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Earlier this year, Chile substantially revised its insolvency legislation in an effort to foster international trade with Chile and encourage foreign direct investment, according to Patrick E. Mears, a former partner at Barnes & Thornburg LLP and Ricardo Reveco, a partner in the law firm of Carey y Cia in Santiago, Chile. In this Bloomberg/BNA article, Mears and Reveco provide an overview of the new insolvency provisions and find that a number of provisions aim to provide predictability and certainty to Chile's financial and economic markets. The insolvency regulations promote transparency, restructuring of viable businesses, effect the efficient closure and transfer of assets of failed businesses, and facilitate financing for the establishment and reorganization of business enterprises, the authors say, and also are expected to spread the general effect of free trade agreements entered into by Chile with other states to all members of the world community.

Chile's New Bankruptcy Legislation to Attract More Foreign Direct Investment and International Trade

BY PATRICK MEARS AND RICARDO REVECO

I. Introduction.

On January 9th, 2014, the first major reform of Chile's insolvency laws since 1982 was ushered in by the government of President Sebastián Piñera. This legislation formed a part of a package of legislative changes aimed at increasing Chile's domestic commerce and international trade. Between 1996 and 2014, Chile entered into 16 separate "free trade" agreements ("FTAs") with foreign countries such as the United States (2004), China (2006), Japan (2007), the Republic of Korea (2004) and Mexico (1998) as well as with trading blocs such as the European Union (2002) and MERCOSUR (1996), all of which were designed to enhance Chile's international trade regime.

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Chile's recent insolvency law reforms include streamlining and encouraging business reorganization proceedings and adopting the Model Cross-Border Insolvency Law (the "Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL"); these changes were drafted to encourage foreign direct investment in Chile and to foster its international trade with other nations. Although the United States-Chile FTA has significant protections for American investors in Chile, the bankruptcy reforms enacted this year by Chile encourage current and potential investors in Chile across the globe by creating a more transparent and predictable domestic insolvency regime and by easing the access of insolvency administrators to assets of foreign debtors and their affiliates in

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Chile. This article will discuss the Model Law and the World Bank's initiatives for improvement of national insolvency laws and explain their impact upon Chile's recent insolvency law reforms.

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II. International Incentives for Insolvency Law Reform: UNCITRAL and the World Bank. In the late 1990s and early 2000s, two related developments in international trade law and economic developments surfaced on the world scene, both of which were sponsored by key international players: UNCITRAL and the International Bank for Reconstruction and Development, otherwise known as the World Bank. Both of these developments took place in a period of great global change bookended by the collapse of the Soviet Union in 1991 and the Asian Financial Crisis of 1997-1998.

a. *UNCITRAL's Model Law on Cross-Border Insolvency.*

UNCITRAL was established by the United Nations in December 1966, charged with the mission of fostering the ''modernization and harmonization'' of rules on international trade law. The decision to create this agency was based upon the General Assembly's ''conviction that divergences arising from the laws of different States in matters relating to international trade constitute one of the obstacles to the development of world trade.''[1] In the mid-1990s, UNCITRAL began its proselytizing work in the field of insolvency law by addressing the issues of whether and how to prescribe rules to coordinate cross-border insolvency cases, i.e., related bankruptcy proceedings pending in two or more nations. Cross-border cases range from a ''main'' proceeding pending in a debtor's home state and an ancillary or ''non-main'' proceeding in another jurisdiction to protect, collect and dispose of its assets in that jurisdiction, to a main proceeding involving a parent company and a separate proceeding involving an affiliate organized in another state. Problems arising in the administration of these types of proceedings were highlighted by the ''dueling'' reorganization cases of the various enterprises owned by the English publishing magnate, Robert Maxwell, commenced in New York City and London in 1990 upon Maxwell's untimely death.

As a result of intensive work on this project undertaken by UNCITRAL and other interested organizations over a five-year period, UNCITRAL developed and proposed its ''Model Law on Cross-Border Insolvency'' (''Model Law'') which, in states adopting it, provides important provisions for coordinating cross-border insolvency proceedings. This coordination begins once a court in a state enacting the Model Law enters an order formally recognizing the foreign proceeding and the authority of the foreign representative petitioning for recognition. These provisions include those

- granting direct access of foreign representatives of debtors in foreign proceedings and foreign creditors to the courts of the states enacting the Model Law;
- establishing simplified procedures for recognizing qualifying foreign proceedings and their authorized representatives in order to avoid time-consuming legal processes;
- affording foreign creditors the same rights as domestic creditors concerning the commencement of and participation in these proceedings and specifically prohibiting discrimination in the ranking of foreign creditors claims;
- providing interim relief in the cross-border proceedings prior to the court's formal recognition of a foreign proceeding and granting additional relief to the foreign representative once recognition is granted; and
- requiring courts and foreign representatives involved in cross-border proceedings to cooperate and communicate with one another and to coordinate the various proceedings involved.

