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BANKRUPTCY LAW REFORM

The Senate is expected to analyze, in 2025, Bill 3/2024, aimed at accelerating and making corporate bankruptcy cases fairer. This proposal, considered a priority by the federal government, seeks to shorten deadlines, reduce bureaucracy, and empower creditors. The innovations include the possibility for creditors to appoint a fiduciary manager to conduct the process, replacing the bankruptcy trustee chosen by the judge.

Finance Minister Fernando Haddad argues that the current Bankruptcy Law, enacted in 2005, is lengthy and detrimental to the economy, hindering the recovery of creditors' funds. To address this issue, the project proposes the establishment of a "bankruptcy plan," the approval of which by the judge would remove the need for several formalities, facilitating contracts and sales of assets.

Furthermore, the proposal makes voting in creditors' meeting more democratic, acknowledging the importance of creditors' opinions in the efficient liquidation of assets.

Creditors representing at least 10% of the amounts receivable may oppose the bankruptcy plan, while those representing 15% may propose an alternative plan.

The project also establishes a three-year term for the bankruptcy trustee or fiduciary manager, capping their remuneration at a ceiling of 10,000 minimum wages. Asset sales must be completed within six months of appointment, although this timeframe may change in cases involving hard-to-sell assets.

For ongoing bankruptcy cases, the creditors' meeting will decide on the continuation of the trustee in situations where the case has already exceeded three years.

In summary, Bill 3/2024 seeks to optimize and enhance the efficiency of bankruptcy cases, aiming to protect creditors' interests and recover assets more swiftly, thus contributing to economic stability.

STJ LIMITS CLAIM ADJUSTMENT TO THE DATE OF THE REORGANIZATION PETITION

The 3rd Panel of the Superior Court of Justice (STJ in Portuguese) ruled in REsp 2.138.916 that claims originating before a reorganization petition is filed should only be adjusted up to the date of that petition, even if the creditor seeks to receive payment in a subsequent reorganization.

The case involved a creditor of company Oi who failed to file a proof of claim in the company's first court-supervised reorganization, which took place in 2016 and was concluded after the fulfillment of the reorganization plan. This creditor waited until the second reorganization in 2023 to request an adjustment of the amount. However, the Court of Justice of Rio Grande do Sul (TJ/RS) denied the request, stating that the adjustment should be limited to the date of the first petition, as the claim was considered a bankruptcy claim.

The judge-rapporteur at STJ, justice Ricardo Villas Bôas Cueva, emphasized that the legislation (Article 9, II, of Law 11.101/2005) establishes that claims must be adjusted only up to the date of the first reorganization petition to ensure equality among creditors. Any subsequent adjustment would violate the reorganization plan approved at that time.

Thus, STJ decided that the claim should be adjusted only up to the date of the first reorganization petition, and subsequently subject to any discounts anticipated in that plan. Therefore, even without having filed a proof of claim in the first reorganization, the creditor is not entitled to an adjustment of the claim until 2023.

FMU'S COURT-SUPERVISED REORGANIZATION

Faculdades Metropolitanas Unidas, one of the leading higher education institutions in Brazil, has filed for court-supervised reorganization. The decision was driven by financial difficulties faced by the institution, including a debt exceeding R$ 300 million.

The court-supervised reorganization petition (case No. 1031812-63.2025.8.26.0100) was filed on March 13, 2025, and granted on March 14, 2025, by the 1st Bankruptcy Court of the Central Civil Forum of São Paulo District.

The aim is to restructure FMU's finances, allowing the school to continue its activities while seeking to meet its financial obligations. The institution aims to negotiate its debts with creditors and keep the continuity of the courses offered to students.

FMU asserts that court-supervised reorganization is a necessary measure to ensure the quality of education and the maintenance of its employees' jobs. It is expected that, with the assistance of a reorganization plan, the institution can recover and regain its status as a reference in the educational sector.

CHALLENGES IN THE REORGANIZATION PLANS OF GOL AND AZUL

Gol Linhas Aéreas has postponed the completion of its Chapter 11 proceeding, originally expected for 2025. The company, which filed for Chapter 11 in 2024 due to the financial impacts of the COVID-19 pandemic, is now facing additional challenges related to fierce competition in the aviation sector.

Recently, Gol highlighted the need for adjustments in its financial and operational planning in light of a "price war" among airlines, which has put pressure on revenues. The difficulty in raising fares in a highly competitive environment hampers the company's efforts to rebalance its finances and effectively implement its reorganization plan.

