



INSOL
INTERNATIONAL

GLOBAL INSOLVENCY
PRACTICE COURSE

Canada, Brazil, and India



**Dr. Janis Sarra, University of British
Columbia Law, Canada**

**Judge Daniel Carnio Costa, Bankruptcy
Court of Sao Paulo, Brazil**

**Dhananjay Kumar, INSOL Fellow, Cyril
Amarchand Mangaldas, India**

Module B, Session 18



Historical Context

Canada

- Restructuring regime since early 1980s
- 2 primary statutes: *Bankruptcy and Insolvency Act (BIA)* and *Companies' Creditors Arrangement Act (CCAA)*
- *Winding-up and Restructuring Act* for financial institutions

Brazil

- Restructuring regime since 2005 (Law n. 11.101/05) –business reorganization
- Crisis 2014/2015 and Pandemic
- The great reform: Law n. 14.112/20 – pre-insolvency regime; DIP; creditor's plan; cross-border insolvency

India

- Historically, has only had liquidation regime
- *Sick Industrial Companies Act* in 1985 introduced a Chapter 11 style rescue regime – ineffective
- *Insolvency and Bankruptcy Code* in 2016 – introduced a rescue regime – is the primary statute now



Fundamental Principles of the System

Canada

- Maximizing value of debtor's assets
- Going-concern restructuring if possible
- Fair and equitable treatment of creditors/ stakeholders
- Protection of the public interest

Brazil

- Social Function of the companies (community impacts)
- Going-concern restructuring if possible
- Preservation of the social and economic benefits arising from a running business (jobs, salaries, wealth, tax revenue...)
- Taxes are not impaired by reorganization effects

India

- Maximizing value of debtor's assets
- Liquidation last resort
- Fair and equitable treatment of creditors; however, only FCs get to vote
- Taxes do not enjoy priority
- Focus on banking sector recoveries



Restructuring Options - Canada

CCAA

- Debtor must be insolvent; debtor or creditors can file; initial stay 10 days, then apply to extend – applicant must be acting in good faith and with due diligence
- Unique role of monitor
- Post-commencement financing available on approval by court on a primed basis
- Limited priority employee claims
- If a majority in number and 2/3 in value of each class of creditors voting agree to any compromise/arrangement, the plan may be approved by the court
- If sanctioned, plan is binding on all creditors.

BIA proposal

- Stay is automatic with filing; same voting threshold & financing; but if no proposal approved by creditors & court within 6 months, debtor automatically bankrupt and liquidated.



Restructuring Options - Brazil

1- Business Reorganization

- Only for companies
- There is no insolvency test (struggling or financial crisis)
- Chapter 11's alike – 180 + 180 stay period
- Creditor divided on 4 classes to vote (majority – 50%)
- Cross-class cramdown

2- Pre-pack (extrajudicial business reorganization)

- 90 days stay period

3- Pre-insolvency proceeding (mediation and conciliation)

- Early stage of crisis
- Protection of a 60 days stay to bust mediation/conciliation with creditors



Restructuring Options - India

IBC – does not apply to financial services companies

- Rescue process starts on payment default of Rs. 10 million – creditor or debtor can file
- Moratorium starts on admission of the application – continues till rescue or liquidation – no *ipso facto*
- Resolution professional takes control of company and runs the rescue process – committee of creditors (only financial creditors) takes all major decisions
- Anyone can present a rescue plan subject to section 29A and committee's criteria –cross-class cram down possible
- If plan not approved within 330 days (requires 66% by value of CoC and court's approval), company is liquidated
- IBC provides for interim finance for administration costs – enjoys priority in waterfall
- Taxes below most debts, employee and workmen claims enjoy limited priority.
- “Financial debt” has priority over “operational debt”.



Recognition of foreign proceedings and creditors

Canada

- Adopted Model Law 2009
- Cross-border proceedings common, sometimes with live joint hearings
- Strong commitment to comity, cooperation, recognition of foreign proceedings
- Will recognize foreign judgments absent fraud or public policy concerns -must be final

Brazil

- Adopted Model Law 2020
- Only 2 Cross-border proceedings so far
- Adopt JIN Guidelines on court-to-court cooperation and communication (Resolution CNJ 394/2021)
- Will recognize foreign judgments absent fraud or public policy concerns

India

- No adoption of the model law – bill prepared – equal treatment of foreign creditors
- Courts still mostly follow territorialist approach
- Comity or common law rules not available – rare cases have followed such principles
- First protocol was approved in *Jet Airways*



Thank you