The Model Law was crafted by UNCITRAL and adopted by the UN General Assembly to achieve various goals including the objective of promoting ''greater certainty for trade and investment.''[2]

To date, twenty-one states have adopted the Model Law, the last one being Chile in its January 2014 insolvency reform legislation. Major trading nations are in this group of ''Enacting States,'' including the United States (2005), Japan (2000), Mexico (2000), the Republic of Korea (2006) and the United Kingdom (2006).

b. *The World Bank's Principles and UNCITRAL's Legislative Guide.*

1. Principles.

In response to the 1997-1998 Asian Financial Crisis that threatened to severely damage the financial infrastructure of various Asian nations, the World Bank, along with the International Monetary Fund, UNCITRAL, and other global organizations focused on the broadly perceived need for ''strong insolvency debtor-creditor regimes [as an] important means for preventing or limiting financial crises and for facilitating rapid and orderly workouts from excessive indebtedness.'' The World Bank consequently developed and published in 2001 its ''Principles for Effective Insolvency and Creditor Rights Systems,'' (''Principles'') that provide benchmarks for evaluating the efficacy of national in-

[1] G.A. Res. 2205 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6594 (Dec. 17, 1966)

[2] Model Law, Preamble, subparagraph (b)

solvency regimes. These Principles were subsequently revised in 2005 and now, along with UNCITRAL's Legislative Guide on Insolvency Law (the ''Legislative Guide''), constitute the primary tools for the World Bank's evaluation of state insolvency laws and procedures.

Certain of the Principles recognize the importance of both reorganization and liquidation procedures in state insolvency law as well as the need for a ''framework for cross-border insolvencies, with recognition of foreign proceedings.'' Accordingly, national systems ''should promote quick and easy access to the proceeding; assure timely and efficient administration of the proceeding; afford sufficient protection for all those involved in the proceeding; provide a structure that encourages fair negotiation of a commercial plan; and provide for approval of the plan by an appropriate majority of creditors.'' Notwithstanding the foregoing, the Principles urge that, when an enterprise lacks viability, national insolvency laws should provide for the entity's ''swift and efficient liquidation to maximize recoveries for the benefit of creditors.'' These liquidations may include the sale of the business as a going concern.

With respect to cross-border insolvencies, the Principles advocate that national insolvency regimes ''should establish clear rules pertaining to jurisdiction, recognition of foreign judgments, cooperation among courts in different countries, and choice of law.'' Identified as key ingredients to achieving these goals are the following:

- a ''clear and speedy process'' for recognition of foreign insolvency cases;
- relief granted upon recognition of foreign cases;
- access to courts and ''related authorities'' granted to foreign representatives;
- cooperation among courts and insolvency representatives; and
- prohibition of discrimination against foreign creditors in favor of domestic creditors.

In an obvious display of group coordination, these prescriptions effectively embody the key policies and provisions of UNCITRAL's Model Law.

2. The Legislative Guide.

In December 2004, the UN General Assembly ratified the Legislative Guide promulgated by UNCITRAL earlier that year. Through this document, UNCITRAL advanced beyond its earlier objectives in the field of cross-border insolvency procedures to advocating substantive and procedural reforms of national insolvency laws. In doing so, it proceeded along the path taken by the World Bank in the Principles but in a more detailed and comprehensive fashion. The original version of this 384-page document is contained in Parts One and Two, and has been supplemented by two additional sections since then: Part Three expands upon the earlier two sections of the guide and Part Four tackles the thorny question of how to treat enterprise groups in insolvency, both nationally and internationally.[3]

The ''key objectives'' of the reforms advocated in the Legislative Guide are listed in Part One of the document and reflect to a significant extent those championed by the World Bank in the Principles. These objectives are as follows:

