

Rural producers and rural produce under the Bill to reform the Business Reorganization and Bankruptcy Law

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Topics

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Bill PL 4458, which was approved by the House of Representatives, the Senate on November 25, 2020, and now awaits presidential sanction. Among other things, the bill proposes changes to the Brazilian Bankruptcy Law, including the judicial reorganization of rural producers and to certain agribusiness credit transactions.

Judicial reorganization of rural producers has long been a source of debate among legal professionals. In recent years, the main dispute is over the question of whether rural producers that are not registered as businesses in a Commercial Registry can apply for judicial reorganization. The question arises because (1) as it now stands, the legislation governing reorganization of distressed businesses provides that, among other requirements, only business proprietors or business companies that have lawfully done business for two years or more may apply for judicial reorganization, and (2) the Civil Code provides that rural producers may be treated as business proprietors, if they are registered in the Public Register of Mercantile Businesses.

The controversy arises with respect to rural producers that have been in business for two years or more, but do not meet the registration requirement. On one side of the debate are those that argue that in such circumstances the rural producer is not entitled to the benefits of judicial reorganization; on the other are those who contend that registration is not a legal requirement for rural producers to do business, and therefore it is sufficient for the rural producer to have been in business for two years or more before applying for judicial reorganization.

Over the last few years, the Superior Court of Justice (STJ – Superior Tribunal de Justiça) has adopted a position aligned with the second school of thought. Bill PL 4458 ratifies the STJ's position by expressly providing that rural producers that have done business for at least two years have standing to apply for judicial reorganization, regardless of whether they are registered.

Proof that rural producers have been in business for two years is made by means of (1) tax accounting records, in the case of legal entities, and (2) in the case of natural persons, presentation of the rural producer's digital business accounting records, income tax returns, and balance sheet.

The bill makes it clear that the effects of judicial reorganization of rural producers extend only to debts arising out of farming activities, as shown in the rural producer's accounting records.

The bill also excludes from the effects of judicial reorganization (of both rural producers and business companies involved in agribusiness) the rural credit transactions provided for in articles 14 and 21 of Law 4825/65 (the Rural Credit

Law), if they were renegotiated prior to the application for reorganization; debt contracted in the three years prior to the reorganization to acquire rural land, and security given for the debt; and debt and securities related to rural produce notes (CPRs) to be settled by physical delivery of the commodity, if all or part of the price of the commodity has been paid in advance, or the CPRs represents an exchange of inputs.

In summary, the Bill attempts to find a balance: on one hand, it seeks to resolve the legal uncertainty around the question of whether unregistered rural producers are entitled to the benefits of judicial reorganization, while on the other it provides greater protection to credit institutions in the agribusiness sector by excluding them from the effects of the reorganization.

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