BRAZILIAN'S CORPORATE REORGANIZATION RECORD

According to the Financial Times, in 2016, world trade has had the worst year since the 2008 financial crisis. In addition, the International Monetary Fund (IMF) has recently warned that it is prepared to lower the world growth forecast for the year. In this context, besides the bankruptcy of a company being a risk to the market itself, it also affects the economy of a country. As a result, to avoid bankruptcy, many jurisdictions have voted laws aimed to preserve companies in trouble, avoiding the consequences of a bankruptcy.

The present global markets instability has had an important effect over the Brazilian economy (along with the internal political scenario), affecting the economic growth and the health of several companies.

The Brazilian Bankruptcy Law[1], inspired by the U.S. Bankruptcy Code, aims to enable the recovery of companies undergoing economic and financial crisis. In order to do so, it provides tools to overcome the situation, with its own version of Chapter 11: the corporate reorganization under court supervision. In Brazil, although the Bankruptcy Law is not so new, in 2016 applications for judicial reorganization reached their record[2].

According to Brazilian media, this record "reveals the severity of the current economic crisis"[3]. The combination of high interest rates and prolonged recession (typical in a period of economic distress) culminates into serious financial difficulties for the companies. In order to enable de survival of the companies the Brazilian Bankruptcy Law provides efficient tolls to facilitate the credit and lower interest rates.

The crisis affected the economy as a whole and companies are facing a period of difficulties. Therefore, some of them are using the prerogatives of the law mostly for asset protection, leaving their creditors in complete frustration.

As a result, the judicial reorganization in Brazil has become more than just a 'trend topic': it is now a controversial matter, as most companies which claim for the procedure are using the courts as a tool to avoid, or at least postpone their debts' payment for some years.

Then, it is important to highlight some legal tools that the creditors have at their disposal in order to recover the credit from a malicious debtor.

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[1] Law n. 11.101, signed on February 9, 2005, and in effect since June of that year.

[2] The number of Judicial Recoveries plead in the first four months of 2016 was 97.6% higher than in the same period of 2015, according to the ***Serasa Experian's*** *Indicator for Bankruptcy and Recoveries.* The result is the highest since 2006, after the entry into force of the New Bankruptcy Law.

[3] http://g1.globo.com/economia/noticia/2016/05/pedidos-de-recuperacoes-judiciais-batem-recorde-nos-4-meses-de-2016.html

The law is clear in determining that the bankruptcy or judicial recovery of one of the debtors does not bring any consequence to the co-debtors, who remain bound to fulfill their obligations. Brazilian law authorizes "*the creditors of the debtor under reorganization retain their rights and privileges against the obligors, guarantors and individuals with right to recourse*". Consequently, all the personal guarantees remain valid, even if the credit is subject to the reorganization procedure. In this case, the creditor has the right to seek payment from the individual who signed the contract along with the debtor company.

In addition, the law states that "*the reorganization plan involves novation of credits prior to the request, and forces the debtor and all creditors subject to it, notwithstanding the guarantees* […]". Therefore, it is noticeable that even with the approval of the reorganization plan; the creditors have the right to execute the debt against the other obligors in court.

To sum up, the law wisely determined that the guarantees provided by the other obligors (bank guarantees, non-banking guarantees, "aval" or joint assumption of debt) shall not be modified by the approval of the reorganization plan. Otherwise, certainly the suppliers would cease any relationship with companies facing financial difficulties, completely invalidating what the law first desired.

Besides, if on one hand the credit is subject to a process of reorganization, on the other hand, to assume that the legal procedure would mean the loss of the guarantees once conferred to the creditors, would lead to serious inconsistencies. If so, the cancellation or impairment of guarantees issued previously to the reorganization plan (or bankruptcy) would cause credit price rise or even its reduction, because of the uncertainty perceived by the economic agents.

The role that the Bankruptcy Law tries to play in Brazil's current economic scenario is actually remarkable, with its proposition to recover ruined companies and bring them back to the market. However, it is essential to pay attention to the "tricks" that the debtors might use. Predicting that it would happen, the law has set a series of tools in order to protect the creditors' concerns, which must be wisely and strategically used by the lawyers acting on their behalf.

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