- providing certainty in the market to promote economic stability and growth;
- maximizing the value of assets;
- striking a balance between liquidation and reorganization;
- ensuring equitable treatment of similarly situated creditors;
- providing for timely, efficient and impartial resolution of insolvency;
- preserving the insolvency estate to allow equitable distribution to creditors;
- ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information;
- recognizing existing creditor rights and establishing clear rules for ranking of priority claims; and
- establishing a framework for cross-border insolvency. [4]

c. *The World Bank's ''Doing Business'' Reports*

Since 2003, the World Bank has been issuing its yearly ''Doing Business'' reports in which the bank ranks the economies of all national economies in numerical order after analyzing business regulations and their enforcement in those economies. The goal of this annual survey is to measure the performance of countries in establishing regulatory environments that are conducive to the starting and operation of local small to medium enterprises (SMEs). National economies are evaluated in ten separate categories, which include ''Starting a Business,'' ''Getting Credit,'' ''Protecting Investors,'' ''Trading Across Borders'' and ''Resolving Insolvency.'' In 2014, the World Bank ranked Chile 34th out of 189 national economies surveyed, which was the highest in Latin America. Chile's closest competitors were Peru, Colombia and Mexico, which were ranked 42nd , 43rd and 53rd respectively. The four highest-ranking nations were, in descending order, Singapore, Hong Kong, New Zealand and the U.S.

Although Chile performed well in most of the ten categories considered by the World Bank, Chile's rank in ''Resolving Insolvency'' was well below average in 102nd place. This category identifies weaknesses in existing national bankruptcy laws and ''the main procedural and administrative bottlenecks in the bankruptcy process.'' The World Bank's methodology assumes as a hypothetical SME a hotel located in the country's largest city owned by a local limited liability company that has defaulted on its secured bank debt. This SME is also obligated to pay its suppliers, employees and taxing authorities. Other assumptions include the debtor's inability to enter into a consensual workout with its creditors and the debtor's lack of assets to pay its creditors in full, including the bank which is the debtor's sole secured creditor. In ranking economies under the ''Re-

[3] http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/2004Guide.html (last viewed on May 19, 2014).

[4] Legislative Guide, pp. 10-14.

solving Insolvency'' rubric, the World Bank analyzes answers to a questionnaire sent to local insolvency practitioners and verifies those answers by a study of applicable laws and regulations as well as public information concerning national bankruptcy systems.

The rankings in the ''Resolving Insolvency'' category are then made with reference to recovery rates for creditors, which rates are determined in accordance with the time necessary to close a business; the cost of estate administration in the insolvency proceedings, measured as a percentage of the estate's assets; and the outcome of the proceedings, namely, is it reasonable to expect a reorganization of the enterprise as a going concern or will the assets more likely be sold piecemeal. The resulting recovery rate determined by the World Bank is measured by cents on the U.S. dollar.

Chile's time to close a business was measured in 2014 (based on data collected in 2013) at 3.2 years with a cost to the bankruptcy estate at 15 percent of its assets. The probability of a reorganization of the hypothetical debtor as a going concern was discounted by the World Bank, thereby resulting in a recovery rate of 29 cents on the dollar. In contrast, in the U.S. (which was ranked in 17th place by the World Bank), the time to close a bankruptcy case of the hypothetical debtor was 1.5 years at a cost of only 7 percent of the estate's assets. In the U.S., a reorganization of the hypothetical debtor as a going concern could be reasonably anticipated, with a resulting recovery rate of 81.5 cents on the dollar. Many Latin American countries rank ahead of Chile in the ''Resolving Insolvency'' category including Colombia (25^{th}, Mexico (26^{th}), Uruguay (51^{st}) and even Argentina (97^{th}).

III. Brief History of U.S.-Chile Trade Relations.

a. *Early Years*

On January 27, 1823, the U.S. government officially recognized the nation of Chile upon the U.S. Senate's confirmation of President James Monroe's nomination of Herman Allen as Envoy Extraordinary and Minster Plenipotentiary to Chile. The next year, diplomatic relations between the two states were formally established when Allen presented his credentials to Ramón Freire Serrano, the successor to Bernardo O'Higgins as Supreme Director of Chile.

