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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 15
Oi S.A., *et al*.,[1]	Case No. 16-11791(SHL)
	(Jointly Administered)
Debtors in a Foreign Proceeding.	**Hearing Date: TBD** **Objection Deadline: May 11, 2018 at 5:00 pm (EDT)**

OBJECTION OF PHAROL, SGPS S.A., BRATEL B.V. AND BRATEL S.À.R.L. TO MOTION FOR ORDER GRANTING RELIEF PURSUANT TO 11 U.S.C. §§ 105(a), 1145, 1507(a), 1521(a) AND 1525(a) TO (I) ENFORCE THE BRAZILIAN REORGANIZATION PLAN AND (II) GRANT RELATED RELIEF

Pharol, SGPS S.A., Bratel B.V. and Bratel S.À.R.L., in their capacity as direct and indirect shareholders of Foreign Debtor Oi S.A. ("**Oi**") (collectively, the "**Pharol Parties**"), hereby submit this objection (the "**Objection**") to the Foreign Representative's *Motion for Order*

[1] The debtors in these chapter 15 cases and the identifying four digits of the tax identification number of each are: Oi S.A. (5.764) ("**Oi**"), Telemar Norte Leste S.A. (0.118), Oi Brasil Holdings Coöperatief U.A. (8518), and Oi Móvel S.A. (3.963).

Granting Relief Pursuant to 11 U.S.C. §§ 105(a), 1145, 1507(a), 1521(a) and 1525(a) to (I) Enforce the Brazilian Reorganization Plan and (II) Grant Related Relief [D.I. 232] (the "**Enforcement Motion**")[2], and rely upon the following facts and matters of law:

Preliminary Statement

By way of the Enforcement Motion, the Foreign Representative seeks the entry of a comprehensive Proposed Order that would pave the way for substantial consummation of a far-ranging RJ Plan confirmed by the Brazilian Confirmation Order that remains subject not only to meaningful appeals that present fundamental and central issues of first impression regarding Brazilian constitutional, corporate and insolvency law and civil procedure, but also to a pending arbitration that challenges the jurisdiction of the Brazilian RJ Court to have entered orders affecting shareholder rights and interests.

As explained more fully below, the circumstances of these cases and the foreign proceedings from which they arise differ significantly from other cases in which U.S. bankruptcy courts have granted recognition or relief under Chapter 15. Although many of those circumstances are omitted or given short shrift in the 118-page Enforcement Motion and accompanying Filho Declaration and exhibits,[3] upon full consideration of the relevant facts and law the Court should deny the Enforcement Motion without prejudice, or defer consideration until certain appellate proceedings, the referenced arbitration and Brazilian RJ Court-ordered mediation proceedings in Brazil have been concluded or resolved.

The Enforcement Motion describes "a near-unanimously approved plan for the Brazilian RJ Debtors' comprehensive restructuring" and paints a picture of a complex case highlighted by

[2] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Enforcement Motion.

[3] *Declaration of Antonio Reinaldo Rabelo Filho, Etc.* filed in support of Enforcement Motion. D.I. 230 (the "**Filho Declaration**").

negotiations and an ultimate resolution comprised of overwhelming *creditor* support for the RJ Plan. Enforcement Mtn. at 2-4. The Enforcement Motion, however, notably excludes any meaningful reference to the continued opposition of *shareholders* to the RJ Plan, the exclusion of those shareholders from the *recuperação judicial* process in respect of the issues that directly affect their rights and interests in violation of Brazilian corporate law, and the pendency of the appellate, arbitration and mediation proceedings referenced above and more fully described below.

The crux of the many issues presented in these appeals and arbitration, and to be addressed in the mediation ordered by the Brazilian RJ Court, is that the RJ Plan and the process utilized by which the Brazilian RJ Debtors obtained its approval violated basic principles of Brazilian law and civil procedure. The RJ Court's interpretation of insolvency law in a manner that is contrary to, or fails to take into account, both corporate law and Oi's own bylaws, excluded the Pharol Parties and other shareholders from the *recuperação judicial* process in respect of those aspects of the RJ Plan directly affecting their rights and interests. While the Pharol Parties readily acknowledge that it is not the function of this Court to *decide* the issues of Brazilian law presented in the pending appeals, it is respectfully submitted that under the circumstances described here and in Brazil this Court should exercise its discretion to deny or withhold the entry of relief as sought in the Enforcement Motion as a matter of comity, so that the Brazilian courts may address these issues of first impression as presented on appeal.

The Foreign Representative fails to present this context sufficiently in the Enforcement Motion. The fundamental issues raised in the pending appeals and arbitration are neither identified nor addressed, nor is there any mention that the mediation process in which the Debtors, S.À.R.L (as defined below) and Société Mondiale are involved was ordered by the

Brazilian RJ Court.[4] Thus, the Pharol Parties submit this Objection to bring a clearer and more complete factual record to this Court's attention, on the basis of which record they respectfully submit that granting the Enforcement Motion on the expedited basis sought by the Foreign Representative would be inconsistent with the principles of comity and the purposes of Chapter 15.

Background

1. Bratel B.V. is a wholly-owned subsidiary of Pharol SGPS, S.A. and the 100% owner of its own subsidiary Bratel S.À.R.L. ("**S.À.R.L.**"), which in turn is Oi's largest shareholder, holding 22.24% of the total shares of Oi. If the RJ Plan that is presently subject to appeal is consummated, S.À.R.L. and other shareholders of Oi will suffer substantial dilution in their holdings, notwithstanding the deprivation by the Brazilian RJ Court, in violation of Brazilian corporate and civil procedural law, of their opportunity to appear and be heard in the Brazilian RJ Proceeding with respect to the impact of the RJ Plan on their rights and interests as shareholders.[5]

2. The Enforcement Motion portrays the Brazilian RJ Proceeding as one fraught with disputes -- of which the majority were ultimately resolved through negotiation, appeal or a combination thereof -- resulting in a near-consensual confirmation of the RJ Plan. The Enforcement Motion, however, mischaracterizes or omits to mention certain material events that

[4] The Brazilian RJ Court ordered mediation in a decision dated April 2, 2018, an English translation of which is annexed hereto as Exhibit A. Thereafter, Oi alleged that Société Mondiale, one of the parties ordered to mediate, should not take part in any mediation because its ownership interest had been significantly reduced and it did not demonstrate a spirit of conciliation throughout the process. After a supplemental submission by Société Mondiale in response to Oi's allegations, the Brazilian RJ Court disagreed with Oi's position and, on April 18, 2018 signed a decision, an English translation of which is annexed hereto as Exhibit B, upholding the mediation and Société Mondiale's participation therein.

[5] If the Enforcement Motion is granted and the RJ Plan is implemented, S.À.R.L.'s holdings will be diluted to approximately 6.2%.

transpired over the course of the Brazilian RJ Proceeding, the subsequent appeals, and ancillary proceedings, creating an incomplete factual record for this Court. As the decision of this Court in respect of the Enforcement Motion is critical to substantial consummation of the RJ Plan,[6] it is similarly critical that the Court understand more fully the significance of the multiple appeals pending from multiple judgments and orders in the Brazilian RJ Proceeding, a pending arbitration, and a pending mediation ordered by the Brazilian RJ Court.

Statement of Facts

I. Material Misstatements and Omissions in Enforcement Motion

3. The record of the Brazilian RJ Proceeding presented to this Court by the Foreign Representative is incomplete and, at times, misleading. In particular, the following clarifications are necessary to provide a fuller picture on which the Court can base its ruling:

- Enforcement Motion Statement: "*On March 28, 2017 and in the course of the extensive negotiations discussed above, the Brazilian RJ Debtors filed its first series of proposed modifications to the RJ Plan, on the basis of requests of parties in negotiation. Id. at ¶ 29. Further modifications were considered in the following months, and a revised RJ Plan was filed on October 11, 2017. Id.*" Mtn. ¶ 28.

    - Pharol Parties' Clarification: It is the Pharol Parties' position that not all modifications to the RJ Plan were legal. S.À.R.L. was excluded from participating in negotiations regarding the terms of the RJ Plan. It was the ultimate presentation of the RJ Plan in the Brazilian RJ Court and the obvious and devastating impact it would have on their rights that led shareholders to request a shareholders' meeting and participation in the GCM to discuss the RJ Plan, resulting in an October 20, 2017 decision issued by the Brazilian RJ Court prohibiting S.À.R.L. and other shareholders from participating in the GCM in their capacity as shareholders. The shareholders were interested in proposing modifications to key RJ Plan provisions and their participation was denied, precluding their ability to take part in negotiations. It is S.À.R.L.'s position that the RJ Plan violates Brazilian corporate law in respect of its treatment of shareholders; this is the key issue presently on appeal to the 8th Civil Chamber of the Rio de Janeiro State Court of Appeals.

[6] Based upon the facts set forth in the Enforcement Motion and Filho Declaration there appears to be no question that the RJ Plan has not been substantially consummated, – and only can be consummated following entry of an Order by this Court.

- Enforcement Motion Statement: "*In anticipation of the pending creditor vote, the Brazilian RJ Court revoked the power of conflicted members of Oi's executive officers that had been appointed by Oi's board of directors on November 3, 2017 (i.e., members nominated or appointed by certain of Oi's shareholders) from participating in the restructuring process. Seventh Declaration at ¶ 5.*" Mtn. ¶ 29.

    - Pharol Parties' Clarification: The foregoing statement is not accurate. Under Brazilian law, these executive officers are not "conflicted" – in fact, Oi bylaws expressly authorize members of the board to hold officer positions. Moreover, the officers were not nominated or appointed by the shareholders, but by the Oi board, in compliance with Brazilian corporate law. Further, S.À.R.L. appealed the decision by the Brazilian RJ Court, which is pending final decision. It is the Pharol Parties' position that prior to making its decision, the Brazilian RJ Court improperly denied S.À.R.L. the opportunity to be heard on this matter.

- Enforcement Motion Statement: "*On November 29, the Brazilian RJ Court vested sole authority of the restructuring process with Oi's chief executive officer (the "**CEO**") and directed him to present the final RJ Plan no later than December 12, 2017. Id.*" Mtn. ¶ 29.

    - Pharol Parties' Clarification: The foregoing statement omits certain key information. Namely, S.À.R.L. filed an appeal of the decision of the Brazilian RJ Court that vested sole authority with the CEO, which appeal is presently pending. The statement is also misleading, as the Brazilian RJ Court did not vest full authority with the CEO, whose powers were notably limited to Brazilian corporate rules that provide shareholders rights to approve or reject certain provisions of the RJ Plan, without which the RJ Plan is not valid. S.À.R.L. also has challenged in the pending arbitration (more fully described below) the acts undertaken by the CEO on behalf of Oi pursuant to the authority purportedly granted him by the Brazilian RJ Court. S.À.R.L. has requested that the arbitration panel prevent Oi from implementing certain provisions of the RJ Plan or declare void the acts undertaken by the CEO, in violation of Brazilian corporate law and Oi's own bylaws. Again here, it is the Pharol Parties' position that prior to making its decision the Brazilian RJ Court improperly denied S.À.R.L. the opportunity to be heard on this matter.

- Enforcement Motion Statement: "*On January 9, 2018, Oi shareholder Pharol, SGPS S.A. ("**Pharol**") and its subsidiary Bratel S.À.R.L ("**Bratel**"), issued a statement informing that it was requesting a "partial reconsideration" of the Brazilian Confirmation Order (the "**Partial Reconsideration Request**") and calling for an extraordinary shareholders meeting (the "**Extraordinary Meeting**") to be held on February 7, 2018 to deliberate the terms of the RJ Plan among other issues. Id. at ¶ 118.*" Mtn. ¶ 30.

    - Pharol Parties' Clarification: The foregoing statement fails to mention that the purpose of the Extraordinary Meeting was to approve or reject certain provisions of the RJ Plan that, under Brazilian law, require shareholder consent at a

shareholders' meeting, such as a capital increases and corporate governance issues. Therefore, it is the Pharol Parties' position that the RJ Plan is invalid, as the shareholders' agreement to such provisions has not been validly and effectively obtained in accordance with applicable Brazilian law and procedure.

- Enforcement Motion Statement: "*The Brazilian RJ Court rejected the Partial Reconsideration Request, including the request calling for the Extraordinary Meeting.*" Mtn. ¶ 30.

    - Pharol Parties' Clarification: The foregoing statement fails to mention that S.À.R.L. filed an appeal of the Brazilian Confirmation Order and the Brazilian RJ Court's decision denying the Partial Reconsideration Request, which appeal is presently pending. The validity and enforceability of the RJ Plan is presently subject to litigation and arbitration. Notably, S.À.R.L. did not request that the Brazilian RJ Court schedule the Extraordinary Meeting. Rather, (a) S.À.R.L. requested that the Oi board call the Extraordinary Meeting and the board refused to do so; and (b) Oi executive officers directed Oi to file a submission with the Brazilian RJ Court requesting, among other things, that the Brazilian RJ Court prevent the shareholders from calling or holding the Extraordinary Meeting. S.À.R.L. takes the position that there was never a court order specifically prohibiting the Extraordinary Meeting from occurring. Subsequently, however, the Brazilian RJ Court issued a decision staying the effects of the Extraordinary Meeting; S.À.R.L. appealed this decision, which appeal is presently pending. Notably, the Public Prosecution Office of the State of Rio de Janeiro (the "**Public Prosecutor**")[7] also filed opinions and an appeal from the Brazilian Confirmation Order, stating his position in each that shareholders should have the right to deliberate on the RJ Plan.

- Enforcement Motion Statement: "*On March 7, 2018, the Brazilian RJ Court granted the Prosecutor's request and issued a decision, suspending the "political rights" of those shareholders who voted at the Extraordinary Meeting and removing the members of the Board who were appointed by such shareholders, until the new equity contemplated under the RJ Plan has been issued to creditors. Id. at ¶ 119.*" Mtn. ¶ 31.

    - Pharol Parties' Clarification: The foregoing statement fails to mention that this matter is presently pending in arbitration and on appeal in the Superior Court of Justice. It is the Pharol Parties' position that the Brazilian RJ Court improperly denied S.À.R.L. the opportunity to be heard on this matter in respect of the impact of the RJ Plan on shareholders' rights in violation of Brazilian corporate law.

[7] The Public Prosecutor occupies a role that does not have an identical counterpart in the United States. As an independent public official with a broad mandate, the Public Prosecutor acts as *custos legis*, offering exempt opinions on the contents of the law and best legal approach to matters before the court. In this specific regard the role of the Public Prosecutor is somewhat similar to the United States Trustee in a Chapter 11 case, addressing legal issues and matters of public policy that arise before an RJ court – including, in the Brazilian RJ Proceeding, the issue of whether under Brazilian corporate law shareholders have the right to deliberate on certain terms of the RJ Plan to which this Court is now being asked to give the green light.

- Enforcement Motion Statement: "*On January 3, 2018 and in accordance with Brazilian Bankruptcy Law, the Public Prosecution Office of the State of Rio de Janeiro issued an opinion (the "**Public Prosecutor Opinion**") in support of confirmation of that the RJ Plan, with the reservation of certain exceptional matters later addressed by the Brazilian RJ Court in its order confirming the RJ Plan and discussed next. See Supp. Factual Decl. at Exhibit B at 19-20; Supp. Legal Decl. at ¶ 42.*" Mtn. ¶ 46.

    - Pharol Parties' Clarification: The foregoing statement fails to mention that, as set forth above, the Public Prosecutor issued opinions stating that the Extraordinary Meeting (of shareholders) should deliberate on certain provisions of the RJ Plan that, according to Brazilian corporate law, should be approved by shareholders – including provisions impacting corporate governance and capital increases.

