

**Kobre & Kim's Cross-Border
Disputes Team**

JANUARY 16, 2025

**Brazilian Insolvencies: Offshore and
Cross-Border Strategies****Ana Frischtak**São Paulo
ana.frischtak@kobrekim.com**Andrew Lomas**Cayman Islands
andrew.lomas@kobrekim.com**Daniel J. Saval**New York
daniel.saval@kobrekim.com**John Han**Hong Kong
john.han@kobrekim.com**Timothy de Swardt**BVI
timothy.deswardt@kobrekim.com**Victor D. V.
Clementino**São Paulo
victor.clementino@kobrekim.com

The December 2024 Chapter 15 filing of Brazilian cement group Intercement is the latest in a series of insolvency cases involving Brazilian companies with cross-border implications. While navigating the multijurisdictional aspects of distressed situations could prove both demanding and rewarding for international creditors and investors, aggressive and effective strategies can give creditors the leverage they need.

The December 2024 Chapter 15 filing of Brazilian cement group Intercement is the latest in a series of insolvency cases involving Brazilian companies with cross-border implications. As seen in high-profile examples such as airline GOL's Chapter 11 restructuring journey, navigating the multijurisdictional aspects of distressed situations could prove both demanding and rewarding for international creditors and investors.

Brazil's insolvency landscape has historically created practical impediments for creditors, such as long completion times due to the limited number of specialized courts. Recent developments in Brazil are providing new opportunities for investors. A multijurisdictional approach – especially in offshore jurisdictions where many Brazilian companies hold interests – allows international investors and creditors to gain leverage toward a favorable recovery.

Offshore Strategies for Creditors to Boost Monetization

Since a recent amendment to the bankruptcy law was enacted, several tools have become available in Brazil for international creditors looking to improve their leverage, including creditor-driven recovery plans. The recent amendment also adopts the UNCITRAL Model Law on Cross-Border Insolvency, formalizing a mechanism (similar to Chapter 15 in the U.S.) for recognizing foreign insolvencies in Brazil.

These tools can be further enhanced by leveraging resources outside of Brazil, especially when there are nexuses to offshore jurisdictions, such as USD offshore bonds, assets belonging to the debtor company, or the domicile of key directors or officers. These

resources can include:

- **Bringing proceedings offshore.** Brazilian companies often hold share interests through holding companies in offshore jurisdictions, including the Cayman Islands and the British Virgin Islands. In some situations, creditors can obtain information in those places through judicial proceedings without having to notify the debtor in question.

This content provides information on legal issues and developments of interest to our clients and friends and should not be construed as legal advice on any matter, specific facts or circumstances. The distribution of our content is not intended to create, and receipt of it does not constitute, an attorney-client relationship.

- **Utilizing Offshore Injunctions.** Many jurisdictions also offer powerful provisional orders, such as injunctions and interim receivers, that have worldwide effect in certain circumstances.
- **Leveraging U.S. insolvency tools.** Many Brazilian companies also have interests in the U.S., allowing international creditors to take advantage of the creditor-friendly U.S. insolvency and discovery regimes and increase their leverage. This includes the broad discovery powers available in U.S. insolvency proceedings, allowing creditors to pursue evidence such as bank records from U.S. clearing banks.
- **Conducting a worldwide information gathering and targeting campaign.** Identifying the debtor company's or other relevant targets' worldwide structures and assets can not only provide creditors with a clearer picture of what to target but can also be relevant for claims against third parties for damages. Potential targets can include, for instance, overseas receivables or IP.

As investors face sprawling and slow-moving insolvencies of Brazilian companies, new tools are available to help them improve their positions. In addition, recent developments in Brazilian legislation are having an impact. When combined with an aggressive multijurisdictional strategy, creditors can build the leverage needed to reach a favorable resolution and recovery.

About Kobre & Kim

Kobre & Kim is a global law firm focusing on cross-border disputes and investigations, often involving fraud and misconduct. Our capabilities include:

- We help clients with interests in Brazil through our team in São Paulo that routinely acts in complex, cross-border insolvencies and asset recovery campaigns.
- Our team of offshore-based attorneys and former government prosecutors has deep experience tracing, freezing, and recovering misappropriated assets hidden in cross-border and offshore structures.
- Our deep experience coordinating claim enforcement and monetization strategies across jurisdictions, often involving assets and adversaries in Brazil and other Latin American countries, with enforcement lawyers across key offshore financial centers, South America, Asia, EMEA, and the U.S.