In 1834, the U.S. and Chile ratified the ''Treaty of Peace, Amity, Commerce and Navigation'' between the two countries that had been negotiated by Andres Bello, a Venezuelan by birth, Chilean diplomat and senator, author of Chile's Civil Code of 1852 and founder of the University of Chile, and John E. Hamm, a hero of the War of 1812 and the U.S. Ambassador to Chile under President Andrew Jackson. This treaty contained a ''most favored nation'' clause and permitted the citizens of each nation to reside and trade in the territories of the other. This treaty remained in effect until January 20, 1850, when Chile terminated the agreement by transmitting notice to the U.S.

In the last half of the 19^{th} Century, Chile viewed the U.S. as a minor trade partner for its developing industries of nitrate and copper excavation and other commercial ventures. Chile instead looked to the developed countries of Europe, especially Great Britain, as its preferred trading partners during this time. Nevertheless, Chile was viewed by the U.S. as a critical link in its trade routes to the West Coast of the country, especially after the acquisition of California in the Mexican War of 1846-1848 and the subsequent discovery of gold there. American ships passing through the Straits of Magellan en route to California would stop in Valparaiso's accommodating harbor to restock after their long voyages around Cape Horn.

b. *U.S.-Chile Free Trade Agreement.*

1. Background.

The next important phase of United States-Chilean economic relations occurred in the 1990s after the departure of General Augusto Pinochet as Chile's president. It was during this decade that trade between the United States and Chile dipped, especially after Chile entered into free trade agreements with MERCOSUR, Canada, Mexico and a group of Central American countries. As explained in a statement (http://waysandmeans.house.gov/media/pdf/chile/hr2738docbenefitschilefta.pdf) by the Ways and Means Committee of the U.S. House of Representatives,

''Prior to the late 1990s, U.S. products were highly competitive in the Chilean market, accounting for a growing share of Chile's imports. Chile subsequently became an Associate Member in Mercosur and has trade agreements providing preferential access for several countries, most notably with Canada, Mexico, and the 15 members of the European Union. The trade advantages accorded other countries under these agreements, together with other factors, resulted in a significant erosion in the volume of imports from the United States into Chile. The U.S. share of Chile's goods imports from the world fell from 24 percent in 1997 to under 17 percent in 2002. U.S. service providers likewise saw their share of Chile's services market drop from 35 percent in 1997 to 27 percent in 2001.''

To change the downward trajectory of this trend, President Bill Clinton announced that the United States and Chile would begin negotiations over the terms of a free trade agreement. These negotiations successfully culminated in 2003 and on January 1, 2004, this treaty came into force.

2. Provisions .

The U.S.-Chile FTA contains twenty-four chapters providing for the elimination of tariffs on originating goods with special attention being given to agricultural products, textiles and apparel, rules of origin, origin procedures and customs administration. Social aspects of trade, such as sanitary measures, labor and environmental issues are also addressed in the FTA along with specific requirements for certain industries, e.g., financial services, telecommunications and electronic commerce. Most important for our analysis, however, are the provisions protecting the rights and interests of ''investors'' of one treaty party in the economy of the other, which measures are designed to enhance the opportunities and climate for foreign direct investment and international trade.

Chapter 10 of the FTA establishes rules protecting a treaty party's investors against unfair or discriminatory government actions concerning their investments in the other party's territory, e.g., the establishment of a foreign affiliate to manufacture and distribute products in the other nation. Chapter 10 creates six basic protections for these investors:

- non-discrminatory treatment relative to domestic investors and investors from other nations;

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- freedom from ''performance requirements'';
- free transfer of funds related to an investment;
- a ''minimum standard of treatment'' in conformity with customary international law;
- protection from expropriation other than in conformity with customary international law; and
- the ability to hire key managerial and technical personnel without reference to nationality.

In the event of disputes between an investor of one treaty party and the other party, e.g., disputes over an alleged breach of the foregoing principles or of an investment agreement, the FTA establishes the dispute resolution mechanism of arbitration.

Other important protections granted to investors are contained in Chapter 17 of the FTA on intellectual property rights and in Chapter 20 on transparency. In addition to requiring Chile to ratify or accede to certain international agreements on intellectual property rights, the FTA establishes additional independent substantive protections for copyrights, trademarks, patents and trade secrets and contains provisions for enforcement of these rights against infringers and others. Chapter 20 requires, inter alia, that each treaty party promptly publish all laws, other regulations, procedures and rulings relating to the treaty and to establish rights of review and appeal by interested persons affected by these laws, regulations and other legal acts and procedures.

c. *Resulting Growth in International Trade.*

Between 2004 and 2012, bilateral merchandise trade between the United States and Chile mushroomed by 340 percent. During this same time, U.S. exports to Chile increased by almost 600 percent, increasing from $2.7 billion in 2003 to $18.9 billion in 2012. U.S. imports from Chile also increased during this time from $3.7 billion in 2003 to $9.4 billion in 2012, an uptick of 153 percent. The Chilean economy is considered the strongest in South America.