- Enforcement Motion Statement: "*Several motions for clarification and several interlocutory appeals have been filed against the Brazilian Conformation Order. Supp. Factual Decl. at ¶ 57. Although subject to several of these pending appeals, the Brazilian Confirmation Order and RJ Plan have not been stayed, fully or partially, and therefore remain in full force and effect, according to their terms, as of the date of this Motion. Supp. Legal Decl. at ¶ 44; Supp. Factual Decl. at ¶ 57.*" Mtn. ¶ 49.

    - Pharol Parties' Clarification: The foregoing statement contains multiple material omissions. First, the pending arbitration has a direct impact on the RJ Plan and its implementation. More importantly, there is an arbitration decision that precludes Oi from implementing the capital increase that is intended to follow the bond exchange under the terms of the RJ Plan. In respect of the violation of Brazilian corporate law as a result of the RJ Plan, S.À.R.L. commenced an arbitration proceeding (the "**Arbitration**") with an "Arbitrator for Urgent Matters," (the "**Arbitrator**") seeking a preliminary injunction. On March 5, 2018, the Arbitrator issued an order ruling on one of the requests made by S.À.R.L. and deferred ruling on certain other requests until after the filing of Oi's responsive papers. In the March 5 decision, the Arbitrator (i) recognized arbitral jurisdiction to consider the issues raised by S.À.R.L., and (ii) granted one of S.À.R.L.'s urgent requests, thereby (a) suspending the effects of possible approval of any resolution resulting from the meeting of Oi's Board of Directors scheduled to occur (and occurred in fact) on March 5, 2018 in which the Board would deliberate (and actually deliberated) on the capital increase, debt exchange, issuance of new shares and subscription bonus contemplated under the RJ Plan, and (b) precluding Oi from implementing the capital increase, subject to a penalty in the amount of BRL 122,923,791.41.

      The Foreign Representative also fails to mention that Oi has initiated a proceeding before the Superior Court of Justice ("**SCJ**") to determine which court – the Brazilian RJ Court or the Arbitrator – has jurisdiction over the matter. SCJ is Brazil's highest court for non-constitutional matters. Thereafter, SCJ Minister Judge Marco Buzzi granted a preliminary injunction at Oi's request, staying the

effects of the decision rendered by the Arbitrator, but solely in relation to the part of the decision that would impose a monetary penalty. The SCJ also appointed the Brazilian RJ Court to decide any other preliminary injunction requests. S.À.R.L. has filed an appeal of this injunction, which is presently pending. It is S.À.R.L.'s position that the aforementioned SCJ decision is stayed only as to the penalty indicated above, and that therefore under the Arbitrator's decision Oi may not proceed with the implementation of the capital increase.

Finally, as set forth herein, the Foreign Representative does not mention that there is a mediation proceeding ongoing between Oi and shareholders S.À.R.L. and Société Mondiale, which mediation was ordered by the Brazilian RJ Court.

II. Appeals, Arbitration, and Mediation in Brazil

4. As the Enforcement Motion merely references and glosses over certain appeals from the RJ Confirmation Order that remain pending in Brazil, it falls to the Pharol Parties to provide a more complete picture of those appeals, the ongoing Arbitration and related circumstances in Brazil that bear upon the decision whether to grant the Enforcement Motion in the expedited time frame that the Foreign Representative thrusts upon the Court.

5. Following confirmation of the RJ Plan, S.À.R.L. lodged an appeal of the Brazilian Confirmation Order with the 8th Civil Chamber of the Rio de Janeiro State Court of Appeals. To the extent necessary, further appeals are permitted to the Superior Court of Justice (regarding non-constitutional matters of Federal law) and/or the Federal Supreme Court (regarding constitutional matters). The issues of first impression presented on appeal involve a fundamental conflict between rights of shareholders under Brazilian constitutional and corporate law and civil procedure, and the exclusion of Oi shareholders from the restructuring process in the Brazilian RJ Proceeding.[8] More specifically, the primary issues raised on appeal include the following:

[8] By comparison, while certain shareholder rights arising under state law yield to principles of insolvency law in a Chapter 11 case in the U.S., 11 U.S.C. §1109(b) expressly grants to "an equity security holder" or a committee of such holders appointed under 11 U.S.C. §1102(a)(2) the right to "appear and be heard on any issue in a case under" Chapter 11. The issue of whether a similar opportunity to appear and be heard exists in an RJ proceeding in Brazil, at least in respect of those aspects of an RJ plan that affect shareholder interests, or whether as in the Brazilian RJ Proceeding at issue here shareholders can systematically be excluded from all phases of the RJ process, is one of first impression under Brazilian law. It is the position of S.À.R.L. in the pending appeals that, under Brazilian law,

- First, that the Brazilian RJ Court lacks jurisdiction to rule that a shareholders' meeting is unnecessary. This is a procedural point in connection with the arbitration clause provided under Oi's bylaws.
- Second, that the shareholder rights provided for under Brazilian corporate law are not eliminated or superseded by Brazilian insolvency law, and therefore confirmation of the RJ Plan without shareholder involvement or participation violated their rights.

6. As set forth above, S.À.R.L. commenced the Arbitration against Oi, pursuant to the arbitration clause in section 68 of Oi's bylaws, in order to (i) call a shareholders meeting to discuss the terms of the RJ Plan affecting shareholders (*i.e.*, dilution, capital increases and corporate governance issues), on which shareholders contend they have a right under Brazilian corporate law to appear and be heard; (ii) require Oi to comply with Brazilian corporate law governing a shareholder demand, by filing an action for damages against its managers and directors responsible for carrying out acts without shareholder consent, and as a consequence of the filing of the lawsuit to remove those managers and directors from their positions; and (iii) prevent Oi from implementing the terms of the RJ Plan that violate shareholders' rights and, by extension, Brazilian insolvency and corporate law and/or to declare null and void actions that implemented such terms. Oi objected to the filing of this proceeding on the basis that only the Brazilian RJ Court has jurisdiction. S.À.R.L. subsequently responded to Oi's objection on April

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the Brazilian RJ Court should have afforded it that opportunity in respect of those matters in the Brazilian RJ Proceeding that affected its rights as a shareholder of Oi.

12, 2018 on the grounds that there is no legal basis to transfer jurisdiction from the Arbitrator to the Brazilian RJ Court. This jurisdictional matter is pending decision.[9]

7. In addition, as referenced above, in a decision dated April 2, 2018, the Brazilian RJ Court ordered Oi and shareholders S.À.R.L. and Société Mondiale[10] to participate in mediation in an effort to resolve their disputes. Rejecting Oi's effort to exclude Société Mondiale from the mediation, the Brazilian RJ Court issued its decision on April 18, 2018, approving Société Mondiale's participation and ordering mediation to proceed. English translations of these decisions from the Brazilian RJ Court are annexed hereto as Exhibits A and B, respectively.[11]

8. Contrary to the picture painted in the Enforcement Motion, the mediation process is both active and ongoing. In its order of April 18, 2018, the Brazilian RJ Court expressed its expectation "that the parties will use all efforts to solve the conflict, which certainly will only bring benefits to all those involved." Apr. 18, 2018 Decision at 2, Ex. B. A mediator has been appointed, and substantive meetings are scheduled throughout the remainder of May. More specifically, the Pharol Parties had a brief initial call with the mediator on Friday, May 4, 2018, and a follow-up videoconference with the mediator is scheduled for May 14, 2018. All parties to the mediation, ***including Oi***, will be participating in a joint mediation conference at a mutually agreeable date and time during the week of May 21, 2018 – the very same week in which the

[9] Again, without deciding the underlying jurisdictional issues under Brazilian law, the Court may note the conundrum presented by Oi's position – that only the same Brazilian RJ Court that has systematically excluded the Pharol Parties and other shareholders from the RJ Proceeding has jurisdiction to hear and decide issues of shareholder rights.

[10] Upon information and belief, Société Mondiale is a minority shareholder of Oi and also has lodged an appeal from the Brazilian Confirmation Order.

[11] If necessary, in advance of any hearing on the Enforcement Motion the Pharol Parties will provide sworn translations of any exhibits annexed to this Objection.

Foreign Representative initially requested that this Court schedule a hearing on the Enforcement Motion.

9. As the mediation unfolds over the remainder of May and into June, the appeals also remain pending in Brazil. Against this backdrop of activity, the Foreign Representative asks this Court in the Enforcement Motion to grant extensive relief so that the Foreign Debtors can proceed to enforce and implement the RJ Plan in the U.S. and other jurisdictions around the world – all without fully disclosing the activity or addressing the legal and practical consequences of the Proposed Order. Instead, the Foreign Representative (along with other parties in interest who stand to gain from the RJ Plan at the expense of the Pharol Parties and other shareholders) stresses the importance of the July 31 deadline for implementation, in an effort to extract a swift and immediate ruling from this Court without regard to the underlying circumstances in Brazil. At a minimum, the Pharol Parties respectfully submit that in light of those circumstances and pending further development of a complete record, the Court should exercise its discretion to reserve ruling on the Enforcement Motion until all appeals and ancillary proceedings -- and certainly, a resolution of the jurisdictional issue before the Arbitrator -- have been resolved in Brazil.

Burden of Proof

10. Having previously obtained recognition of the Brazilian RJ Proceeding as foreign main proceedings,[12] the Foreign Representative asks this Court to grant comity to a ruling of the Brazilian RJ Court, along with an extensive list of relief as necessary to substantial consummation of the RJ Plan. The Foreign Representative bears the burden of demonstrating that he is entitled to the relief requested. *See, e.g.*, *In re Sivec SRL, as successor in liquidation to*

[12] To be clear, by no means do the Pharol Parties question nor seek to revisit the Court's grant of recognition to the Brazilian RJ Proceeding.

Sirz SRL, 476 B.R. 310, 323 ("The burden of proof is on the party urging comity.") (citing *Reserve Intern. Liquidity Fund, Ltd. v. Caxton Intern. Ltd.*, 2010 WL 1779282 at *13 (S.D.N.Y., Apr. 29, 2010); *CSL Australia Pty. Ltd. v. Brittania Bulkers PLC*, No. 08-8290, 2009 WL 2876250 at *3 (S.D.N.Y., Sept. 8, 2009) ("The burden of establishing international comity rests on the party asserting it.") (citation omitted); *see also Fox v. Bank Mandiri (In re Perry H. Koplik & Sons, Inc.)*, 357 B.R. 231, 239 (Bankr. S.D.N.Y. 2006) (noting that "the moving party carries the burden of proving that comity is appropriate") (citation omitted).

Objection

I. Granting the Enforcement Motion Would be Inconsistent with the Purposes of Chapter 15

11. Cooperation with foreign courts is one of the key goals of Chapter 15, along with ensuring greater certainty for trade and investment, facilitating fair and efficient administration of cross-border insolvencies in a manner that protects the interests of all interested parties, and protection and maximization of value of a debtor's assets. *See* 11 U.S.C. § 1501(a). Yet it is well settled that such cooperation does not require blind adherence to the rulings of the foreign courts. For this reason, Chapter 15 contains various safeguards intended to prevent U.S. courts from becoming a "rubber stamp" for foreign decisions. *See, e.g.*, 11 U.S.C. 1506, 1507(b) and 1522(a); *see also Bank of New York v. Treco (In re Treco)*, 240 F.3d 148, 154, 157 (2d Cir. 2001) (indicating, with respect to former section 304[13], that (i) "[t]he statute expressly directs courts to consider several factors before deferring to [a] foreign court," (ii) "[t]he statute plainly

[13] Principles of former section 304 cases and comity continue to apply to consideration of post-recognition relief under Chapter 15. *See, e.g.*, *In re Atlas Shipping A/S*, 404 B.R. 726, 737 (Bankr. S.D.N.Y. 2009) ("while chapter 15 replaced §304 and provided a more structured framework for recognizing foreign proceedings, Congress specifically granted courts discretion to fashion appropriate postrecognition relief, consistent with the principles underlying §304."). Courts have thus held that §304 case law is relevant to requests for relief under §1507. *See, e.g., SNP Boat Serv. S.A. v. Hotel Le St. James*, No. 11-62671, 2012 WL 1355550, at *8 (S.D. Fla. Apr. 18, 2012); *In re Lee*, 477 B.R. 156, 179 (Bankr. D. Mass. 2012); *In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006).

provides that [these] factors may form the basis for denying relief, and thus denying comity, in some cases," and (iii) "comity has never meant categorical deference to foreign proceedings.") (citations omitted); *Ad Hoc Group of Vitro Noteholders v. Vitro S.A.B. de CV (In re Vitro S.A.B. de CV)*, 701 F.3d 1031, 1054 (5th Cir. 2012) (explaining that Chapter 15 "impose[s] certain requirements and considerations that act as a brake or limitation on comity, and preclude[s] granting the relief requested by a foreign representative") *cert. dismissed*, 133 S. Ct. 1862 (2013).

12. Moreover, each of the other goals set forth in section 1501 weighs heavily in favor of withholding an immediate or expedited decision on the Enforcement Motion. Granting relief in the United States to enforce the terms of an RJ Plan that is subject to multiple non-frivolous appeals, arbitration, and court-ordered mediation, and which depends for its substantial consummation on additional assistance from this Court, will hardly provide "greater legal certainty for trade and investment," as investors would have to anticipate the potential that the Brazilian Confirmation Order may be overturned on appeal. *See infra.* ¶ 20. Granting the Enforcement Motion on the expedited basis urged by the Foreign Representative would signal to future foreign debtors that they could obtain relief under Chapter 15 to implement a cross-border restructuring notwithstanding the pendency of non-frivolous appeals, arbitration, and an order to participate in good faith mediation in their home jurisdiction, thereby short-circuiting those other ongoing proceedings and resulting in an end-run around the foreign courts' jurisdiction. Such a result is inconsistent with the principles of comity.

13. Likewise, the principles of fairness and certainty are fundamental to fair and efficient administration of cross-border insolvency proceedings. *See* 11 U.S.C. § 1501(a); *see also In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R.

122, 126 (Bankr. S.D.N.Y. 2007) ("Unique to the Bankruptcy Code, Chapter 15 contains a statement of purpose. . .with the express objectives of. . .fair and efficient administration of cross-border insolvencies that protects the interests of all creditors *and other interested entities*, including the debtor.") (emphasis added). By no means would immediate entry of the Proposed Order promote these considerations; rather, in light of dueling and inconsistent U.S. and Brazilian law on the issue of mootness as explained below, entry of the requested relief would inject considerable uncertainty into the entire complex restructuring process that is described in such painstaking detail in the Enforcement Motion. *See infra.* ¶ 20. Under the circumstances of this case and the Brazilian RJ Proceeding, fairness, efficiency and comity dictate that this Court reserve judgment until such time as the appeals and Arbitration pending in Brazil are resolved and the pending mediation has concluded.

II. The Enforcement Motion Should Not Be Granted Under Either Section 1521 or 1507

14. The grant of further relief under 11 U.S.C. §1521 and additional assistance under 11 U.S.C. §1507, over and above the automatic relief granted upon recognition of a foreign main proceeding under 11 U.S.C. § 1520, is subject to the discretion of the Court. *See, e.g.*, *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 333 (Bankr. S.D.N.Y. 2008) ("relief [post-recognition] is largely discretionary and turns on subjective factors that embody principles of comity."); *see also In re Nat'l Warranty Ins. Risk Retention Grp.*, 306 B.R. 614, 619 (B.A.P. 8th Cir. 2004). As discussed further below, in considering whether to grant discretionary relief under sections 1521 and 1507, a court must consider the particular facts of the case at hand and evaluate the equities of the requested discretionary relief against those facts.

