amended laws of Argentina (2002), Brazil (2004), and Mexico (2007), all of which streamlined or included an expedited debt-restructuring procedure similar to the U.S. Chapter 11 prepackaged deals. Also, Peru (2002) and Bolivia (2003) adopted prenegotiated plans as a restructuring option. The difference between the prepackaged deals and prenegotiated plans is the moment of solicitation

[77] See Law 18,387, art. 218.
[78] See Law 18,387, art. 219.
[79] See Law 18,387, art. 220.
[80] See ibid.
[81] See Law 18,387, art. 222. For details on the requirements, see arts. 221 and 217.
[82] See Law 18,387, art. 223.
[83] See Law 18,387, art. 224.
[84] See Law 18,387, arts. 230, 158, 159.
[85] Art. 898 et seq.

of the creditor's consent. As clearly stated by Jacoby,[86] the difference is whether the agreement is prevoted or postvoted and assessed as of the moment that a court approval (homologation) is requested by the debtor. The key element of these expedited mechanisms is that by giving limited scope for intervention to the court, the debtor has the chance to "cram down" the dissenting minorities, thereby solving the ever-feared problem of holdout creditors.

The scope for intervention of the court is limited in the sense that the court's role would be limited to (1) ensuring that certain principles (equity, fairness, etc.) have not been violated by the debtor and that the required restructuring threshold has been achieved and (2) homologating the approved plan/agreement, making it mandatory for the dissenting minority. If a prenegotiated plan has been put before the court for approval, the court will also have to summon creditors to vote on the plan under the auspices of the court. However, the debtor cannot request the court's approval if it has not—as the procedure's name indicates—prenegotiated the creditor's consent. It is worth noting that there are some countries where such proceedings do not even involve a court and where the overseeing authority is an administrative entity (e.g., Peru and Bolivia).

Importantly, the substance of the new expedited bankruptcy laws is that they provide a signal to creditors that they may be better off engaging in swift, voluntary, and less cumbersome restructurings than actual insolvency proceedings.

The use of expedited debt-restructuring episodes—a debtor-driven approach—allows debtor and creditors to negotiate the terms of an agreement in a shorter period of time than traditional reorganization procedures, avoiding the problem of holdout creditors, long and costly procedures, full disclosure of information, bad press, etc.

As the Argentine crisis in 2001–2002 has proven—not only with the Multicanal case resolved in New York, but with many other Argentine companies that recently have restructured their debts[87]—expedited debt-restructuring episodes are essential in facilitating reorganization procedures. Highly indebted corporations have been able to "wash" their balances over a short period of time with the collaboration of their creditors, gaining a solid credit ratio.

Thus—over a short period of time—by means of an expedited debt-restructuring procedure, a company's default will be cured and a big portion of the company's liabilities will have disappeared from its balance sheet. Consequently, an expedited debt-restructuring procedure contributes to the viability of the company and can increase the value of shares that have been bought at steep discount after an event of default.

The table at the top of the following page summarizes the different out-of-court or minimum-court-involvement alternatives available in the different Latin American countries. Argentina, Brazil, Colombia, Mexico and Uruguay have prepackaged reorganization deals. In Colombia the trend is that all the reorganization procedures (court and out-of-court based) are performed on an out-of-court basis, although the out-of-court basis produces the same effects as a prepack filed with a court for its homologation.

[86] Jacoby, "Prepacks and the Deal-Litigation Tension."

[87] Among others, Acindar S.A., Autopistas del Sol S.A., CTI Holdings S.A.., Metrogas S.A., Química Estrella S.A.C.I, Sideco S.A., and Telecom Argentina S.A.

Out-of-Court or Minimum-Court-Involvement Restructuring Alternatives in Latin America	
Restructuring Alternatives	***Countries***
Prepack Plans	Argentina Brazil Colombia[1] Mexico[2] Uruguay
Prenegotiated Agreements[3]	Bolivia Peru
Nonbankruptcy Restructurings	Chile Ecuador Paraguay Venezuela

[1] All insolvency proceedings in Colombia are out-of-court driven.
[2] Mexico has a streamlined procedure for opening the reorganization procedure that, if the required majority is achieved, can work as a prepackaged deal.
[3] Prenegotiated agreements in Bolivia and Peru are filed with the regulatory authority (not a court) to summon creditors to vote and obtain the benefits of its approval.

In general terms, it can be said that in those Latin American countries where prepacks are available—excepting certain procedural differences from each jurisdiction—the restructuring mechanism is similar. Usually, after a negotiation between the debtor and its creditors, the agreement is filed with the pertinent court for homologation. The debtor has to fulfill the requirements set forth in each jurisdiction (mainly disclosure) and demonstrate that the required majority among creditors has been achieved. The majority required may vary in each jurisdiction, with the requirements sometimes being twofold or threefold. Once the agreement is homologated by the court, it is binding on all the general creditors. Privileged creditors or secured creditors are usually excluded from the terms of the agreement

In Bolivia and Peru, a prenegotiated agreement can be reached. The whole reorganization procedure is performed out of court, since it is an administrative authority that will summon and oversee the creditors' meeting. Courts have very limited scope for intervention (they can intervene only in the event that the different instances of the administrative procedure have been exhausted).

In Chile, Ecuador, Paraguay, and Venezuela, there are no prepacks or prenegotiated plans so far. Therefore, an out-of-court agreement requires unanimity, because otherwise it will not be binding on all creditors.

Legal and regulatory reforms entail the process of building a consensus that goes beyond the debate of being either a debtor- or creditor-friendly jurisdiction. It is related to providing sound solutions in a time-effective way—through an inexpensive process—avoiding procedural complexities and bad press that might affect the outcome. Therefore, time and complexity are the two main variables on which reforms should focus. Measuring the inefficiencies of these variables helps the process of reform. Understanding what is needed to improve helps the consensus-building process among the many stakeholders involved. Clarity in the priority of claims provides accountability and predictability to any reform process. Therefore, the regional overview presented in this paper has to be analyzed under the catalyst view of a sound reform agenda pursuing an efficient insolvency system aiming at the maximization of the value of the assets, the possibility of rescuing potentially sound businesses, and providing creditors effective rights at all times.

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