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The land is blessed with substantial mineral deposits with copper being its primary export; Chile is the world's largest producer of this metal. Agriculture is the occupation of approximately 13 percent of Chile's population, even though it produces less than one-half of domestic needs. Chile's Gross Domestic Product (GDP) in 2012 was $325.8 billion, which translates into $18,700 per capita. GDP in 2012 grew at a 5.5 percent rate compared to the prior year. Chile's imports in 2012 were valued at $74.9 billion, with the U.S. being its largest supplier. Chile's primary imports are petroleum and petroleum products, chemicals, electrical and telecommunications equipment, industrial machinery, vehicles and natural gas. Chile's exports in 2012 totaled $78.3 billion, with the U.S. being its second largest customer behind China. In addition to minerals, Chile's primary exports are fruit, fish and fish products, paper and pulp, chemicals and wine.

IV. Reform of Chile's Insolvency Legislation.

a. *Background*

In May, 2012, then-President Sebastián Piñera presented to Chile's national legislature a proposed ''Law on the Reorganization and Liquidation of Companies and Individuals'' as part of a broad package of proposed legislation for economic reform and stimulus. The then-existing insolvency law was contained in Book IV of Chile's Commercial Code and had remained relatively unchanged since its enactment in 1982 during the rule of Augusto Pinochet. The new legislation offered by Piñera was based on legislation enacted in Colombia in 2006, which sought to increase the efficiency of liquidating failed companies, thereby increasing creditors' recovery rates, and to streamline business reorganizations.

The Colombian legislation also adopted the Model Law modernizing cross-border insolvency procedures. Since Colombia adopted these laws, its ranking on the World Bank's ''Resolving Insolvency'' standards discussed above rose to 21st place, which is highest among Latin American countries. Leading this attempt to modernize Chile's insolvency legislation for the 21st Century was Josefina Montenegro, Chile's Superintendent for Bankruptcies, who assembled a team of experts to assist her in the drafting of this legislation.

b. *Key Provisions of New Legislation.*

As we have already noted, the new legislation on insolvency follows the World Bank's and UNCITRAL's insolvency legislation principles, guidelines and objectives. Let us examine, in particular, how the ''key objectives'' of an effective and efficient insolvency law, contained in UNCITRAL's Legislative Guide on Insolvency Law, are addressed by Chile's recent reforms:

1. Provision of Market Certainty to Promote Economic Stability and Growth.

The new insolvency law contains a number of provisions that aim to provide predictability and certainty to Chile's financial and economic markets. These insolvency regulations promote restructuring of viable businesses, effect the efficient closure and transfer of assets of failed businesses, and facilitate financing for the establishment and reorganization of business enterprises.

a. *Focus in Reorganization.*

The primary goal of the new Chilean insolvency law is to change the legislation's approach to insolvency in Chile, from an approach that strongly disapproves of those entities responsible for their insolvency and promotes the liquidation of these enterprises to a perspective that is more forgiving of the debtor, that facilitates its reorganization, and that encourages the preservation of enterprise value and jobs. Some of the main innovations in this regard will be discussed in subsection IV(B)(2) below.

b. *Decriminalization of Insolvency.*

Chile's current insolvency act contemplates several presumptions of both negligent and fraudulent bankruptcy, and establishes prison sanctions to punish directors and officers involved in a negligent or fraudulent bankruptcy. In order to reduce the social stigma that has been traditionally associated with insolvency proceedings, the new law eliminates the aforementioned presumptions and does not contain criminal sanctions. Criminal sanctions will henceforth be regulated only by Chile's Criminal Code. By reducing the enterprise and personal risks of business failure, the decriminalization of insolvency will undoubtedly promote entrepreneurship.

