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Bankruptcy, Insolvency & Rehabilitation Proceedings in Brazil

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KEY FACTS OF BANKRUPTCY, INSOLVENCY & REHABILITATION PROCEEDINGS UNDER BRAZILIAN LAW

1. A brief presentation of the bankruptcy/ insolvency/ rehabilitation proceedings of the country and their main differences.

The Brazilian Bankruptcy and Reorganization Law (Law No. 11,101/2005) provides companies with financial difficulties the necessary tools to restructure their obligations and operations, allowing the companies in crisis to continue as going concerns. This is achieved through rehabilitation and reorganization procedures, which include (a) in-court judicial reorganization (*recuperação judicial*) or (b) out-of-court/prepackaged reorganization (*recuperação extrajudicial*) and liquidation/bankruptcy process (*falência*).

Judicial reorganization is a court-supervised procedure analogous to Chapter 11 of the U.S. Bankruptcy Code. Judicial Reorganization is designed to facilitate the effective restructuring of viable companies in financial distress. During the stay period of 180 days (extensible once for the same period), the debtor is protected from enforcement actions and may submit, negotiate, and seek creditors approval for a Judicial Reorganization Plan.

The Judicial Reorganization Plan shall be voted and approved by the majority of creditors (qualified quorum applies) and once approved and ratified by the Court, pre-petition claims subject to the proceeding shall be paid according to the conditions proposed in the Judicial Reorganization Plan. Typically, the debtor and its management continue to operate the business during the judicial reorganization, while a court-appointed trustee oversees the process, verify the fulfillment of the law, audit the numbers and balance sheets of the company, supervise the right of creditors etc., without management powers.

An extrajudicial reorganization is an out-of-court process, similar to a pre-pack, that restructures a viable company's debt to avoid formal insolvency or judicial reorganization. It involves a contractual agreement between the debtor and creditors (or some of them) to reschedule or modify obligations. Once the agreement is signed, the debtor can request court ratification to extend the terms to all creditors in the same class, provided certain requirements are met.

Liquidation/Bankruptcy is a court process that involves (i) declaring the debtor insolvent and (ii) dissolving the debtor by selling its assets and distributing the proceeds among creditors according to the payment hierarchy established by law.

2. (Depending on the type of the proceedings) The protection granted to the debtor against its creditors.

The following questions should be addressed for each proceeding, provided by the law of the country:

- i) **What kind of protection is granted?** (e.g. the creditors may not enforce any court decision against the debtor's assets etc.)

Judicial Reorganization: After the petition for judicial reorganization is granted, a 180-day stay period begins. During this time, creditor actions against the debtor, such as executions and asset seizures, are suspended. This period is intended to provide the debtor with the necessary time to negotiate the Judicial Reorganization Plan.

Note that the stay period does not affect post-petition claims, so new obligations hired by the debtor shall be paid normally by the debtor, under penalty of having new enforcement proceedings/collection claims filed by the creditors and new attachments/seizures over debtor's assets. Also, tax claims are not affected by the stay period, but the Judge of the Judicial



Reorganization shall have a kind of priority over the company's assets, so the Judge of a tax claim cannot attach or block assets that could be essentials to the success of the Judicial Reorganization.

The Brazilian Bankruptcy and Reorganization Law explicitly allows for a one-time extension of the 180-day stay period for an additional 180 days, provided the delay in voting on the reorganization plan is not due to the debtor in possession. The stay period may be extended a second time if creditors submit an alternative Judicial Reorganization Plan, as outlined in Article 6, Paragraphs 4 and 4-A, and Article 56, Paragraph 4.

Extrajudicial Reorganization: the 180-day stay period is not a rule in the Extrajudicial Reorganization but can be (i) negotiated with the creditors subject to the Extrajudicial Reorganization and (ii) requested to the Judge in charge of the proceedings. Considering that the Extrajudicial Reorganization achieves only some classes of creditors, so the stay period also achieves only the same classes of creditors.

Liquidation/Bankruptcy: there is no stay period in the Liquidation/Bankruptcy proceeding. Once the Liquidation is declared, all the debtors' assets will be gathered and sold to pay the creditors, according to the priority list.

- ii) What is the extent of the protection?** (e.g. it includes all of the debtor's assets; Is it limited to several assets for which the debtor may ask for protection? Is it at the court's discretion to include any asset? etc.)

Judicial Reorganization: The stay period protection extends to all assets of the company filing for Judicial Reorganization—cash, real estate, equity interests, etc. However, assets pledged as collateral in fiduciary alienation agreements are not protected by the stay period,

as creditors with such collateral are not subject to the effects of the judicial reorganization.

Extrajudicial Reorganization: The stay period protection extends to all assets of the company filing for Judicial Reorganization—cash, real estate, equity interests, etc., but only for the creditors that are subject to the effects of the Extrajudicial Reorganization.

Liquidation/Bankruptcy: Not applicable.

- iii) By whom it is granted?** (e.g. by a court decision or by injunctions or directly by the law etc.)

The stay period is typically granted by the State Court or by the Court of Appeals if the lower instance has not authorized the processing of Judicial/Extrajudicial Reorganization.

- iv) Does the protection include only the debtor, or may it cover other persons as well** (e.g. guarantors)?

The stay period protection generally applies only to the debtor and the companies that have requested Judicial/Extrajudicial Reorganization. In Brazil, it is common for guarantors to seek Judicial Reorganization to avoid the enforcement of debts against them.

However, if the guarantor does not request Judicial/Extrajudicial Reorganization, creditors retain all their rights against the guarantors.

- v) When is the protection granted?** (e.g. in the rehabilitation proceeding in Greece, the debtor may apply before a court for protection of its assets before any agreement has been concluded with its creditors. After the agreement is concluded, different protection applies).

Typically, the stay period protection is granted after the debtor files for Judicial Reorganization, following a decision that authorizes the commencement of proceedings.



However, it is increasingly common for debtors to request an advance of the stay period's effects (injunction), with the Court granting a deadline for the debtor to file for Judicial/Extrajudicial Reorganization and confirm the injunction.

vi) For how long is the protection granted?

180 days, extendable once.

vii) Which creditors are bound by the protection?

All the creditors are subject to the Judicial/Extrajudicial effects.

viii) Any other particularities of the procedures of each country (if any).

Recently, Federal Law No. 14,112/2020 amended the Brazilian Bankruptcy and Reorganization Law and overhauled the 15-year-old legislation. Some of the most relevant changes to the current legislation are the following:

1. Brazil has adopted the UNCITRAL Model Law on Cross-Border Insolvency, adding a specific chapter in the Brazilian Bankruptcy and Reorganization Law to regulate these proceedings.

2. Debtor-in-possession (DIP) financing is now easier, with provisions allowing asset encumbrance and shareholder loans after filing for judicial reorganization.
3. The process of selling assets in judicial reorganization and bankruptcy liquidation is now more efficient, flexible, and legally secure, creating a safer environment for investors.
4. Creditors can now submit competing reorganization plans if certain legal conditions are met.
5. While tax claims remain excluded from judicial reorganization, new provisions aim to resolve such debts and allow the Treasury to negotiate more favorable terms with the debtor.

Bankruptcy liquidation proceedings are now significantly faster, enabling debtors to be discharged from obligations in a much shorter timeframe compared to the lengthy processes currently seen in Brazil.