

INTERNATIONAL INSOLVENCY INSTITUTE

13TH ANNUAL CONFERENCE

COMMITTEE ON LATIN AMERICA

**“The Banco Santos Case: How Does a Multi-jurisdiction Case is
Managed out of Brazil”**

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LAW GOVERNING THE INSOLVENCY OF FINANCIAL INSTITUTIONS IN BRAZIL

- Specific systems – entities subject to intervention, winding-up and bankruptcy.
- Bankruptcy (judicial liquidation) can be declared after the out-of-court winding up procedure.
- Central Bank's authorization to the liquidator for that request, on the basis of a report showing that the assets are not sufficient to cover even half of the unsecured debts or that there are well-grounded indications that bankruptcy crimes have been committed.

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AMOUNT OF BANCO SANTOS'S BANKRUPTCY

- Liabilities of R\$ 2.236 billion on the date the out-of-court winding up was decreed
- If the obligations resulting from operations done within the financial group by companies directly or indirectly related to its parent were considered, these liabilities could reach R\$3.258 billion.

CAUSES OF BANCO SANTOS'S BANKRUPTCY

IRREGULAR PRACTICES

- Reciprocal transactions
- Rental of Rural Product Certificates (“CPR”)
- Rented export notes
- Investment in flexible options
- Loans to formally or informally connected companies
- “M” transactions

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BANCO SANTOS'S RELATIONSHIP WITH OTHER FINANCIAL INSTITUTIONS ABROAD (BANK OF EUROPE AND ALSACE-LORRAINE)

- Back-to-back transactions in reciprocity with the customer
- Guarantees offered by the bank - “pledged collateral agreements”
- Issuance by Alsace Lorraine Investment Services Ltd. (BVI)
- Promissory Notes in custody at Bank of Europe Ltd. (Antigua-Barbuda)

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PROBLEMS FACED BY INTERNATIONAL BANKS IN RECEIVING AEC CREDITS AND CURRENT SITUATION

Operations known as Advances on Exchange Contract (AEC)

Requests for the immediate return of money from the Bankruptcy Estate

Nature of the AEC operation: resources considered to belong to third parties:

With the intervention in Banco Santos, five types of AEC were classified:

- Perfect AECs
- Non-performed AECs
- Non-contractual AECs
- AECs performed before the intervention
- Cancelled AECs

POSSIBILITY OF RECOVERING ASSETS DIVERTED ABROAD

(a) Judicial Cooperation

Need of international cooperation between the courts in Brazil and those of countries in which foreign companies have headquarters or were headquartered, as well as those where material assets are located.

- UNCITRAL Model Law on Cross Border Insolvency of 1997
- BRITISH VIRGIN ISLANDS' Insolvency Act of 2003
- US BANKRUPTCY CODE – Chapter 15 - ancillary proceedings
- BRAZIL does not regulate multijurisdictional insolvencies in a modern manner
 - ❑ Varig case: recent cooperation between Rio Court and the Bankruptcy Court of New York

POSSIBILITY OF RECOVERING ASSETS DIVERTED ABROAD

(b) Investigative Tasks

- Tracing the “path” the money has traveled in the various jurisdictions in question.
- Banco Santos comptroller used more than 40 off-shore companies to handle the money, mixing its own financial resources with those of its customers to hinder potential investigations.
- Multilateral Judicial Cooperation Agreement
- Mutual Legal Assistance Treaty (“mlat”)
- Direct police cooperation - Interpol

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