A. The Grant of Discretionary Relief Requires a Case-by-Case Analysis

15. The determination of whether to enforce a plan stemming from a foreign proceeding -- or here, to pave the way for its substantial consummation that cannot otherwise be achieved -- must be made on a case-by-case basis, driven by consideration of the process and results of the case at hand rather than solely by the merits of the foreign law at issue. *See In re Treco*, 240 F.3d at 156 ("Although some of the considerations in determining whether to defer to a certain country's bankruptcy proceedings may be constant from case to case, other factors vary."); *see also Argo Fund Ltd. v. Bd. of Dirs. of Telecom Argentina, S.A. (In re Bd. of Dirs. of Telecom Argentina, S.A.)*, 528 F.3d 162, 174 (2d Cir. 2008) (noting that rulings under former section 304 were "based on the specific facts of [the case at hand]"); *In re Garcia Avila*, 296 B.R. 95, 107-08 (Bankr. S.D.N.Y. 2003) ("The court must apply the factors [set forth in former section 304] on a case-by-case basis. Accordingly, a prior decision to defer to a particular court in one case is not determinative in a different case.") (citation omitted).

B. The Grant of "Appropriate Relief" Under Section 1521(a) or of "Additional Assistance" Under Section 1507(a) Requires Application of a Balancing Test

16. Section 1521(a) permits a court, in its discretion, to grant "appropriate relief," but solely to the extent such relief is permitted by section 1522(a). Section 1522(a), in turn, provides that a court may grant discretionary relief "only if the interests of the creditors and *other interested parties,* including the debtor, are sufficiently protected." 11 U.S.C. § 1522(a) (emphasis added). The analysis under section 1522(a) requires a balancing of the interests of the debtor and other affected parties. *See Jaffe v. Samsung Elecs. Co., Ltd.*, 737 F.3d 14, 27-28 (4th Cir. 2013) ("The analysis required by § 1522(a) is . . . best done by balancing the respective interests based on the relative harms and benefits in light of the circumstances presented, thus inherently calling for application of a balancing test.") Such a balancing test requires a court to

consider "the just treatment of all holders of claims against the bankruptcy estate, the protection of U.S. claimants against prejudice and inconvenience in the processing of claims in the [foreign] proceeding, and the distribution of proceeds of the [foreign] estate substantially in accordance with the order prescribed by U.S. law." *In re Artimm, S.r.L.*, 335 B.R. 149, 160 (Bankr. C.D. Cal. 2005) (decided under former section 304(c), but indicating that the analysis would be the same for relief granted under section 1521).

17. Likewise, section 1507(a) permits a court, in its discretion, to grant "additional assistance," but only after balancing various factors set forth in section 1507(b). Those factors require the court to consider whether the granting of the requested relief, *consistent with the principles of comity*, will reasonably assure:

> (1) just treatment of all holders of claims against or interests in the debtor's property;
>
> (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
>
> (3) prevention of preferential or fraudulent dispositions of property of the debtor; [and]
>
> (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title . . . .

11 U.S.C. § 1507(b). In short, whether post-recognition relief is sought under section 1521 or 1507, the factors to be considered are similar, and the relief granted must be consistent with the principles of comity.

C. The Foreign Representative Cannot Meet His Burden With Respect to the Applicable Tests and Factors, and to Grant the Enforcement Motion Would Be Inconsistent With Principles of Comity

i. The Appeals

18. As referenced above, if the Court grants the Enforcement Motion within the expedited time frame urged by the Foreign Representative, it would inject great uncertainty into

the Oi restructuring process and the ongoing proceedings in Brazil. This uncertainty arises, at least in part, based upon the conflicting laws of the United States and Brazil with respect to the principle of equitable mootness -- the legal and practical impact of substantial consummation of the RJ Plan on the Brazil appellate proceedings and the array of complex multinational transactions set into motion by entry of the Proposed Order.

19. Under prevailing U.S. law as developed in this Circuit, the substantial consummation of a confirmed Chapter 11 plan leaves any pending appeal from the confirmation order subject to dismissal on the grounds of equitable mootness. *See R² Invs., LDC v. Charter Commc'ns, Inc. (In re Charter Commc'ns, Inc.)*, 691 F.3d 476 (2d. Cir. 2012) (rebuttable presumption of equitable mootness when plan substantially consummated within meaning of 11 U.S.C. §1101(2)); *see also, Beeman v. BGI Creditors' Liquidating Trust (In re BGI, Inc.)*, 772 F.3d 102 (2d. Cir. 2014) (extending equitable mootness doctrine to appeals from order confirming liquidating Chapter 11 plans); *Official Comm. of Unsecured Creditors, et al. v. Sabine Oil & Gas Corp., et al.*, 2017 WL 477780 (S.D.N.Y. Feb. 3, 2017) (dismissing appeal of confirmation order as equitably moot where plan was substantially consummated). While the sponsor and proponents of a Chapter 11 plan confirmed by a U.S. court may, as a matter of strategy, seek to implement and substantially consummate that plan in order to render any appeal from the confirmation order moot, it is far different when as here, the Foreign Representative as proponent of the RJ Plan seeks to ***use this Court as the instrument*** through which it attains substantial consummation so as to render foreign appeals similarly moot.

20. The issue is further complicated by the fact that Brazilian law does not appear to recognize the doctrine of equitable mootness, at least in the context of an appeal from an order approving a *recuperação judicial* plan. As a result, if an appeal is ultimately successful,

Brazilian law may require that a consummated plan be unwound. Thus, the Foreign Representative's urgent request for entry of the Proposed Order prior to resolution of the pending appeals in Brazil poses the conundrum that in the event the Brazilian Confirmation Order is overturned or modified on appeal, the Brazilian court might order the debt-equity conversions provided for under the RJ Plan unwound, or fashion other relief for the Pharol Parties and other shareholders that could undermine the RJ Plan. This uncertainty is compounded by the unknown impact of a successful appeal on the conversion of other debt instruments in other countries which, as referenced in the Enforcement Motion, have in common their dependence on entry of the Proposed Order by this Court. *See* Enforcement Mtn. ¶¶ 142; 152-153.

21. To be sure, the pending appeals in Brazil are hardly frivolous and the positions advanced by S.À.R.L. find considerable support in Brazilian law. Specifically, in connection with its appeal of the Brazilian Confirmation Order S.À.R.L. has obtained as many as four (4) legal opinions from independent experts on Brazilian law, each of which supports S.À.R.L.'s positions that (a) the RJ Plan was confirmed in violation of Brazilian corporate law by denying the required shareholder participation in respect of the provisions of the RJ Plan directly affecting the interests of these shareholders, and (b) under Brazilian arbitration law and civil procedure, the shareholder issues are within the exclusive jurisdiction of the Arbitrator and not the Brazilian RJ Court. Translated copies of each legal opinion submitted in connection with the pending appeals in Brazil are attached hereto as Exhibits C-1 – C-4, respectively.[14]

[14] In civil law jurisdictions such as Brazil it is common for parties to present independent legal opinions to a court in respect of a controlling legal issue before it. To be clear, in offering these opinions here the Pharol Parties do not ask this Court to revisit the Brazilian Confirmation Order or prejudge the outcome of the pending appeals, but rather to establish that the appeals are non-frivolous and present serious substantive issues of Brazilian law on which there exists considerable support for their legal position.

ii. **The Arbitration**

22. The critical importance of the Arbitration and its potential impact on the Brazilian Confirmation Order and RJ Plan also cannot be overlooked. Undersigned counsel is advised that the Arbitrator has determined, based on principles of Brazilian law, that the Brazilian RJ Court did not have jurisdiction over matters relating to shareholders, such as shareholders' rights, that are subject to the Arbitration, as a result of which many of the decisions entered by that Court in the Brazilian RJ Proceeding may be null and void. Moreover, under the widely-recognized jurisprudential doctrine of *kompetenz-kompetenz*,[15] as applied in Brazil, issues of jurisdiction relating to those shareholder rights are determined by the Arbitrator and not the judge of the Brazilian RJ Court. While the final decision rests with the SCJ in Brazil, it is the position of the Pharol Parties that the initial jurisdictional ruling of the Arbitrator has not been stayed or enjoined. As a result, the jurisdictional predicate, validity and enforceability of orders entered in the Brazilian RJ Proceeding remain very much unresolved in Brazil – so much so that the sweeping relief sought in the Enforcement Motion is, once again, premature in respect of a Brazilian Confirmation Order that may be null and void in respect of its impact on shareholder interests.[16]

iii. **The Mediation**

23. The Foreign Representative's urgent request for expedited ruling on the Enforcement Motion would also undermine the mediation process in which S.À.R.L., Société Mondiale, and Oi were ordered by the Brazilian RJ Court to participate, and have a duty to

[15] Undersigned counsel is advised that the *kompetenz-kompetenz* principle is included in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Brazil and the United States are signatory.

[16] If the appeals are successful or the Arbitrator's jurisdictional ruling is upheld then under Fed. R. Bankr. P. 9024 Fed. R. Civ. P. 60(b)(5), the Pharol Parties would be entitled to seek relief from the Proposed Order on the basis that "it is based on an earlier judgment that has been reversed or vacated;. . . ." Fed. R. Civ. P. 60(b)(5); *see In re Oi Brasil Holdings Coöperatief U.A.*, 582 B.R. 358 (Bankr. S.D.N.Y. 2018) (recognizing applicability of Fed. R. Bankr. P. 9024 and Fed. R. Civ. P. 60(b)(5) in context of Chapter 15 case).

participate in good faith. Although not mentioned in the Enforcement Motion, that mediation process is just reaching a critical stage of ongoing meetings with the mediator during the next two weeks -- precisely the time frame within which the Foreign Representative sought initially to convene a hearing on the Enforcement Motion before this Court. To grant the Enforcement Motion in the middle of the pending mediation, on the expedited basis urged by the Foreign Representative, would frustrate the purpose of the court-ordered mediation process -- a result that is plainly inconsistent with principles of comity and respect for foreign courts, law and process.

D. The Enforcement Motion Should Be Adjourned Until All Appeals, Arbitration and Mediation Proceedings Have Been Exhausted in Brazil

24. On the foregoing bases, it would run contrary to the core principles of comity for this Court to enter the Proposed Order within the narrow time frame urged by the Foreign Representative. This Court should not be asked to short-circuit and frustrate ongoing proceedings in a foreign jurisdiction, or to usher in the wave of legal and commercial confusion that surely would follow the entry of the Proposed Order and substantial consummation of the RJ Plan. *See In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 700 (Bankr. S.D.N.Y. 2010) (recognizing a foreign main proceeding only after it was "affirmed on appeal"); *In re Bd. of Dirs. of Telecom Argentina S.A.*, No. 05-17811, 2006 WL 686867, at *25 (Bankr. S.D.N.Y. Feb. 24, 2006) (comity is appropriate "in a case in which a foreign court with undisputed jurisdiction has issued a final order") *aff'd*, 528 F.3d 162 (2d Cir. 2008).

25. In reply to this Objection, the Foreign Representative is likely to rely on the decisions from other sitting and former judges of this Court in *In re Gerova Fin. Grp., Ltd.*, 482 B.R. 86 (Bankr. S.D.N.Y. 2012) (Gropper, J.) and *In re Rede Energia S.A.*, 515 B.R. 69 (Bankr. S.D.N.Y. 2014) (Chapman, J.), as support for the proposition that the pendency of an appeal from an order in a foreign proceeding is not a basis upon which to deny or delay entry of Chapter

15 relief. As set forth below, the key facts supporting the holdings in *Gerova* and *Rede* are distinguishable from this case, and ***neither case supports the grant of relief to achieve substantial consummation of a foreign plan*** as sought in the Enforcement Motion.

26. *Gerova* came before the Court in an entirely different posture than presented here, involving Chapter 15 *recognition* rather than relief, in respect of foreign main proceedings notwithstanding a pending appeal of the Bermuda court's wind-up order. That case involved none of the mootness or related uncertainties presented here; indeed, Judge Gropper appeared to acknowledge that the appellate proceeding could be relevant to any future grant of relief, pointing out that the Bermuda order in that case merely allowed the liquidators to "take on their duties," and directing that if that order were to be reversed on appeal, they would have an obligation to inform the U.S. court pursuant to section 1518 of the Bankruptcy Code. 482 B.R. at 94. Indeed, the operative paragraph from 482 B.R. at 94 cites to and relies on the "plain language" of section 1517 and the text of section 1515(b)(1), *both of which* sections deal with *recognition* and not *relief*. Given the checklist of factors under 11 U.S.C. §1517 that make the grant of recognition far less complicated than relief under other provisions of the Bankruptcy Code, the limited holding in *Gerova* in no way supports the proposition that a Chapter 15 court can -- or should, as a matter of comity -- short-circuit an appeal of the operative order in a foreign proceeding in order to grant broad post-recognition relief that will pave the way for substantial consummation of a foreign plan in the face of pending appeals that present fundamental issues of foreign law.

27. *Rede Energia* is factually closer to the present case in that it involved the grant of relief, rather than mere recognition, to enforce a plan in the face of a pending appeal from the confirmation order, but is nevertheless distinguishable on a key point of fact and comity. The

Rede court was asked to grant ancillary relief in respect of a plan that *the parties acknowledged had already been substantially consummated in a foreign jurisdiction, and Judge Chapman expressly so noted in granting that relief*. 515 B.R. at 94 ("The Court's refusal to grant the Plan Enforcement Relief would thus mean that the Brazilian Reorganization Plan, *which has already been substantially consummated*, could not be fully implemented and the distributions to Noteholders would be prevented or substantially delayed.") (emphasis added).

28. The posture in which this case comes before the Court is materially different. Here, the Foreign Representative acknowledges throughout the Enforcement Motion, explicitly and impliedly, that the RJ Plan has not been substantially consummated, and that in fact he is relying on this Court to issue the relief necessary to effectuate such consummation. *See, e.g.*, Enforcement Mtn. at 2-4; ¶¶ 142-144; 153. ***It is one thing for a Chapter 15 Court to grant relief in aid of effectuation in the U.S. of a foreign plan that <u>the parties</u> already have substantially consummated in the foreign jurisdiction in the face of a pending appeal (Rede Energia), and quite another where, in granting the requested relief, the Chapter 15 Court itself becomes the vehicle by which substantial consummation is achieved (Oi S.A.)***.[17]

29. Moreover, as set forth above, the decision whether to grant the extensive post-recognition relief requested in the Enforcement Motion is subject to the Court's discretion. Thus, the fact that the *Rede* court chose not to exercise its discretion to defer ruling under distinguishable facts is not binding or probative here.

30. It may be helpful to the Court to evaluate the issue by considering the analogous circumstances if, for example, this were a diversity case pending in an Article III court and a foreign party sought to enforce a foreign court order that was on appeal in the foreign

[17] In addition, neither *Gerova* nor *Rede Energia* involved a situation where, as here, a pending arbitration proceeding in the foreign nation challenged the jurisdiction of the foreign court in respect of matters that are inextricably intertwined with the relief sought in the Chapter 15 court.

jurisdiction. In such circumstances, courts have temporarily stayed federal cases pending the resolution of related, foreign appeals. *See, e.g.*, *Turner Entmt. Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1581 (11th Cir. 1994) (staying U.S. federal case until German court ruled on a pending appeal); *In re Application of Alves Braga*, 789 F. Supp. 2d 1294 (S.D. Fla. 2011) (temporarily staying U.S. federal case for approximately 45 days to provide for a resolution of a pending appeal in Brazil); *Societe Nationale D'Industries Nutritive S.A.E. v. Coca-Cola Co.*, No. 08-CV-3565, 2009 WL 1068813 (Bankr. N.D. Ga. Sept. 16, 2009) (staying U.S. federal cases until Egyptian court ruled on a pending appeal). Although, as here, these courts recognized the principle of comity, they considered the impact on the litigants and interests of judicial efficiency in determining to stay the cases.