c. *Objectivization of Subjective Avoidance Actions.*

Another amendment in favor of legal certainty concerns avoidance provisions. The new insolvency law improves the regulation of both ''subjective'' and ''objective'' avoidance actions, granting more legal certainty to creditors that provide loans or enter into transactions with the debtor before its commencement of bankruptcy proceedings. Subjective avoidance actions permit challenges to transactions executed during the two years prior to the commencement of the debtor's insolvency proceedings, provided that certain ''subjective'' conditions are present (i.e., bad faith and harm to creditors). The new law represents a major improvement over the prior law by affording legal certainty to third parties through the introduction of an objective standard of judicial review. Specifically, the law establishes tests of ''market conditions'' and ''fairness'' to determine whether and when creditors were harmed as a result of the challenged transactions.

d. *Liquidation of Failed Enterprises.*

Even though the new insolvency law encourages reorganization, it still contains a strong liquidation procedure. This procedure, however, has been amended in order to balance the interests of the debtor and the different kinds of creditors, as discussed in more detail in Subsection IV(B)(3) below.

2. Maximization of Value of Assets, and Preservation of the Insolvency Estate to Allow Equitable Distribution to Creditors.

In general, the new Chilean insolvency law's emphasis on reorganization seeks to maximize the value of the debtor's assets. In addition, in order to facilitate business reorganization, the new regulations increase the protection for the debtor during reorganization proceedings.

One critical innovation in this regard is that, if a reorganization plan is approved by creditors representing 66 percent of the debtor's liabilities, secured creditors will be bound by the terms of this plan even if they voted against it. Thus, if the court determines that the secured creditors' collateral is essential to the debtor's reorganization, secured creditors will not be allowed to foreclose on assets that secure their claims if the plan so provides. This is a major shift from the prior law, under which secured creditors that had voted against the reorganization plan could always foreclose on liened assets, even when the reorganization proceedings were on course.

Another substantial amendment involves the early termination of contracts based on the debtor's insolvency. Under the new law, during a period of time following the debtor's filing of a reorganization plan, the debtor's contracts may not be terminated merely on the grounds of insolvency. In addition, payment terms in contracts to which the debtor is a party will remain unaltered and the debtor's guarantees may not be foreclosed or otherwise enforced. Claims held by creditors violating these rules will be subordinated and be paid after unsecured and ''insider'' creditors.

3. Striking a Balance Between Liquidation and Reorganization.

Although the new insolvency law encourages reorganization in order to maximize the value of the debtor's assets, liquidation is always possible if the plan is not approved by the required majorities of creditors. Also, the new regulations provide for conversion between the different types of proceedings in appropriate circumstances as envisioned by the UNCITRAL Legislative Guide.

One of the main amendments regarding the liquidation procedure is that, under the new law, the debtor may contest an involuntary petition filed against it through a special proceeding based on a limited catalogue of exceptions. This proceeding contemplates two hearings: an evidentiary hearing and a sentencing hearing. The former insolvency law did not permit a debtor to oppose an involuntary liquidation petition filed against him in the context of a hearing. In order to balance the rights of the parties, the court will appoint an observer to monitor the debtor's activities during this challenge procedure. The petitioner may file for injunctive relief during the same period.

Precisely because the law contemplates that both liquidation and reorganization procedures are important and necessary to a properly functioning economy, new authorities have been created such as the observer, who is a person in charge of the reorganization process, and the liquidator, a person in charge of the liquidation of assets. Under the former law, there only existed receivers, who handled both liquidation and reorganization procedures.

Finally, in order to strengthen liquidation procedures, the new law creates specialized Insolvency Auctioneers. These specialized authorities will henceforth replace traditional auctioneers in liquidation proceedings.

4. Ensuring Equitable Treatment of Similarly Situated Creditors.

a. *Reorganization Plans.*

The reform adopts the cardinal principle of par condicio creditorum, by providing that the debtor's reorganization plan may contain specific provisions for different categories of creditors, which must be approved separately by each category of creditors. In addition, even if secured creditors will be bound by the terms of a reorganization plan approved by a majority of creditors, the new law recognizes secured creditors' privileged status, allowing them to maintain the priority ranking of their claims for purposes of plan distributions to creditors. In this manner, the law attempts to compensate secured creditors for the loss of their rights, under certain circumstances, to foreclose on liened assets during the course of a reorganization case.

b. *Avoidance Actions.*

The improvement of the regulation of subjective and objective avoidance actions, briefly addressed above, also seeks to ensure an equitable treatment of similarly situated creditors. UNCITRAL's Legislative Guide recommends that ''an insolvency law should address problems of fraud and favoritism that may arise in cases of financial distress by providing, for example, that acts and transactions detrimental to equitable treatment of creditors can be avoided.'' With this same purpose, the new insolvency law provides that amendments to the debtor's bylaws made within the six months preceding the commencement of insolvency proceedings may be avoided if they cause a decrease in the debtor's equity.

