

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

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Gaining Leverage in Brazilian Insolvencies: Local and Cross-Border Tools for International Creditors

Rising insolvencies in Brazil are ensnaring international creditors into the byzantine local legal landscape. We explain below how new developments are providing new tools for creditors to speed up a resolution, especially when combined with a creative, assertive, cross-border strategy.

The Americanas fraud has shaken the Brazilian market and sparked a growing wave of insolvencies. As global financial conditions continue to tighten, other Brazilian companies in financial distress may be next, putting creditors on alert.

Creditors may despair at the problems in Brazil's insolvency landscape, from the long completion times to the limited number of specialized courts to deal with the complexities of insolvency proceedings. However, new developments in Brazil are expanding the creditor toolkit, and when combined with a more assertive, multijurisdictional approach, creditors can gain the upper hand.

Strategies for Creditors to Boost Monetization

Since the enactment of a [new bankruptcy law](#), several tools became available in Brazil for creditors looking to improve their leverage, such as creditor-driven recovery plans or the deployment of tools to pierce the corporate veil and debtor in possession financing (DIP).

These tools can be further enhanced if creditors consider leveraging resources outside of Brazil, especially when there are points of connection with other jurisdictions, such as offshore bonds or assets belonging to the debtor company or its controlling shareholders. These resources can include:

- **Bringing proceedings offshore.** Brazilian companies often hold share interests through holding companies located in offshore jurisdictions, including the Cayman Islands and the British Virgin Islands. Creditors can obtain information from local authorities through

administrative or judicial proceedings without having to notify the debtor in question. Many jurisdictions also offer powerful freezing orders that can be applied worldwide.

- **Conducting a worldwide asset tracing campaign.** Tracing assets to identify the worldwide assets related to the debtor company, its shareholders, or other relevant targets can not only provide creditors with a clearer picture of what to target, but can also be relevant for negotiation.
- **Filing a Chapter 15 application in the U.S.** Filing for recognition of the Brazilian proceeding in the U.S. gives access to powerful judicial tools, including access to any U.S.-based documents and employees via discovery. It also opens up the recovery of a debtor's U.S.-based assets. The information gained through discovery can also support Brazilian proceedings, such as proving the need for veil piercing.

As creditors face more Brazilian debtor companies in distress, new tools are available in Brazil to help them improve their negotiating positions. When combined with an aggressive multijurisdictional strategy, creditors can build the leverage needed to reach a favorable resolution.

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