31. In this case, the Court's entry of the Proposed Order creates a significant risk of legal and commercial uncertainty surrounding the outcome of the pending appeals in Brazil. Especially because the doctrine of equitable mootness is not recognized in that country, it offends all notions of comity for this Court to be placed in the position of imposing either that doctrine, or the herculean task imposed upon the Brazilian courts of unwinding the complex series of events and transactions that will unfold in multiple foreign jurisdictions if the Enforcement Motion is granted on the expedited basis urged by the Foreign Representative.

Conclusion

32. In sum, to grant the expedited relief requested by the Foreign Representative would stand the principle of comity and respect for foreign courts on its head; rather than respect the appellate, Arbitration and court-ordered mediation processes in Brazil, this Court is asked to grant relief that would disrupt those proceedings and create a cacophony of legal and commercial confusion in that country and the multiple other jurisdictions touched by the RJ Plan. The far

better exercise of discretion is to deny the Enforcement Motion without prejudice, or adjourn and reserve ruling on the Enforcement Motion until the pending appeals, Arbitration and mediation proceedings in Brazil have had sufficient time to run their natural and appropriate course.

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Reservation of Rights

33. The Pharol Parties reserve the right to amend, supplement, or modify this Objection, in whole or in part, and to assert any other rights, objections, and remedies under and relating to the Enforcement Motion, the Bankruptcy Code or other applicable law, including, without limitation, the right to submit additional facts, documents and legal arguments in respect of the appeals, Arbitration and mediation presently pending in Brazil, at such time and in such manner as the Court may permit or direct.

Dated: May 11, 2018
New York, NY

Respectfully submitted,

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Counsel for Pharol, SGPS S.A., Bratel B.V. and Bratel S.À.R.L.

EXHIBIT A

April 2, 2018 Mediation Decision

Rio de Janeiro State Judiciary
Court of Justice
Judicial District of the Capital
Office of the 7th Business Court
Av. Erasmo Braga, 115 Lna Central 706 CEP: 20020-903 – Centro – Rio de Janeiro – RJ Telephone: 3133 2185
email: cap07vemp@tjrj.jus.br

Procedure No.: 0203711-65.2016.8.19.0001

Electronic Procedure

Class/Subject: Judicial Recovery – Judicial Recovery

Plaintiff: OI S.A.
Plaintiff: TELEMAR NORTE LESTE S.A.
Plaintiff: OI MÓVEL S.A.
Plaintiff: COPART 4 PARTICIPAÇÕES S.A.
Plaintiff: COPART 5 PARTICIPAÇÕES S.A.
Plaintiff: PORTUGAL TELECOM INTERNATIONAL B.V.
Plaintiff: OI BRASIL HOLDINGS COÖPERATIEF U.A.
Interested Party: FEDERAL ATTORNEY'S OFFICE WITH ANATEL
Interested Party: BANCO DO NORDESTE DO BRASIL S.A.
Judicial Administrator: ESCRITÓRIO DE ADVOCACIA ARNOLDO WALD
Interested Party: CHINA DEVELOPMENT BANK CORPORATION
Interested Party: GLOBENET CABOS SUBMARINOS S.A.
Interested Party: PRICEWATERHOUSE COOPERS ASSESSORIA EMPRESARIAL
Legal Representative: JOSE MAURO FERNANDES BRAGA JÚNIOR
Interested Party: GOLDENTREE DISTRESSED FUND 2014 LP AND OTHERS
Interested Party: PTLS SERVIÇOS DE TECNOLOGIA E ASSESSORIA TÉCNICA LTDA
Interested Party: MAZZINI ADMINISTRAÇÃO LTDA
Interested Party: TIM CELULAR S.A. AND OTHER
Interested Party: JEAN LEON MARCEL GRONEWEGEN
Interested Party: THE BANK OF NEW YORK MELLON S.A.
Expert: RIO BRANCO SP CONSULTORES ASSOCIADOS LTDA
Legal Representative: MARCELO CURTI

On this date, I submit the records to the Honorable Judge
Fernando Cesar Ferreira Viana

On 03/26/2018

Decision

As known, I have suspended the political rights of the subscribers of the minutes of AGE on pages 256.134/256.141, except for those that refrained from voting, because acts that breach judicial decisions will never be tolerated by this Court. I note that the motions for clarification that intend the express indication of the names of those with suspended rights will still be decided – to that end, I have already determined the manifestation from the companies under recovery.

In the same decision, I have determined the summoning of the current executive board and CEO of Grupo Oi as well as the shareholders which political rights have been suspended, to manifest themselves on the interest in the installation of a mediation procedure. This Court is an enthusiast of the adoption of alternative means for conflict solution, and believes that the mediation can settle the corporate conflict. There are no doubts it will be better for everyone that this environment of instability and disregard to judicial decisions is stalled so Grupo OI can recover and leave this process strengthened.

Rio de Janeiro State Judiciary
Court of Justice
Judicial District of the Capital
Office of the 7th Business Court
Av. Erasmo Braga, 115 Lna Central 706 CEP: 20020-903 – Centro – Rio de Janeiro – RJ Telephone: 3133 2185
email: cap07vemp@tjrj.jus.br

The companies under recovery, on page 293,087 informed that they are not opposed to the mediation suggested by the Court. In the same sense were the manifestations from Bratel and Société Mondiale.

Thus, before the receptivity to the suggestion of Court, I determine the installation of mediation procedure so Bratel, Société Mondiale and the Companies under recovery settle the established conflict. I appoint as mediator Dra. Juliana Loss, with an address known to the office and, as I have made in other mediations, I determine to the Judicial Administrator to accompany the procedure and keep the Court informed on its evolution.

Let all parties be summoned and give personal notice to the Public Prosecution.

Rio de Janeiro, 04/02/2018.

Fernando Cesar Ferreira Viana – Judge

_____

Records received from the Honorable Judge

Fernando Cesar Ferreira Viana

On ___/___/_____

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EXHIBIT B

April 18, 2018 Mediation Decision

State of Rio de Janeiro Judiciary Branch
Court of Justice
District of the Capital
Registry Office of the 7th Corporate Court
Av. Erasmo Braga, 115 Lna Central 706 CEP: 20020-903 - Centro - Rio de Janeiro - RJ Phone: 3133 2185
e-mail: cap07vemp@tjrj.jus.br

Pages

Case: 0203711-65.2016.8.19.0001

Electronic Proceedings

Class/Subject: Court-Supervised Reorganization - Court-Supervised Reorganization

Plaintiff: OI S.A.
Plaintiff: TELEMAR NORTE LESTE S.A. Plaintiff: OI MÓVEL S.A.
Plaintiff: COPART 4 PARTICIPAÇÕES S.A. Plaintiff: COPART 5 PARTICIPAÇÕES S.A.
Plaintiff: PORTUGAL TELECOM INTERNATIONAL FINANCE B.V. Plaintiff: OI BRASIL HOLDINGS COÖPERATIEF U.A.
Stakeholder: FEDERAL PROSECUTOR'S OFFICE WITH ANATEL
Stakeholder: BANCO DO NORDESTE DO BRASIL S.A.
Judicial Administrator: ESCRITÓRIO DE ADVOCACIA ARNOLDO WALD
Stakeholder: CHINA DEVELOPMENT BANK COORPORATION
Stakeholder: GLOBENET CABOS SUBMARINOS S.A.
Stakeholder: PRICEWATERHOUSE COOPERS ASSESSORIA EMPRESARIAL
Legal Representative: JOSE MAURO FERNANDES BRAGA JÚNIOR
Stakeholder: GOLDENTREE DISTRESSED FUND 2014 LP E OUTROS
Stakeholder: PTLS SERVIÇOS DE TECNOLOGIA E ASSESSORIA TÉCNICA LTDA
Stakeholder: MAZZINI ADMINISTRAÇÃO LTDA
Stakeholder: TIM CELULAR S.A E OUTRO
Stakeholder: JEAN LEON MARCEL GRONEWEGEN
Stakeholder: THE BANK OF NEW YORK MELLON S.A
Expert: RIO BRANCO SP CONSULTORES ASSOCIADOS LTDA
Legal Representative: MARCELO CURTI
Stakeholder: SOCIETÉ MONDIALE FUNDO DE INVESTIMENTO EM AÇÕES

On the date hereof, I hereby submit the records to the Honorable Judge
Dr. Fernando Cesar Ferreira Viana

On 4/17/2018

Decision

I- The Mediation (pages 294.614/294.619, 296.602/296.608, and 297.099/297.103)

On pages 294.576/294.577, after the hearing and the agreement by the stakeholders, I ordered the implementation of yet another mediation process in an attempt to cooperate to the uplift of the Group being reorganized.

However, after having agreed to the suggestion made by the Judge, the Companies being Reorganized made another claim alleging that the Société Mondiale fund should not take part in the mediation, as (i) its ownership interest in the Companies being Reorganized was significantly reduced and (ii) the shareholder did not demonstrate any spirit of conciliation throughout the process. In the same vein, we have the claim made by Goldentree e outros qualified bondholders.

State of Rio de Janeiro Judiciary Branch
Court of Justice
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In view of this new claim, I ordered Société to make a pronouncement, which in my opinion, addressed the issue very well.

Société's ownership interest in the Companies being Reorganized is not a relevant matter, as the reason for the Judge to suggest mediation was not the fund's ownership interest, but rather the evident conflict settled inside and outside the records, and which solution is intended through mediation.

Therefore, the Judge reiterates that the participation of Société is crucial and trusts that the parties will use all efforts to solve the conflict, which certainly will only bring benefits to all those involved.

The appointed mediator has already been summoned and may start the procedures. Execution ordered.

II- The Credit of NET COURIER ENCOMENDAS (pages 293.124/293.128; 296.118/296.128, and 296.409/296.296.411).

The Judge was requested to make a pronouncement on the credit of creditor Net Courier Encomendas in August 2017, upon the announcement in the records of the pledge in favor of the creditor in the records of an action to recover undue payment pending before the 47th Civil Court of the district of the capital of the State of Rio de Janeiro.

On that occasion (pages 216.789/216.791), I stressed that the credit being discussed seemed to be subject to reorganization, "as in addition to the fact that the tort—which gave rise to indemnification—was committed before its distribution, as the pending procedure dates back to 2007, the judgment that constituted it was also rendered prior to the referred date."

In the same decision, I stressed that: "only a particular situation can eliminate the referred credit from being subject to the court-supervised reorganization regime, i.e. upon verification of exhaustion of the objection stage or the motions to stay execution prior to the filing of the court-supervised reorganization on 6/20/2016, when in thesis, the pledge made—and in this case, restored by decision of the Special Body of this Esteemed Court—can be converted to payment for fulfilling the credit."

Therefore, at that time, I ordered the issuance of an official letter to the executory claim's Court requesting the verification of intervention of the final term of the objection stage in satisfying the judgment prior to the filing of the court-supervised reorganization.

State of Rio de Janeiro Judiciary Branch
Court of Justice
District of the Capital
Registry Office of the 7th Corporate Court
Av. Erasmo Braga, 115 Lna Central 706 CEP: 20020-903 - Centro - Rio de Janeiro - RJ Phone: 3133 2185
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Now, the creditor requests that it be notified that the decision was rendered by the Judge of the 47th Civil Court, rejecting in limine Telemar's objection to the satisfaction of the rendered judgment. The creditor argues that "rejection of the Telemar's objection necessarily means inexistence of an objection stage in the records of the referred execution, so that if the credit being enforced will not undergo the court-supervised reorganization procedure undergone by the Oi Group."

Therefore, it requests that this Judge, in view of the referred decision, recognize that the credit being discussed in that claim is not subject to the reorganization procedure, and thus allows for the withdrawal of the funds pledged thereby.

After being summoned, the Companies being Reorganized allege that the credit is subject to reorganization, as the collection regarded as undue was made by Telemar in 2006, 10 years prior to the request for court-supervised reorganization. They also say that they filed motions for clarification against the decision that rejected its objection, and that the creditor cannot raise the amounts pledged in that claim.

Once these considerations have been made, it seems to me that it is no longer possible to argue the subjection of the credit of Net Courier to court-supervised reorganization. This is due to the fact that, although the blocking in the original court has been effected prior to the filing of the debtor's court-supervised reorganization, only now was the objection stage considered invalid.

Although the rejection of the objection made by the debtor in the records of the execution does not imply—as understood by the creditor—recognition of the inexistence of an objection stage, it is certain that the opportunity for objection could indeed be considered exhausted to the extent that the decision that rejects the objection— notedly that which fails to fulfill the basic prerequisites to be approved—is of a declaratory, rather than a constitutive nature.

Therefore, it is unquestionable that the credit of Net Courier falls under the exception provided for in the decision rendered by this Judge and confirmed by the Court of Justice, i.e. the credit is not subject to the debtor's court-supervised reorganization regime, as the exhaustion of the objection stage of the execution must be considered prior to the filing of the court-supervised reorganization. The pledge made—and in this case, restored by means of a decision rendered by the Special Body of the TJRJ—may be converted to payment for satisfying the credit, upon the rendering of a final declaratory decision by the civil Judge.

In the light of the foregoing, I hereby order the issuance of an official letter to the Judge of the 47th Civil Court, notifying that after the rendering of the final decision that rejected the objection filed by the company being reorganized, this Judge considers the inexistence of the subjection of the credit of Net Courier to this court-supervised reorganization procedure.

To be notified after immediately returning completed.

State of Rio de Janeiro Judiciary Branch
Court of Justice
District of the Capital
Registry Office of the 7th Corporate Court
Av. Erasmo Braga, 115 Lna Central 706 CEP: 20020-903 - Centro - Rio de Janeiro - RJ Phone: 3133 2185
e-mail: cap07vemp@tjrj.jus.br

Rio de Janeiro, 4/18/2018

Fernando Cesar Ferreira Viana - State Judge

Records received from the Honorable Judge Dr.
Fernando Cesar Ferreira Viana
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EXHIBIT C-1

Prof. Fábio Ulhoa Legal Opinion
(Commercial/Insolvency Law)

Legal Opinion

Fábio Ulhoa Coelho
Professor of Commercial Law of
Pontificia Universidade Católica de São Paulo

Bratel S.À.R.L., through its lawyers Tiago Schreiner Garcez Lopes and Guilherme França, prepared an inquiry with respect to debt restructuring law, under the court-based debt restructuring of *Oi S.A.* ("Oi" or "Company"), pending before the 7th Commercial Court of the Judicial District of Rio de Janeiro/RJ (Case No. 0203711-65.2016.8.19.0001 ("Court-based Debt Restructuring").

1. This is the inquiry:

> *Bratel is a shareholder of the Company and it holds, as of this date, 22,24% of the total shares issued by the Company. Bratel is a wholly-owned subsidiary of Pharol, SGPS S.A.*
>
> *During the Court-based Debt Restructuring, Debt Restructuring Court appointed the Chief Legal Officer and Chief Executive Officer of the Company ("CEO") as the person to conduct and conclude the negotiations with the creditors, prepare and provide the debt restructuring plan regardless of the approval from the Board of Directors (doc. 01).*

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The CEO has prepared and provided to the Debt Restructuring Court and the creditors of the Debt Restructuring with the debt restructuring plan ("Debt Restructuring Plan"). The Debt Restructuring Plan has not been submitted to the approval of the Board of Directors of the Company before it was approved, not even for the later ratification thereof. The content of the Debt Restructuring Plan has never been discussed with the Board of Directors. The Debt Restructuring Plan was approved by the creditors on December 20, 2017 (doc. 02).

