THE NEW BRAZILIAN BANKRUPTCY LAW:
INNOVATIONS AND OPPORTUNITIES

New York, June 2005

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NEW BRAZILIAN BANKRUPTCY SYSTEM

MAIN GOALS:

- avoid the liquidation of viable companies;
- maintain the employment;
- generation of taxes;
- improve the chances of recovering credits.

restructure business, operations and debts ➔ economical and financial recovery ➔ preservation of operating activities.
OUT-OF-COURT REORGANIZATION

- Similar to the pre-package of Chapter 11;

- Out-of-court Reorganization Plan ➔ submitted for acceptance of a group or kinds of creditors for further court recognition;

  - Except for:
    - labor claims;
    - tax credits;
    - forward foreign exchange contracts
    - trustee ownership agreements; and

- Two types:

  - requires the acceptance of all creditors subject to the plan (no practical importance); or
  - requires acceptance of 60% of the types or group of creditors subject to the plan ➔ cram down.
JUDICIAL REORGANIZATION

- Replaces the current mechanism of preventive debt rehabilitation (*concordata preventiva*);

- **Objective:** help the debtor overcome an economic or financial crisis;

- **Affects all creditors (secured and unsecured)**
  - tax credits (payment in installments - Supplementary Law);
  - forward foreign exchange contracts;

- **Except for:**
  - trustee ownership agreements; and
  - leasing agreements (financial or operating).

- **Supplementary Bill:** will establish the conditions for payment of tax debts in installments;

- **DIP Finance:** priority in payment (post petition) in the event of bankruptcy;
Submission deadline: **60 days** to submit the Reorganization Plan;

Reorganization Plan (contents):
- the plan must indicate **which creditors** are subject to it;
- the **mechanisms** that will be used by the debtor;
- the **order** and **method of payment** of creditors.

Mechanisms of Judicial Reorganization (illustrative list):
- granting of special payment conditions;
- spin-off/merger/acquisition;
- consolidation;
- assignment of quotas or shares of the company; and/or
- change in the company’s corporate control.

**Elimination** of risks related to **tax and social security succession**.
### ACCEPTANCE OF THE PLAN AND GENERAL MEETING OF CREDITORS

- **General Meeting of Creditors**: deliberate/vote;

- **Reorganization Plan - cumulatively approved**:  
  - (a) 50% of all the credits held by each class of creditors and by a simple majority vote of the creditors present at the respective general meeting;  
  - OR  
  - (b) by a simple majority vote of the creditors present at the general meeting + majority of only two classes of creditors and 1/3 of the third class.

- **Classes of creditors (composition)**:  
  1. creditors holding labor-related claims;  
  2. creditors secured by guarantees *in rem*; and  
  3. all the remaining creditors.

- **If the plan is rejected by the general meeting**: bankruptcy;

- **Reorganization Committee**: may be organized depending on the complexity of the judicial reorganization proceeding.
PROCEDURE

PETITION FOR JUDICIAL REORGANIZATION

GRANTING OF PROCESSING

JUDICIAL REORGANIZATION PLAN

OPPOSITIONS

GENERAL MEETING OF CREDITORS

180 days (stay period)

60 days

30 days

150 days

NOTICE TO CALL CREDITORS
Elimination of the suspensive *concordata* ➔ Prompt disposal of assets; and

Shielding ("*blindagem*") ➔ elimination of risks related to labor, tax and social security succession
NEW RANKING OF CLAIMS UNDER BANKRUPTCY PROCEEDINGS

1. Labor claims (limited to 150 minimum wages/approx. USD 15,000.00 per employee);
2. Claims secured by guarantees *in rem*;
3. Tax-related claims;
4. Claims with special privileges;
5. Claims with general privileges;
6. Unsecured claims; and
7. Subordinated claims.

- Improvement of treatment devoted to secured creditors.
CONCLUSION

THE NEW LAWS:

- Provide debtors with effective mechanisms to protect their business and with greater flexibility in designing reorganization strategies;

- Increase safeguards for secured creditors, broaden creditors' involvement in the reorganization process and improve creditors' ability to recover their credits; and

- Turn investments in distressed companies increasingly attractive, by granting further legal security.