According to information from Gol, factors leading to the postponement include uncertainty about market conditions and ongoing pressure on ticket prices, which are lower due to fierce competition. Additionally, the company needs to continue managing its operational costs, which is essential for its recovery.

While working on its reorganization, Gol is committed to seeking improvements in its services and operations to ensure it starts making profits again. The current scenario suggests that to successfully conclude its court-supervised reorganization, the company must find a balance between price competitiveness and financial sustainability.

On the other hand, Azul Linhas Aéreas S.A. faced various challenges when seeking protection under Chapter 11 in the United States on May 28, 2025, driven by factors such as a drastic decline in demand due to the COVID-19 pandemic, a financial crisis that resulted in a nearly 90% devaluation of its stock, a significant increase in its debt, which reached R$31.35 billion, and macroeconomic and operational challenges, such as inflation and currency fluctuations.

Opting for Chapter 11 was a strategy aimed at getting advantages such as greater agility and less bureaucracy compared to court-supervised reorganization cases in Brazil, especially due to legal restrictions that complicate the reorganization of airlines in the country. The American system also offers a more developed financing market, such as DIP Financing, which enabled the company to secure US$1.6 billion in new investments.

However, one of Azul challenges is that its main creditors, such as the Brazilian Air Force and the Ministry of Finance, are not subject to Chapter 11, which limits the scope of the reorganization proceeding. The American court's decision ensured an automatic stay that suspended the bankruptcy case, allowing the company to operate while presenting its reorganization plan.

Moreover, the company must address the need to separately negotiate tax debts and claims with the Air Force in Brazil, as these are not covered by U.S. jurisdiction. The reorganization plan aims to reduce over US$2 billion in debts and ensure access to additional financing.

Azul expects to complete the Chapter 11 case by early 2026, emerging with a stronger financial structure. For this, it will be crucial that the Brazilian Judicial Branch recognizes the American decision to have jurisdictional issues resolved and facilitate negotiations with creditors in Brazil.

STJ RULES THAT CREDITS ARISING FROM CONTRACTS BETWEEN CREDIT UNIONS AND THEIR MEMBERS ARE NOT SUBJECT TO THE EFFECTS OF COURT-SUPERVISED REORGANIZATION

The 3rd Panel of the Superior Court of Justice (STJ) unanimously ruled that credits arising from contracts between credit unions and their members are considered union actions and, therefore, are not subject to the effects of court-supervised reorganization. This decision resulted from the judgments of Special Appeals 2.091.441 and 2.110.361, related to requests from Sicredi Alta Noroeste and Cooperativa de Crédito Nosso – Sicoob Nosso.

The companies facing court-supervised reorganization argued that these operations had a commercial nature similar to those traditional banks and should be included in the reorganization proceeding. However, the rapporteur, justice Ricardo Villas Bôas Cueva, emphasized that the granting of credit by credit unions is part of their corporate objectives, in accordance with Law 5,764/71. He also highlighted the effectiveness of §13 of Article 6 of Law 11,101/05, which excludes union actions from the effects of court-supervised reorganization.

This decision strengthens legal certainty in relationships between credit unions and their members, recognizing the specificity of the union model. The rapporteur's vote reinforced that these operations maintain their own legal nature, distinct from traditional banking relationships.

STJ RULES THAT COMPANY IN COURT-SUPERVISED REORGANIZATION CANNOT OFFSET CLAIM THROUGH ARBITRATION

The Superior Court of Justice (STJ in Portuguese), in the judgment of REsp 2.163.463, ruled that companies under court-supervised reorganization cannot offset claims through arbitration, considering the partial arbitration award null. The decision emphasized that, although offsetting is a means of fulfilling obligations, claim issues in the context of the bankruptcy case must be in line with the Bankruptcy and Corporate Reorganization Law (Law 11,101/2005). Thus, offsetting authorized by arbitration could result in the exclusion of claims from the reorganization case, compromising the continuity of the bankruptcy proceeding and the execution of the court-supervised reorganization plan.

TJSP DISMISSES CREATION OF SUBCLASS OF COLLABORATING CREDITORS FOR PRESENTING ILLEGAL REQUIREMENTS

The 1st Chamber of Business Law of São Paulo Court of Justice partially granted the interlocutory appeal filed by a creditor, who claimed that two clauses of the reorganization plan should become null. One clause prohibited creditors who voted against the plan from being considered "collaborating creditors," while the other imposed a "commitment not to litigate" against the company facing reorganization. The TJSP deemed these provisions abusive and unconstitutional, as they infringed the right to access justice. The conditions were removed, ensuring that creditors have the opportunity to disagree with the plan and choose the form of payment for "collaborating creditors."

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