The Debt Restructuring Plan sets forth several provisions that are contradictory to the provisions set forth in the effective bylaws of the Company ("Bylaws" - doc. 03), which contradictions provide for: (a) change in the structure of the Board of Directors set forth in the Bylaws, from 11 effective members and 11 alternates to only 7 effective members ("Provisional Board of Directors") - Section 9.2; (b) replacement of the members of the Board of Directors elected by the shareholders with new elected members to comprise the Provisional Board of Directors, whose names were provided in the Debt Restructuring Plan itself and who cannot be removed - Section 9.2 and Exhibit 9.2 of the Debt Restructuring Plan (c) constitution of a new Board of Directors, regardless of the rule set forth in the Bylaws, and election of its members at an extraordinary shareholders' meeting, who also may not be removed ("New Board of Directors ") - Sections 9.3 and 9.5; (d) that such New Board of Directors will have no alternates as members, unlike that which is provided for in the Bylaws, and it will be comprised by 1 member already elected in the Debt Restructuring Plan., as well as 10 other members chosen by the Provisional Board of Directors itself among 22 names selected by a Human Resources advisory firm - Section 9.3; (e) That the shareholders' meeting will only "ratify" the members appointed to the New Board of Directors by the Provisional Board of Directors - Section 9.3; (f) concession of powers to the Officers in non-compliance with the provisions set forth in the Bylaws: maintenance and

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*impossibility to remove two Officers, including with compensation and indemnification rules, who may establish the duties of two other Officers, as well as appoint, on their own account, a Chief Operations Officer - Sections 9.1.1 and 9.3.1); (g) Capital increase of the company, including to an amount which exceeds the amount provided for in the Bylaws, with the increase of authorized capital. The Debt Restructuring Plan sets forth that if the shareholders fail to approve the increase of the authorized capital, the Debt Restructuring Court may overcome the need for such approval - Sections 4.*3.3.3*, 4.3.3.6, 6 and 10.3: (h) issuance of debt securities without the authorization from the Board of Directors, contrary to the provisions set forth in the Bylaws.*

After the approval of the Debt Restructuring Plan, Bratel requested, pursuant to article 123, sole paragraph, "c," of the Brazilian Corporate Law, call notice of a shareholders' meeting to resolve on corporate matters and filing of a lawsuit for damages against the CEO.

However, the Board of Executive Officers submitted such request directly to the Debt Restructuring Court, without enabling the Board of Directors to analyze such request (doc. 04). This action has caught our eyes, among other things, by virtue of the arbitration clause provided for in the Bylaws.

In its claim, the Company asks for an "interlocutory relief" in order to, among other things, suspend the effects of any call notice of shareholders' meeting "on any matters subject matter of the approved plan or the required actions for compliance with the Plan," as well as ban the call notice of shareholders' meetings whose agenda is to resolve on any measure intended to assess the acts performed by the CEU under the Debt Restructuring Plan. Such claim has not been analyzed so far.

Upon lapse of the legal term without call notice of such meeting, Bratel called, on January 8th, an extraordinary shareholders' meeting, to be held on February 7th ("February 7th ESM"), as well as arranged for publication of the relevant call notices, the agenda of which is to resolve on the following matters (doc. 05)- "(I) Constitution of the Provisional Board of Directors comprised by 9 members, the terms-of-office of whom will be effective from date of approval of the Debt Restructuring Plan to the date of investiture of the new members of the Board of Directors pursuant to the provisions set forth in sections 9.2 of the Debt Restructuring Plan; (2) Change to the method of election of the members of the Board of Directors provided for in articles 23 through 27 of the Company's Bylaws, as set forth in Section 9.3 of the Debt Restructuring Plan; (3) Assurance that the Officers remain in their offices and maintain their compensation, and determination of the duties of the members of the Board of Executive Officers, as set forth in section 9.1.1 of the Debt Restructuring Plan, without the prior approval from the Board of Directors; (4) Increase of the subscribed capital stock of the Company as provided for in sections 4.3.3. (Bonds Restructuring) and 6 (New Capital Increase) of the Debt Restructuring Plan, without previously holding an Extraordinary Shareholders' Meeting and without previously providing the shareholders with all economic information; (5) Authorization of payment of fees to the committed subscribers of the capital increase referred to in section 6.1.1.3 of the Debt Restructuring Plan based on new common shares of Oi S.A.; (6) Restrict the application of Article 68 of the Company's Bylaws to any conflict between the Shareholders and the Company pursuant to Section 13.12 of the Debt Restructuring Plan; and (7) File a lawsuit for damages, under the terms set forth in article 159 of the Brazilian Corporate Law, against Officers Eurico de Jesus Teles Neto and Carlos Augusto Machado Pereira de Almeida Brandão.

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After that, on the same date, the Debt Restructuring Plan was ratified ("Ratifying Decision" - doc. 06), which ratification dismissed call notice of the Extraordinary Shareholders' Meeting to approve the sections of the Debt Restructuring Plan corresponding to the legal and corporate duties attributable thereto[2].

[2] Ratifying Decision: "d) Call notice of ESM to resolve on corporate governance matters and capital increase. Finally, although it is acknowledged that the shareholders of the company must comply with the measures approved by the Creditors' Meeting, under penalty of being subject to the events set forth in article 64 of the Bankruptcy Law and held liable for the losses they cause to the companies, their creditors and the other shareholders, the Public Prosecutor's Office believes that it is necessary to call the ESM in order to formalize and consummate the decisions made by the creditors with respect to corporate governance matters and the capital increase. However, the relevant changes, including to the company's bylaws, approved in the Debt Restructuring Plan, do not require the ESM to be held and may be given effect by the management bodies of the company, subject to the authorization from the Creditors' Meeting, as provided for in the Bankruptcy Law, which is the special law in relation to the Brazilian Corporate Law on this matter. Pursuant to the decision transcribed above, under a debt restructuring process, the principle of the corporate function of property, as well as the company, must guide the exercise of shareholders' rights, which are no longer attached to the entrepreneur's interest, but to the company and the company's interest which is inevitable to uplift the company, in order to preserve the production source and the generation of working positions, goods and services, so that its corporate function is promoted and the economic activity is encouraged. Submitting the effectiveness of the decisions made at the Creditors' Meeting to an ESM which is intended to provide for non-compliance with the plan, converting any potential non-compliance into sanctions to its shareholders and reimbursement of losses and damages, would be, in my opinion, contrary to the principle of preservation of the company, pursuant to articles 35.1, 50. III and IV, and 64, VI. of the Bankruptcy Law. Article 50 of the Debt Restructuring Law sets forth a special rule with respect to the Brazilian Corporate Law. Such rule provides for the legal instruments of debt restructuring and the economic uplift of the company under restructuring. The provision of the plan which sets forth corporate governance during the transition period is in conformity with such article 50 of the Debt Restructuring and Bankruptcy Law, and it is not in violation to the Brazilian Corporate Law, even because it is intended to give institutional stability to the corporate bodies and the managers of the companies under restructuring for purposes of compliance with the debt restructuring plan approved by the creditors. To the contrary, call notice of a shareholders' meeting in this situation would bring instability back, which was strongly refused by the Judiciary Branch during the entire debt restructuring process. Creditor's will needs to be respected, provided, further, that any act intended to prevent compliance with the debt restructuring plan which has been approved as provided by law may not be performed by any shareholder, member of the board of directors and member of the board of executive officers. In fact, the Chairman of the Board of Directors shall immediately give effect to compliance with the approved plan, as soon as it is ratified, ensuring, among other things, provisory conditions of corporate governance and conversion of debt into shares, based on the decision rendered by the creditors."

Also, Bratel filed a petition claiming that certain sections of the Debt Restructuring Plan be suspended until the February 7th ESM (doc. 07)[3] is held.

On January 25, Bratel's claim was denied by the Debt Restructuring Court, which sustained the decision which approved the Debt Restructuring Plan including such sections (doc. 08). Notwithstanding, the Public Prosecutor's Office filed an interlocutory appeal against the decision which ratified the Debt Restructuring Plan with no exceptions to the section which (i) provide for payment into installment of claims held by Anatel, and (ii) do not comply with the Brazilian Corporate Law as to the rules of corporate governance and capital increase of the Company (doc 09).

2. After being provided with the documents referred to in the inquiry, the client proposes the following questions:

1. May the February 7th ESM be held and resolve on the matters listed in the agenda, if quorum is reached? Does the Ratifying Decision prevent the February 7th ESM from being held?
2. Does the potential approval of the action for damages by the managers give rise to non-compliance with the Ratifying Decision (item 7 of the agenda)?
3. May be shareholders be held liable for power abuse or may any of the sanctions provided for in article 64 of the Bankruptcy Law apply in the event

[3] Claim: "Given this scenario, Bratel, in order to obtain a balanced solution, claims for partial review of the decisions which approved the plan, so that the following section of the Debt restructuring Plan are not ratified until the ESM called to be held on February 7th, 2018, is held, even because the decision on whether or not the ESM should be held is not attributable to this Court: Section 9 and sub-sections (Corporate Governance), Section 4.3.3 and sub-sections (Bond Restructuring) and Section 6 and sub-sections (Capital Increase), including as to payment of any Commitment Bonus provided for in Section 6.1.1.3 upon delivery of shares at the discretion of the Creditors and/or without the actual contributions of funds."

of approval of the lawsuit for damages by the managers (item 7 of the agenda) or a decision which is contrary to that which is provided for in the Debt Restructuring Plan?

3. This legal opinion is divided into two sections, the first of which describing the premises, weather theories or related to the subject matter of the inquiry, and the second of which providing an answer to the questions made.

Section I – Combination of the Restructuring-Bankruptcy Law with the Corporate Law

4. The combination of, on one side, the principles and rules of the restructuring-bankruptcy law (Law No. 11.101/05, Bankruptcy Law), and, on the other side, the corporate law (Law No. 6.404/76 - Brazilian Corporate Law, especially), is a complex matter, which requires an accurate and careful work of the lawyers acting in these areas.

5. On August 22, 2016, at the request of the same client, I prepared a legal opinion, also pursuant to the Court-based Debt Restructuring of Oi, the inquiry of which was in the middle of these two sub-segments of corporate law[4]. However, there is one fundamental difference, with respect to the facts, between the current and the previous situation.

6. The first situation, in 2016, was a *conflict between partners* caused by a minority shareholder and its repercussions in the Court-based Debt Restructuring.

[4] Theory considerations in the 2016 report were used in an article I wrote as a tribute to lawmaker MANOEL JUSTINO entitled Limitation to the exercise of corporate right in a company under court-based restructuring (*Limitação ao exercido de direitos societárias na companhia em recuperação judicial).* This article was published on *Temas de Direito da Insolvência - Estudos em homenagem ao Professor Manoel Junino Bezerra Filho.* Organized by Ivo Waisberg and José Horácio Halfeld Rezende Ribeiro. São Paulo: IASP. 2017, pgs. 246/262.

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7. However, in this Legal opinion, another conflict of interest has given rise to the inquiry. It no longer refers to a conflict between the shareholders of the companies under restructuring, but between the *debtor* and the *creditors* (or a portion of them), which is the most common type of dispute under court-based restructuring processes.

8. Please beware of this fact: those who believe that, in the current situation of the Court-based Debt Restructuring of Oi, there is a conflict between the *shareholders of the debtor and the creditors* are wrong. The conflict of interest which has led the client to have this inquiry prepared was between the debtor under restructuring itself, on one side, and its creditors, on the other side.

9. This is because the legal will of Oi, a company subject to the Brazilian Corporate Law, is not expressed exclusively and invariably by only one of its bodies (board of executive officers); much less by an individual act by one member of this body (CEO). The will of a company, as provided by law, is only legally valid and effective when expressed by other bodies, including the shareholders' meeting.

10. The Bankruptcy Law does not, whether in its principles or in the fundamental principle of preservation of the company, provide for any provisions that could justify the non-application of the rules set forth in the Brazilian Corporate Law with respect to the constitution of will of a legal entity. In addition, as seen below, compliance with the rules set forth under corporate law is indispensable to ensure full effectiveness of the principle of preservation of the company

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Contractual nature of the Court-based Debt Restructuring

11 A court-based debt restructuring is a true *legal agreement*, as provided by authorized legal literature[5]. In other words, it is essentially an agreement entered into between the debtor (who is going through transitory and overcomable difficulties) and some of its creditors (or people subject to the effects thereof) in order to enable the company to overcome its economic-financial crisis.

12. Therefore, it is an agreement. Such agreement entered into to overcome a crisis (the *debt restructuring agreement)* is only taken to court by virtue of certain specific goals. These measures are intended to create an environment which is favorable to the negotiation between the debtor and its creditors.

13. Therefore, the debt restructuring agreement is only taken to court aiming at three purposes: (a) temporary suspension of the executions and requests for bankruptcy against the debtor (BankrupctyLaw, article 6, paragraph 4); *(b)* submission to the will of the majority of creditors from a potential minority (article 59); and (c) exception of the general rule of corporate succession in the event of disposal of the individual production unit (article 60).

[5] SÉRGIO CAMPINHO: "the court-based debt restructuring is essentially intended to a single purpose: approval by the debtor and its creditors of a proposal to enable the company for that which it has been operating so far. Thus, the economic-financial crisis will be transitory and overcomable at creditors' will, which will lead to the subject matter of the process, namely, the restructuring of the company. The judge will be limited to check the legal provisions that apply to the plan. He/she will safekeep the legality thereof. However, the judge may not interfere in the content of the plan, which is exclusively attributed to the parties. Requirement of approval of the agreement by a court authority refers to a legal political measure. For this reason, in our opinion, the court-based debt restructuring needs to be deemed a legal agreement, of a novation nature, which occurs through a debt restructuring plan, and the debtor is subject to certain subjective and objective conditions in order for the plan to the implemented." *(Falência e recuperação de empresas.* 5th edition. Rio de Janeiro: Renovar, 2010, pgs- 11/12).

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14. With the exception to such goals, the relation between the debtor and its creditors, as well as the sections of the agreement mutually determined by them, are exclusively governed by the law of obligations, after all, the court-based debt restructuring is essentially an agreement, a contract between parties.

15. This premise (that the court-based debt restructuring is an agreement), with which all parties have agreed under the Court-based Debt Restructuring of Oi, needs to be *coherently* taken to the ultimate consequences, so that the correct legal interpretation is provided to the case.

Existence, validity and effectiveness of the court-based debt restructuring agreement

16. Like any other contractual legal transaction, one of the elements of *perfection* of the court-based debt restructuring refers to the converging will of the contracting parties. Without an express converging will of, on one side, the debtor under restructuring, and, on the other, all creditors, the agreement *does not* exist.

17. In the classic distinction between the existence, validity and effectiveness of legal transactions, the converging will of the contracting parties refers to the first. Thus, without the converging will of the parties (debtor and creditors subject to the effect of the restructuring) provided for in the sections of the debt restructuring plan, the legal transaction does not exist; however, the legal transaction does not exist; the law does not accept the court settlement which will enable the overcome of the economic-financial crisis which struck the company under restructuring[6].