5. Provision for Timely, Efficient and Impartial Resolution of Insolvency.

In order to achieve higher efficiency and effectiveness through specialization, insolvency cases will henceforth be assigned to specialized courts that have deep knowledge of insolvency laws and procedures. Bankruptcy cases will not be randomly distributed among civil judges as before.

In addition, certain time periods have been reduced in order to insure faster proceedings. For example, the time to object to claims filed in a liquidation proceeding has been reduced from 30 to 10 days.

Finally, a free online platform has been created, on which court decisions will be published for notice purposes. This innovation is expected to speed up the pace of reorganization cases and to reduce their total costs by, inter alia, replacing the formerly paid publications in the official gazette.

6. Provisions for Incentives for Gathering and Dispensing Information.

a. *Incentives and sanctions to encourage the debtor to reveal its positions.*

The bill approved by the Chilean Congress amends the Chilean Criminal Code in order to ensure that adequate information is available in respect of the debtor's financial condition and reorganization prospects, providing incentives to encourage the debtor to reveal its positions in the case and, where appropriate, imposing sanctions on the debtor for its failure to do so. Accordingly, the new legislation recognizes, in the context of the Criminal Code, the following ''bankruptcy crimes'':

- Furnishing the bankruptcy authorities or the creditors, during the insolvency proceedings, false or incomplete information, that fails to reflect the real situation of the debtor's debts or liabilities; and

- Failing to maintain accounting records required by law, which must be turned in to the bankruptcy authorities after bankruptcy is declared, or the hiding, destroying of altering of these records in such a manner that they fail to reflect the real situation of the debtor's debts or liabilities.

These crimes may be committed not only by the debtor, but also by the debtor's directors and officers who execute or explicitly authorize said acts or omissions, as well as by persons who do not hold any of said positions, but who perform the acts previously described by means of a person who holds any of said positions, or cooperate in said crimes with the aforementioned persons, or induce the latter to commit them.

b. *Further Transparency of Insolvency Proceedings.*

The free online platform previously mentioned will contribute to the transparency of insolvency procedures, as it will allow the public to have free and convenient access to the court decisions adopted in insolvency proceedings.

7. Adoption of the Model Law of Cross-Border Insolvency.

For the first time in Chile, regulations regarding cross-border insolvency have been adopted. Chile's recent insolvency law adopts UNCITRAL's Model Cross-Border Insolvency Law. These cross-border regulations apply where

- assistance is sought in Chile by a foreign court or a foreign representative in connection with a foreign proceeding;

- assistance is sought in a foreign state in connection with proceedings commenced in Chile;

- a foreign proceeding and a proceeding under the laws of Chile in respect of the same debtor are taking place concurrently; and

- creditors or other interested persons in a foreign state have an interest in requesting the commencement of, or participating in, a proceeding under the laws of Chile.

These new provisions will undoubtedly be of help for foreign investors, as they facilitate the cooperation between the insolvency institutions and courts in Chile and foreign states.

V. Conclusion. Earlier this year, Chile opted to revise substantially its outdated insolvency legislation to achieve the aims of fostering international trade with Chile and encouraging foreign direct investment therein. As described above, the means chosen by Chile to achieve these goals are essentially twofold. First, by adopting UNCITRAL's Model Law of Cross-Border Insolvency, Chile enables foreign insolvency administrators and debtors in possession to obtain promptly possession of assets of enterprises subject to foreign administration and to dispose of those assets quickly and efficiently while protecting equally the rights of Chilean and non-Chilean creditors.

In addition, this new legislation facilitates not only reorganization of troubled but salvageable enterprises, but also liquidations of those business entities that cannot be reconstructed. These improvements are expected to enhance greatly the business and investment climate for non-Chileans by reducing substantially the delays and uncertainties that existed under Chile's 1982-vintage bankruptcy laws. Although a number of the free trade agreements entered into by Chile with other states grant foreign investors and traders specific protections of their investments, this legislation spreads the general effects of those benefits to all members of the world community.