18. Please note that, on creditors' side, because of the characteristics of the restructuring, the converging will is not required from all of those who are subject to the court-based debt restructuring. The majority of each class[7] is enough in order to constitute

[6] On the distinction between existence, validity and effectiveness of the legal transaction, legal literature provides for classic content and surveys, including *Tratado de direito privado*, by PONTES **DE MIRANDA (3rd edition,** 2nd reprinting. São Paulo: RT, 1984), especially volumes 1 through 6, *Negócio jurídico existência, validade e eficácia*, by Antônio Junqueira de Azevedo (4th edition, São Paulo; Saraiva, 2002); *Teoria do Fato Jurídico*, by MARCOS BERNARDES **DE** MELLO (16th Edition. São Paulo: Saraiva. 2010, 3 volumes) and *Teoria Geral do Negócio Jurídico*, by CUSTODIO **DA PIEDADE UBAIDfNO MIRANDA (2nd** edition. São Paulo: Atlas. 2009). In my opinion, see *Curso de direito civil.* 8th edition. São Paulo. RT, 2016. vol. I, pgs. 313 et. seq.).

[7] I will not provide details, given that they are well known by the professionals of the area, with respect to resolution quorum of Creditors' Meeting to approve the debt restructuring plan. On the other hand, you must keep in mind the Brazilian legal practice known as ***cram down,*** in other words, the concession of court-based debt restructuring by the judge, when reached, at the Creditors' Meeting, a quorum which is close to the majority required for approval thereof, as provided for in

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the legal transaction underlying the court-based debt restructuring agreement with respect to all creditors. Alter all, as stated above, one of the reasons to take the debt restructuring to court is to enable minority's will to be bound by the will of the majority of creditors.

19. In other words, the will of a *group* of creditors subject to the effects of the court-based debt restructuring, verified through the means and procedures provided for by the Bankruptcy Law (verification of claim, Creditors' Meeting, classes, cram down etc.), contributes for existence of the restructuring agreement, as corresponding declaration as plaintiff.

20. Accordingly, converging will *(rectius,* of legal declarations) between the parties is the essential element which constitutes a legal transaction between them, which is the first step to enable the company under restructuring to overcome the crisis. It is under, as stated above, the existence of the legal transaction under discussion.

¿Z[8] Á
21. As to validity, we refer to matters related to the adequacy of the debt restructuring agreement reached by the parties and the applicable law. Control of such adequacy must be preventively made by the Restructuring court, by granting the court-based debt restructuring with exceptions to certain sections of the debt restructuring plan. However, it may be also done correctively, by filing an action for annulment, based on consent defects or social defects which render such legal transaction invalid.

22. Finally, as to the effectiveness, and as a condition for such, we point out the decision to grant the court-based debt restructuring, rendered by the restructuring court, pursuant to article 58 of the Bankruptcy Law. The effectiveness of the debt restructuring agreement the creditors and the debtor reach is suspended until the Judiciary Branch grants the restructuring requested by one of the parties to the legal transaction - the company under

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article 58, paragraph 1, of the Bankruptcy Law. On this last matter, pursuant to EDUARDO SECCHI MUNHOZ, this practice was "conceived to enable the judge to interfere, by overcoming veto to the plan by a class of creditors, whenever such rejection goes against the public interest in the restructuring of the company; in other words, whenever such veto expresses an individual position, which is incompatible with protection of the other interests at stake " *(Comentários à Lei de Recuperação de Empresas e Falência.* Several authors. Organized by: Francisco Sátiro de Souza Junior and Antônio Sérgio Pitombo. São Paulo: RT. 2005, pg. 289).

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restructuring which is the debtor[9].

The Bankruptcy *Law does not set forth the "court approval" of court-based restructuring plans*

23. It is worth to point out that the "court approval" of the debt restructuring plan is not provided by law, and, therefore, is not a condition for the existence, validity or effectiveness of the debt restructuring agreement.

24. The Bankruptcy Law only provides for court approval for out-of-court restructuring agreements (articles 162 and 163). The Bankruptcy Law does not provide for or suggests that court-based debt restructuring plans are subject to restructuring court approval.

25. And the legislative solution is right. After all, since the court-based debt restructuring Refers to an agreement between a debtor in crisis and its creditors, convergence of their will is sufficient to constitute a legal transaction. Taking the agreement to the court has specific purposes, already provided for in item 13 of the opinion; apart from such purposes, it refers to a legal transaction like any other which, just like the others, does not require court approval to occur.

26. With effect, the Bankruptcy Law only submits the effectiveness of the restructuring agreement to the concession, by the Judiciary Branch, of the court-based debt restructuring, under the terms set forth in article 58. However, the judicial act is not, and should not, be a condition for existence or even validity of such legal transaction.

27. Please note that the control of validity of the debt restructuring agreement is preventively made by the Debt Restructuring Court, by rendering a decision to grant the measure required by the debtor under restructuring. At this point, the judge may make reservation as to certain section of the plan agreed between the parties, in the event he/she believes they are invalid. The effectiveness of such sections will be suspended if a reservation is made in the granting decision. However, the validity condition of the debt restructuring agreement are given by the

[9] Also in the case under discussion, in Brazil, under cram down, as provided for in article 58, paragraph 1, of the restructuring and Bankruptcy Law, the decision that grants the court-based debt restructuring is a condition for effectiveness of the agreement reached, on one side by the debt under restructuring, and, on the other side, almost the majority of debtors.

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adequacy of its content to applicable law, not the granting decision of the court-based debt restructuring.

28. It is undeniable that the practice of "ratification" of restructuring plans approved at Creditors' Meeting by the restructuring court was widely spread. This practice has been frequently reproduced throughout Brazil, even having no legal grounds and making no sense, which is given by the contractual nature of the court-based debt restructuring.

29. Court ratification of debt restructuring plans, based on widespread practice, accompany the granting decision of a measure requested by the company under restructuring, which is provided for in article 58 of the Bankruptcy Law. However, with all due respect, they are not pertinent nor have any legal effectiveness.

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30. Court ratification has no pertinence and effectiveness so much that restructuring novation is fully valid and effective even for proceedings in which the judge, subject to the technical aspect of the Bankruptcy Law and the contractual nature of this institute, is only limited to grant the restructuring and makes no reference in his/her decision to ratification.

Creditors and debtor bound to the Court-based Debt Restructuring Plan

31. *It is not sufficient to state the contractual nature of the court-based debt restructuring. It is necessary to take this premise to the last consequences, admitting all implications, reasons and legal grounds of this fundamental premise.*

32. As a legal transaction, the debt restructuring agreement exists (although it is not effective) upon converging will, with respect to its sections, of the parties, namely, on one side, the debtor under restructuring, and on the other side, the creditors subject to the effects of the court-based debt restructuring.

33. Again, upon converging will of the parties to the debt restructuring agreement, with creditors as plaintiff, the debt restructuring results from the approval of the plan by the Creditors' Meeting, subject to legal quorum of the will of the majority of creditors, classes of creditors, potential cram down etc.

34. Accordingly, as plaintiffs in the debt restructuring agreement, all creditors subject to the debt restructuring (including those who have not attended the Creditors' Meeting and those who have cast a dissenting opinion at such meeting) are binding upon the legal transaction as specifically provided for in the Bankruptcy Law, in other words, pursuant to the rules of this institute with respect to the collective will of creditors.

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35. What about the debtor under restructuring? How does the will of this party is formed in the bond constituted in the debt restructuring agreement?

36. If, to form the collective will of creditors, the Bankruptcy Law provides for proper means (verification of claims, resolution quorum of the Creditors' Meeting, cram down etc.) to form the will of the debtor under restructuring, the Bankruptcy Law has no provisions in this regard. It is not even the case the lawmaker submitted the formation of will of the debtor under restructuring to specific rules, given that, as the defendant in the debt restructuring agreement, it is not necessary to have any proceedings to define the will of a collectivity. Even in debt restructurings in which debtors require the measure as co-defendants (group), it is the individual will of each of them that constitute the underlying bond to the debt restructuring agreement.

37. Thus, the debtor is binding upon the debt restructuring agreement by expressing its will pursuant to the rules set forth in the civil and corporate law, and there is no specificity under the Bankruptcy Law which prevents application thereof.

Formation of will of the debtor entity

38. As a legal entity, the will of the company is formed based on the resolutions made by its bodies[10].

[10] Legal professionals, lawmakers and law widely use the term *legal representation* when referring to the external function of the managers of the company (...). Calling managers legal representatives of the company is a usual practice in the legal community. It is clear, on the other hand, the exact relevance of the criticism made by some lawmakers to this expression under the argument that the relation between the manager and the company does not refer to a representation, such as provided for under other legal spheres (power of attorney, statement of will of the disabled etc). Thus, the manager, based on such criticism, should be called *legal presenter* because he/she is responsible for presenting the will of the company" (*Curso de direito comercial.* 20th Edition. São Paulo; RT. 2017, vol. 2, pg 430). With respect to inappropriateness, under the rule, from the concept of legal representative, PONTES DE MIRANDA says: "Each one performs, alone, ordinarily, acts that may be taken actively or passively within its legal sphere. The effects result from acts in which the person is present, the one who performs such act positively or negatively. The rule is presentation, in which no one plays the role for another, that is, no one represents another person. (...) When a legal entity performs the act, one must go into the legal world of such legal entity, so there is no representation, but presentation. The act of a corporate body does not constitute, in the legal world, an act performed by the person, which is the body, or the persons comprising such body, but as an act performed by the legal entity, because an act performed by the body is an act performed by the legal entity "(***Tratado*** *de direito privado. 3rd Edition*, 2nd reprinting. São Paulo: RT. 1984, vol. 3. pgs. 231 and 233).

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39. Pursuant to the theory of legal entities, these bodies of the legal entities are responsible, *within the limit of their attributions,* to form the will of the debtor entity. It is worth to point out that the individuals that comprise these bodies express the company's will as representatives of the legal entity.

40. Also, please note that corporate bodies operate based on their duties determined by law or the company's bylaws.

41. If a member of any corporate body exceeds his/her legal duty, there is only one consequence: the will of the legal entity has not been regularly expressed and, thus, no transaction bond was built.

42. Please bear in mind that this discussion exclusively applied to the existence of the legal transaction. If a member of a corporate body wishes to express his/her will on behalf of the legal entity, but the corresponding act is not under the legal duty of the body of which he/she is a member, such will is not expressed under law; no declaration is made by such legal entity.

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43. In sum, the debtor entity in a court-based debt restructuring is only binding upon the debt restructuring agreement, in other words, the court-based debt restructuring plan, if the corresponding will of the competent corporate bodies is expressed.

44. While the bodies that have the legal authority to cause the company to be bound by the sections of the debt restructuring agreement do not express the will of the legal entity, the transaction bond does not exist.

Rules of regular, valid and effective constitution of will of the parties in a debt restructuring agreement

45. The fact that the rules of constitution of the collective will of the creditors are provided for in the Bankruptcy Law and the rules of constitution of the individual will of the debtor are provided for in the Brazilian Corporate Law is absolutely circumstantial and irrelevant. What matters is to define whether such rules, regardless of the legal provisions in which they are established, have been or have not been complied with. If they have, the subject of right was bound to the debt restructuring agreement; if not, there is no binding.

46. This is not, *and I strongly insist on this*, a contradiction or conflict between the rules provided for in restructuring law and corporate law.

47. These rules are compatible because they refer to different matters. The Bankruptcy Law provides for the rules that apply to the constitution of collective will of creditors; the Brazilian Corporate Law provides for the rules that apply to the constitution of the individual will of the debtor under restructuring.

48. There could be a conflict between the rules if both laws provided for conflicting rules on the same matter. However, since each law provides for a specific matter (constitution of will of each of the subjects of right), the conflict simply does not exist under logical or legal terms. It is completely inappropriate to refer to a conflict between the rules in the case under discussion because criteria for such is not met (chronological, hierarchical or specificity).

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The Creditors' Meeting is competent to constitute the collective will of creditors, but not to constitute the individual will of the debtor

49. The Creditors' Meeting is intended to constitute the collective will of the creditors.

50. The collectivity of creditors is not binding upon any debt restructuring agreement until the Creditors' Meeting approves, under Bankruptcy Law, the plan proposed by the debtor.

51. However, the Creditors' Meeting has no authority to constitute the will of the debtor. Most of the creditors, distributed in legal classes, holding claims validly verified by the trustee, who attended the Creditors' Meeting that has been regularly called and held etc., only refers to the will of the claimant of the debt restructuring agreement.

52. Many times, during the Creditors' Meeting, the debtor negotiates the debt restructuring agreement with the creditors, in order to reach consensus with respect to the measures to overcome the economic-financial crisis the company is facing. In these events, debtor's will is stated at the Creditors' Meeting, but this does not mean that it results from the resolutions made by the Creditors' Meeting.

53. In the event of negotiations of the plan during the Creditors' Meeting – which occurs very frequently -, the same rules still apply, namely, the Bankruptcy Law for constitution of the collective will of creditors, and the Brazilian Corporate Law to constitute the will of the debtor.

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54. If, at the Creditors' Meeting, the creditors negotiate changes to the plan with the person who they thought to be the lawful presenter of the debtor, having full powers for such granted by the other corporate bodies, but this is fake, the legal consequence is only one: they thought they were dealing with the debtor; but not, the person who seemed to be the presenter was actually not the presenter. What is the legal consequence, then? It's simple, said negotiations definitely have not existed for the legal world.

55. Anyway, the resolution made by the creditors at the Creditors' Meeting does not have the legal effect to constitute the will of the debtor! Only the debtor may constitute the will of the claimant in the debt restructuring agreement; never the defendant's.

56. In other words, it is not sufficient to be included in a debt restructuring plan approved by the Creditors' Meeting for the sections thereof to be binding upon the legal entity of the debtor. It is also necessary that the debtor's will in the agreement with such sections was constituted in a regular, valid and effective way, as resolved by its competent corporate bodies.

Agreement of the debtor under restructuring is essential to constitute the debt restructuring agreement

57. Brazilian debt restructuring law does not accept a debt restructuring plan with which the debtor under restructuring has not agreed.

58. Pursuant to such law, only the debtor may propose a debt restructuring plan (Bankruptcy Law, article 53). Said law does not allow any other person who is interested in overcoming the crisis, such as the creditors, the bystanders or even the Government, to take to court-based debt restructuring any other proposal of a court-based debt restructuring plan.

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59. The debt restructuring plan proposal provided by the debtor under restructuring is submitted to voting at the Creditors' Meeting in order to constitute the collective will of the creditors subject to such court-based debt restructuring.

60. It is natural and fully compatible with the purposes of this doctrine that, during the Creditors' Meeting, or throughout the processing of the court-based debt restructuring, the plan proposed by the debtor is subject to negotiation. After all, in order to obtain the adhesion of the majority of the creditors, in order to constitute their collective will, the debtor is interested in changing the sections of the plan that has been originally provided.

61. However, even in this context, the Brazilian law provides no other choice: without the agreement from the debtor under restructuring, the debt restructuring agreement is not constituted. In other words, no plan approved by the creditors, in any court-based debt restructuring in Brazil, is contrary to the will of the company under restructuring which has been regularly, validly and effectively constituted.

62. Accordingly, considering that the initiative of any debt restructuring plan and the potential adjustment thereof is exclusively attributed to the debtor under restructuring, it is clear that such plan only improves, as a legal transaction, after the debtor expresses its will to agree with the sections thereof, as provided by law.

63. Sometimes, the will of the debtor under restructuring depends upon the resolution by one of its bodies. For example, if the plan only provides for the extension of the maturity date of the debts of the company under restructuring, constitution of debtor's will in agreement with the plan will be sufficient, which also constitutes, as a result, the bond to the debt restructuring agreement, statement by the board of executive officers or, if permitted by the bylaws, any of the board members thereof.

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64. However, if the plan provides for other sections, such as, issuance of debentures and such task is legally reserved to the Board of Directors, the board of executive officers has no powers to be binding upon the company under restructuring. The board of executive officers will only be binding upon the debt restructuring agreement underlying to the plan after the resolution of the Board of Directors.

65. If, for example, the plan sets forth as restructuring means a spin-off transaction, neither the board of executive officers, neither the Board of Directors will have the authority to bind the company under restructuring. In this case, such matter is legally attributed to the private authority of the shareholders' meeting (Brazilian Corporate Law, article 122, VIII).

66. However, please note that in these two last examples, it would not be rational that the resolutions made by the competent corporate bodies were adopted before the Creditors' Meeting. It is more logical to wait for the binding to the debt restructuring agreement of all creditors, as well as the effectiveness thereof after the concession of the court-based debt restructuring.

67. Therefore, the most common and rational is that the resolutions attributed to other corporate bodies are adopted after the Creditors' Meeting which approves the debt restructuring plan and the concession of such plan by the restructuring court.

68. It is worth to point out against that we are referring to existence, and not the implementation of the debt restructuring agreement. With emphasis, such agreement will only exist, as a legal transactions binding upon the debtor, after the regular, valid and effective constitution of the debtor's will, in other words, after the favorable resolution by the competent corporate body.

69. Accordingly, if the corporate body attributed with the authority to constitute the will of the debtor under restructuring fails to approve such agreement (constituted in a regular, valid and effective way) by such legal entity to be binding upon the debt restructuring agreement (corresponding to the debt restructuring plan approved by the creditors), the consequence thereof is that such plan will not constitute a legal transaction which is binding upon the debtor under restructuring. The parties then restart the negotiations in order to obtain a debt restructuring plan which meets the basic assumptions of the Bankruptcy Law, in other words, the agreement from

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the debtor under restructuring.

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70. Such event that the competent corporate bodies may not cooperate in order to constitute a regular, valid and effective ill of the debtor in order to be binding upon the debt restructuring agreement is, let's be honest, rare. However, it may perfectly occur, and it will not be deemed irregular or illegal since the rules to constitute the will of the company to be complied with when binding it to the debt restructuring agreement are provided by the Brazilian Corporate Law (pursuant to article 50, head provision, of the Bankruptcy Law, as provided below).

71. Accordingly, if in the foregoing examples the Board of Directors does not approve issuance of debentures, the shareholders' meeting does not approve the spin-off provided for in the debt restructuring plan (already approved by the Creditors' Meeting and "ratified" in court), there will be no grounds for conversion of the court-based debt restructuring into bankruptcy.

72. Again, the matter in which we are focusing here refers to the existence of the legal transaction and not the implementation thereof, which assumes prior regular, valid and effective constitution of the compulsory bond. Conversion of the court-based debt restructuring into bankruptcy applies by virtue of non-compliance with the debt restructuring plan (Bankruptcy Law, article 73, IV). So, there is no default of an obligation which is not yet binding upon.

Authority of the extraordinary shareholders' meeting

73. Pursuant to the Brazilian Corporate Law, certain matters are attributed to the shareholders' meeting. It is worth to mention that without the operation of this corporate body, the company cannot constitute any will (which is regular, valid and effective) with respect to any of such matters.

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74. These matters are provided for in article 122 of the Brazilian Corporate Law, which I highlight the following, relevant to the purposes of the inquiry: (a) reform of the bylaws, which includes capital increase (item 1); (b) election of company's managers (item II); and (c) removal, *at any time,* of company's managers (item II).

75. Other provisions set forth in the Brazilian Corporate Law also refer to matters of private authority of the extraordinary shareholders' meeting. Also relevant to the purposes of the inquiry, I highlight the authority to resolve on the liability of managers for losses caused to the company's assets, which is exclusively attributable to this corporate body, pursuant to the head provision of article 159 of the Brazilian Corporate Law.

76. In order for the constitution of the company under restructuring to be regular, valid, and effective, with respect to the debt restructuring plan which comprises any of the matters legally attributed to the private authority of the extraordinary shareholders' meeting, it is essential that this corporate body provides a converging resolution. While such favorable resolution is not made, the legal entity has not expressed absolutely anything, in terms of its will, and, therefore, the bond corresponding to the debt restructuring agreement has not been constituted (does not exist).

Legal means of court-based debt restructuring and authority of the corporate bodies

77. Article 50 of the Bankruptcy Law lists, non-exhaustively, the means of court-based debt restructuring of a company going through a crisis, which adopts such measure. It refers to a long list of legal transactions and corporate transactions only suggested to the involved parties by lawmakers[11].

[11] Pursuant to MANOEL JUSTINO BEZERRA FILHO: "strictly speaking, al 16 items [of article 50] would even be unnecessary. However, the law, laudably, chose to list the means to be adopted, again, as simple suggestions." (*Nova Lei de Recuperação e de Falências Comentada.* 11th Edition. São Paulo: RT.2016. pg. 168).

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78. From such list of measures, most of them depend upon the approval from the shareholders' meeting of the company under restructuring, such as: (i) spin-off, merger, consolidation or transformation of the company; (ii) full or partial replacement of the debtor's managers; (iii) change to the management bodies of the company; (iv) concession to the creditors of the right to separately elect managers and the power of veto with respect to the matters provided for in the plan; (v) capital increase; (vi) shared management; and (vi) issuance of securities (except for debentures, if the company's bylaws already authorize issuance thereof by the board of directors);

79. In any of such matters, the debtor only constitutes its regular, valid and effective will if the shareholders' meeting makes a favorable resolution. This applies to the legal transactions of any nature, as well as debt restructuring agreements.

80. Resolution by the shareholders' meeting may even be made after the Creditors' Meeting is held and the court-based debt restructuring is granted. However, while the extraordinary shareholders' meeting is not held as provided for in the Brazilian Corporate Law, and the corresponding matter is approved by the legal quorum, the will of the company to be bound by the plan is not regular, valid and effective.

81. Please note that at the final part of the head provision of article 50 of the Bankruptcy Law, by listing the means for court-based debt restructuring, such article determines that *"laws applicable to each case shall apply."*

82. Please note that, as it would be natural, the Bankruptcy Law does not provide for any rule related to the constitution of will of the debtor under restructuring with respect to the restructuring means listed in article 50; to the contrary, it refers to applicable law (therefore, the Brazilian Corporate Law), compliance with which is expressly determined by the Bankruptcy Law.

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83. Once again, you can see that there is no conflict between the provisions set forth in the debt restructuring law and the provisions set forth in the corporate law. Thus, the Judiciary Branch is not called to solve any normative disputes, which do not even exist. It is not adequate, as a result, to refer to the principle of restructuring of the company, or any other principle, in order to solve a non-existing conflict between such laws (the Bankruptcy Law or the Brazilian Corporate Law).

Corporate governance rules in debt restructuring agreements

84. There is no doubt that debt restructuring agreements may provide for section that change the corporate governance rules of a company under restructuring. Considering that the list included in article 50 of the Bankruptcy Law is necessarily illustrative[12], given that it is clear that the debt restructuring agreements may refer to a matter which is not provided by such law, whenever deemed relevant to overcome the economic-financial crisis which struck the claimant of the court-based debt restructuring.

85. Therefore, there are no doubts as to this matter.

86. However, binding the debtor to the sections of the debt restructuring agreement related to corporate governance depends upon, as in relation to any other section, constitution of will of the company in a regular, valid and effective way.

87. When the corporate governance rules provided for in the debt restructuring agreement are under the authority of the shareholders' meeting, the debtor does not constitute its will in a regular, valid and effective way to be bound by such rules while such corporate body fails to provide statement.

[12] Pursuant to Sidnei Beneti: "please note that the list in [article 50] is simply illustrative, and not a *numerus clausus,* which means that other means may be thought of and created. And please note that they may be combined; they are not required to be adopted in full." (*O processo de recuperação Judicial.* In *Direito Falimentar e a Nova Lei de Falências e Recuperação de Empresas.* Organized by Luiz Fernando Valente de Paiva. São Paulo: Quartier Latin, 2005, pg. 226)

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88. I insist, it refers to an element that constitutes the binding transaction, with respect to the existence of the debt restructuring agreement. Without the will of the debtor, constituted in a regular, valid and effective way, the company is not binding upon such legal transaction, as well as any other legal transaction.

Events in which the debt restructuring court may impair the application of corporate law rules related to the constitution of will of the company under restructuring

89. The Brazilian debt restructuring law has not adopted, like other countries, no procedure for intervention in the debtor going through a crisis. The Bankruptcy Law has adopted a doctrine from US law known as debtor-in-possession, with the certainty that no one better than the debtor itself to correctly diagnose the causes of the crisis and accurately distinguish the measures to overcome such crisis[13].

90. However, the Bankruptcy Law could not ignore the exceptional events, in which the debt restructuring court should have the tools to remove managers from the debtor or the debtor from the management of the company.

[13] EDUARDO SECCHI MUNHOZ lists the other benefits of the debtor-in-possession: "preference by [most countries] to maintain the debtor and its managers results from the acknowledgement that, even if it may result in increased transaction costs and significant deviation from the absolute priority rule, such solution has the following positive aspects: (i) it encourages the debtor to postpone filing of the debt restructuring request, (ii) it does not cause the debtor to have aversion to claims; (iii) it prevents projects having excessive risks from being adopted, to the extent that the debtor, during the restructuring, may obtain a portion of company's value; (iv) it enables the preparation of the plan by those who have more information on the company; and (v) it encourages restructuring, to the extent that the debtor has a bargain power " (*Comentários à Lei de Recuperação de Empresas e Falência.* Organized by Francisco Sátiro de Souza Junior and Antônio Sérgio A. de Moraes Pitombo. São Paulo: RT, 2005. Pg. 304).

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91. Such matter is provided for in article 64:

Article 64. During the court-based debt restructuring, the debtor or its managers will be maintained in the management of the company, under the inspection of the Committee, if any, and the trustee, except if any of them:

I – was sentenced in a final and unappealable criminal prosecution for a crime committed in a previous court-based debt restructuring or bankruptcy procedure or crime against property, the popular economy or the economic order provided by applicable law;

II – has strong evidence against his/her of having committed a crime provided in this law;

III acted with willful misconduct, simulation or frau against the interests of its creditors;

IV – performed any of the following acts:

a) incurred excessive personal expenses in relation to his/her assets;

b) incurred unreasonable expenses due to their nature or amount, in relation to the capital stock of type of business, operations and other similar circumstances;

c) unreasonable disbursed company's capital or undertake operations that may affect the regular operation of the company;

d) simulation or omission of claims by presenting the list referred to in item III of the head provision of article 51 of this law, without no legal grounds or support from a court decision;

V – refuse to provide information requested by the trustee or the other members of the Committee;

VI – is dismissed pursuant to the court-based debt restructuring plan.

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92. The events in which such dismissal is possible, at the determination of the debt restructuring court, are those which are exclusively listed in the items of this provision. The debt restructuring court may not determine, for example, removal of a manager or suspension of the voting right of a shareholder at a shareholders' meeting under the grounds that such manager or shareholder would not be in agreement with the positions expressed by the creditors during the negotiations of the debt restructuring plan, which would be insisting on certain solutions to the crisis, or any other reason other than one of the reasons specifically and expressly provided for in article 64.

93. The list provided for in article 64, of the events which would authorize intervention by the debt restructuring court in the debtor, is a *numerus clausus.*

94. In addition, considering that our constitutional economic order is based on the principle of free initiative (article 170) to the Government, *including the Court authority*, it is justifiable to interfere in the management of private companies in order to, directly or indirectly, adjust its businesses or instruct the manifestation of contractual will[14]. Therefore, interpretation pursuant to the constitution[15] of article 64 of the Bankruptcy Law, *reinforces* that the debt restructuring court cannot replace managers or the debtor itself other than as specifically and solely provided for in this legal provision.

[14] Pursuant to ANDRÉ RAMOS TAVARES, "the principle of free initiative [...] has a positive normative connotation, meaning the assurance of freedom to any citizen, and another negative connotation, which imposes non-governmental intervention, which may only occur upon legislative activity which shall comply with the other constitutional principles and may not annul or cause to be unusable the minimum content of free initiative" *(Direito Constitucional Econômico.* 3rd edition. São Paulo: GEN-Método. 2011. pg. 235).

[15] Pursuant to LUIS ROBERTO BARROSO: "as an interpretation rule, the principle [of interpretation pursuant to the Constitution] imposes to judges and courts to interpret ordinary law in order to properly reach constitutional purposes. It is worth mentioning: between possible interpretations, the one closes related to the Constitution should be chosen " *(Curso de direito constitucional,* 4th edition. 2nd printing. São Paulo: Saraiva. 2014, pg. 325).

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Item VI of article 64 of the Bankruptcy Law

95. One of the events to cease the debtor-in-possession is to replace or dismiss the debtor, as provided for in the *court-based debt restructuring plan* (item VI of article 64).

96. However, it is clear that this provision only applies after the regular constitution of the transaction bond underlying to the court-based debt restructuring plan. Without the regular, valid and effective statement of will of the debtor that it agrees with the debt restructuring agreement, no section providing for replacement of a manager or dismissal of the debtor may be relied on in order to suspend the debtor-in-possession.

97. Providing a different interpretation would be to give room to absurd situations. Imagine that the CEO of a company under restructuring agrees, at a Creditors' Meeting, with changes to the plan that had been originally proposed by the debtor, without the authorization from the other corporate bodies. Then, imagine that these changes, in addition to granting early payment of claims of the most active creditors, assure that the CEO had a huge personal advantage as a generous bonus for the conclusion of negotiations of restructuring of the company. Finally, imagine that such plan provides for replacement of all other managers, except for the CEO, and suspension of the voting right of shareholders for the term necessary to implement such changes (payment to such creditors and bonus).

98. It is clear that, in the example above, the debtor is not bound by such debt restructuring agreement, and that's because debtor's will to agree with such agreement was not regular, valid and effective because its CEO has exceeded his authority; likewise, the debtor is not bound to the section that provides for replacement of management, or the section that provides for suspension of the voting right of shareholders.

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99. In sum, if the debt restructuring plan provides for a section that dismisses any manager or suspends the voting right of shareholders, the debtor is not bound to it while its will to agree with the debt restructuring agreement has not been expresses in a re gular, valid and effective way, subject to applicable law (which, pursuant to article 50, head provision, of the Bankruptcy Law, refers to the Brazilian Corporate Law).

100. Only after the debtor is binding upon the debt restructuring agreement, as party to a legal transaction, the sections thereof are binding upon it, including the sections that provide for "dismissal" of managers or the debtor itself, as referred to in item VI of article 64.

The debt restructuring plan approved by the Creditors' Meeting does not assure compliance with the principle of preservation of the company

101. It is naive to consider that creditors' resolution, at a Creditors' Meeting, approving the debt restructuring plan would always represent compliance with the principle of preservation of the company.

102. A debt restructuring plan may, in complex financial transactions, perfectly grant advantages that are disproportionate to a portion of greatly active creditors. The implementation of a plan of this nature, as a result, even puts survival of the debtor at risk, which frustrates the principle of preservation of the company. The assumption that all creditors would always be interested in the debt restructuring of the debtor is not invariably true; sometimes they are acting under the "every man for himself" theory.

103. Thus, the only obstacle to this event (creditors using the remaining resources of the company under restructuring, without the smallest concern on the company's survival) is the application of the rules set forth in corporate law, related to the regular, valid and effective constitution of will of the debtor. It is worth mentioning that only compliance with legal authority of the shareholders' meeting may prevent the distortion and assure, in these cases, compliance with the principle of preservation of the company.

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104. Debt restructuring bodies (the bankruptcy court, the Public Prosecutor's Office and the Trustee, when a lawyer) are not equipped with proper tools to identify such distortion from debt restructuring law purposes by virtue of the complex financial clauses set forth in the plan approved at the Creditors' Meeting. In addition, they may not even refer to the economic-financial aspects thereof.

105. Please note that it no surprise the fact that, under this context, the Creditors' Meeting approves (by the significant majority or unanimously) the plan whose implementation may put at risk exactly that which law wishes to preserve, in other words, the company being explored by the debtor. If creditors are under the "every man for himself" spirit, such opportunistic approval will not look odd, especially if we bear in mind that only the majority of creditors present at the Creditors' Meeting approves the plan, who may strategically reserve for themselves the last piece of the cake.

106. In such a scenario, only the application of rules provided in the corporate law, with respect to the regular, valid and effective constitution of will of the debtor could actually assure that the company is preserved.

107. Again, it is naive to consider that the creditors would always be committed to the restructuring of the debtor and overcoming of the crisis which has led the company to the court-based debt restructuring. Many other interests may be at stake, such as dredging the few resources of the company, even leading the company under restructuring to bankruptcy, become the holder of a large number of ownership interests of the company at a small cost etc.

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108. The Judiciary Branch, prevented from referring to the economic merits of the resolutions made at the Creditors' Meeting – not only because of the authority of the bodies of the court-based debt restructuring, but also due to the lack of technical tools, cannot prevent a plan to be given effect in non-compliance with the principle of restructuring of the company.

109. If, on the other hand, the constitution of will of the debtor is not regular, valid and effective under the Brazilian Corporate Law, *under the false assumption* that the will of the Creditors' Meeting would always correspond to the effectiveness of the principle of preservation of the company, the Judiciary Branch ends up neutralizing the only mean in which the distortion could be prevented.

Call notice of the ESM of Oi by the client

110. The Debt Restructuring Plan approved by the Creditors' Meeting at the Court-based Debt Restructuring of Oi is not yet a legal transaction. There is no, under the Court-based Debt Restructuring of Oi, debt restructuring agreement binding upon Oi as defendant, although the creditors subject to the effects of the court-based debt restructuring are already fully bound, as claimants, to the debt restructuring agreement corresponding to the debt restructuring plan.

111. The Debt Restructuring Plan sets forth sections which were prepared and negotiated by the CEO, who had no authority to bind upon Oi.

112. It is clear that the CEO, duly and widely authorized by the debt restructuring court, was not attributed with the task to present a new debt restructuring plan and negotiate, at the Creditors' Meeting, any adjustments in order to obtain the approval from the majority of creditors.

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113. However, not all matters that are the subject matters of the debt restructuring plan approved by the creditors at the Creditors' Meeting are attributed to the legal authority of Oi's CEO. The plan provides for sections that are attributed to other corporate bodies, especially the shareholders' meeting.

114. Because of such sections, which are not under the legal authority of the CEO, the debt restructuring plan that has been approved by the Creditors' Meeting will only become a debt restructuring agreement which is binding upon Oi after the favorable resolution by the competent corporate bodies. While such resolution is not made, Oi's will, as a legal entity, to agree with such sections, will not be constituted in a regular, valid and effective way.

115. Concession of the court-based debt restructuring by the debt restructuring court and even the useful (although not provided by law) ratification of the plan does not cause Oi to be bound by the debt restructuring agreement. They evidently refer to extremely important procedural acts, which provide for the preventive control of the validity of the debt restructuring agreement and render it effective.

116. However, both validity control and the effectiveness of the debt restructuring agreement still depend upon *perfection* thereof, as a legal transaction, which will occur only after the approval of the matters that are attributed to the shareholders' meeting of Oi.

117. *I strongly emphasize that there is no specificity in the Court-based Debt Restructuring of Oi in this "suspension" of effects of the debt restructuring agreement.*

118. In several other court-based debt restructuring procedures throughout Brazil, this situation has been seen before: capital increase, corporate transaction or any other matter provided for in the debt restructuring plan approved by the creditors and ratified by the debt restructuring court pending a resolution by the shareholders' meeting of the debtor because the provisions set forth in such plan refers to matters under the authority of the shareholders' meeting. We may assume that the authority of those attending the Creditors' Meeting representing the debtor may also have been exceeded in these cases; after all, economic and even legal provisions provide that the resolution by the shareholders' meeting occurs only after binding of all creditors to the debt restructuring agreement and the effectiveness thereof through the concession of the court-based debt restructuring.

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119. Therefore, such as in other cases, in order for Oi to be regularly, validly and effectively bound to the debt restructuring agreement the competent corporate body thereof, the shareholders' meeting, shall approve the sections of the Debt Restructuring Plan under its legal authority.

120. I reaffirm that this matter concerns existence of the legal transaction substantiated in the debt restructuring agreement. The resolution made by the extraordinary shareholders' meeting of Oi does not represent, as it could be believed if a rushed analysis of the case under discussion was made, the implementation of an agreement which has been already fully constituted and perfected.

121. In sum, the debt restructuring agreement provided for in the Debt Restructuring Plan is already binding upon the creditors who are subject to the Court-based Debt Restructuring of Oi because their collective will has been constituted in a regular, valid and effective way, pursuant to applicable rules (which refer to those provided for in the Bankruptcy Law). However, because the content thereof refers to matters attributed to the shareholders' meeting, it is not yet binding upon Oi give that Oi's will to agree with such legal transaction has not been yet constituted in a regular, valid and effective way, pursuant to applicable rules (which, pursuant to article 50, head provision, of the Bankruptcy Law, refers to those provided for in the Brazilian Corporate Law).

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122. Therefore, the ESM called to be held on February 7 is not contrary to the Debt Restructuring Plan. To the contrary, is it a condition of existence thereof, in other words, perfection thereof as a legal transaction binding upon the debtor under restructuring as defendant.

CEO Liability

123. The specificity of the Court-based Debt Restructuring of Oi certainly refers to the determination by the debt restructuring court to attribute to only one of the managers, Mr. EURICO TELES ("CEO"), full liability for the constitution and negotiation of the debt restructuring plan.

124. In the decision rendered on November 29, 2017, judge FERNANDO CESAR FERREIRA VIANA rendered the following determination:

> *I determine that the current CEO of Oi Group, Mr. Eurico Teles, is held personally liable for conducting and concluding negotiations with the creditors of this court-based debt restructuring until December 12, 2017, date in which he must personally provide this court with the debt restructuring plan subject to voting at the Creditors' Meeting, regardless of approval from the Board of Directors.*

125. Evidently, such court decision has not granted the CEO with a safe-conduct, releasing him from any liability for the content of the documents he has provided the creditors with on behalf of Oi and used during the negotiations with them at the Creditors' Meeting.

126. The Judiciary Branch cannot declare in advance that certain subject of right will have no liability for the acts he/she may perform in the exercise of powers legally granted *ad hoc*.

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126. To the contrary, the CEO continues to be fully held liable for the acts he/she performs as manager of a corporation, as provided for in the Brazilian Corporate Law.

127. Please note that such "safe-conduct" cannot be deemed to be derived from the resolution made by the Creditors' Meeting to approve the debt restructuring plan prepared and negotiated by the CEO. If so, it would be recognized that the subject of right himself would have been released in advance, at his own initiative, from any liability.

128. Legal ratification of the debt restructuring plan, by its turn, also does not release the CEO from being held liable for any mismanagement acts, by being released from the tasks he had been attributed with by the debt restructuring court. Because the Judiciary Branch cannot evaluate the economic content of the plan that has been approved, the ratification cannot be seen as meaning that the debt restructuring court had already determined that no mismanagement act was performed, as provided for in the Brazilian Corporate Law, which the managers of the companies could have been held liable for.

129. In sum, Brazilian laws only acknowledged, in the past, a single event in which a person would not be attributed with liability, in other words, that could not be held civilly or criminally liable for his/her acts. I refer to the Constitution of 1824, the article 99 of which set forth: "*The Emperor is inviolable and Sacred; He is not subject to any liability."*

130. Liability of a manager of a corporation, for any losses caused to the company, is established, ascertained and given effect pursuant to the Brazilian Corporate Law (article 158 et. seq.). The fact that a corporation damaged by a mismanagement ac tis under court-based debt restructuring does not change that.

131. Therefore, February 7th ESM may discuss and vote the matter described in item 7 of the call notice, regarding the liability of the CEO for the acts that have been performed.

132. Finally, please note that if the February 7th ESM approves that an action for damages is filed against the CEO, article 159, paragraph 2, of the Brazilian Corporate Law establishes that the CEO cannot continue to be a manager of Oi, and his substitute shall be elected at such ESM.

133. With respect to manager impairment provided for in such provision of the Brazilian Corporate Law, NELSON EIZIRIK emphatically notes that removal of such manager is not an option attributed to the shareholders, but their obligation:

> *The manager against whom an action for damages will be filed is automatically impaired, and must be replaced at the same shareholders' meeting, considering that shareholders no longer trust in his performance and conduct. Such impairment is not an option granted to the shareholders' meeting, but an obligation, considering that the lawmaker assumes existence of conflict, and establishes such manager is immediately replaced. [...]*
> *A manager is impaired when the shareholders' meeting decides to file an action for damages, not because of the filing of the action itself. With effect, the impairment is automatic, and the manager is immediately replaced, at the same meeting, even if neither the company neither any of the shareholders file such action for damages in the future*.

134. Impairment of the CEO, as provided for in article 159, paragraph 2, of the Brazilian Corporate Law, is not, on the other hand, affected by the debt restructuring plan that has been approved by the Creditors' Meeting. No legal transaction shall override the law.

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Chair of Commercial Law at PUC-SP

135. Not only this, the sections of any legal transaction need to be construed as provided by law; it is worth mentioning that, in order to be valid, any agreement, including the debt restructuring agreement, needs to comply with applicable law, and it is assumed that the parties, when executing such agreement, do not wish to perform any illegal act; in other words, they are not intended to fail to comply with laws.

136. Thus, the debt restructuring plan that has been approved by the Creditors' Meeting and ratified by the debt restructuring court need to be construed in the sense that stability of management positions for the benefit of the current CEO ceases in the event of any legal impairment, including that which is provided for in article 159, paragraph 2, of the Brazilian Corporate Law. Considering that the parties who have prepared and approved such document would have not provided for such exception to the unusual instability would be to attribute them with an illegal act, of having executed an agreement in non-compliance with law.

138. In sum, since none of the acts performed under the Court-based Debt Restructuring of Oi could have cause the CEO to be a person who *"is not subject to any liability,"* the February 7th ESM may discuss and vote on his liability for mismanagement acts that jeopardized the company, and, if it approves filing of the action for damages against him, the February 7th ESM shall immediately replace him.

Section II – Answer to the Questions

139. Based on the foregoing assumption, we may now answer the questions made by the client, objectively and concisely.

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1. May the February 7th ESM be held, and may the matters included in the agenda be resolved on, if there is quorum? Does the Ratifying Decision prevent the February 7th ESM from being held?

140. After the requirements made by the Brazilian Corporate Law are met, the February 7th ESM may be held and may resolve on all matters included in the agenda informed on its call notice.

141. The Ratifying Decision does not prevent the ESM from being held. In fact, the ESM is, as shown above, imperative for perfection of the debt restructuring plan that has been ratified, as a condition for Oi to be binding upon as defendant in the corresponding legal transaction.

142. Accordingly, the ESM is no only compatible with the Ratifying Decision, but it is necessary for Oi to be regularly, validly and effectively binding upon the debt restructuring agreement under the Court-based Debt Restructuring.

2. Does the approval of the action for damages of managers give rise to non-compliance with the Ratifying Decision (item 7 of the agenda)?

143. It could not be deemed non-compliance.

144. None of the acts performed in the Court-based Debt Restructuring (decision that attributes the CEO with powers to prepare and negotiate the plan, approval of the plan by the Creditors' Meeting and ratification of the plan or otherwise) could release the manager of the company under restructuring from any liability due to losses caused to the company as a result of mismanagement.

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145. The CEO, when released from the tasks he was attributed with by the decision rendered on November 29, 2017, was clearly subject to article 158, I and II of the Brazilian Corporate Law, which refers to the liabilities of managers from companies in general and equally applies to those under court-based debt restructuring.

146. The Judiciary Branch may only establish that the CEO, when performing this task, would have not performed any mismanagement act causing losses to Oi when resolving on an action for damages filed pursuant to article 159 of the Brazilian Corporate Law.

147. In the decision rendered on November 29, 2017, the Judiciary Branch could not have – and has not – released in advance the CEO from his liability in performing his tasks as a manager of Oi attributed, *ad hoc*, with the preparation and negotiation of the debt restructuring plan.

148. The approval of the plan by the Creditors' Meeting may also no be deemed as an act which releases the CEO from any liability as manager of the company, especially because it was prepared and negotiated by the CEO himself.

149. Also, the legal ratification of the plan is not intended to determine that the CEO has no liability for the management acts of Oi he has performed when performing his *ad hoc* tasks. This ratification does not refer to the substantial aspects of the plan, of economic-financial order, and could not even refer to them; and, therefore, the debt restructuring court does not acknowledge (legally speaking) whether or not mismanagement of the company occurred during the preparation and negotiation of such plan.

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150. In sum, the action for damages under article 159 of the Brazilian Corporate Law refers to the only legal procedure in which the CEO may be held liable for the acts he has performed. If he has not performed mismanagement acts, then the action will be deemed invalid. However, if he has performed mismanagement acts, there is no other procedural means in order for Oi to be fully reimbursed for its losses.

151. Pursuant to the head provision of article 159 of the Brazilian Corporate Law, an action for damages filed against a manager due to harmful acts performed against the company is a matter which is privately attributed to the shareholders' meeting. This is because the subject of right being affects is a legal entity; constitution of will of such legal entity whether to suit or not its manager is only regular, valid and effective as resolved by the shareholders' meeting.

152. Therefore, the court decision has not been violated in the discussion and voting, by the February 7th ESM, of the matters indicated in item 7 of the agenda.

3. Can the shareholders be held liable due to power abuse or may any of the sanctions described in article 64 of the Bankruptcy Law apply if the action for damages is approved (item 7 of the agenda) or if a resolution contrary to the provisions set forth in the Debt Restructuring Plan is made?

153. Power abuse by the shareholders does not apply, under any circumstance, if they choose to hold the CEO liable, for purposes of damages of losses suffered by Oi by virtue of a mismanagement act. This is the regular exercise of the corporate law, pursuant to articles 158 and 159 of the Brazilian Corporate Law.

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154. On the other hand, article 64 of the Bankruptcy Law also does not apply when it comes to imposing a sanction to these shareholders. After all, no sanctions of the debt restructuring plan are being non-complied with. The debt restructuring plan does not and could not provide for any provisions in order to release the CEO from his legal liabilities. To the contrary, the plan, in order to be valid, needs to be construed as having provided stability to the CEO as a member of the board of executive officers, except if he is prevented by a court determination.

155. With respect to the matter included in the agenda of the February 7th ESM, which refers to the sections of the debt restructuring plan that has been approved and ratified, as shown above, only the shareholders' meeting may perfect the corresponding debt restructuring agreement, binding upon Oi as defendant.

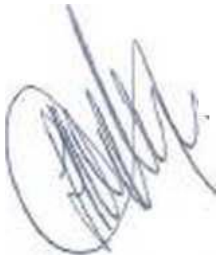
156. The CEO, even acting in accordance with his powers granted to him *ad hoc* by the decisions rendered on November 29, 2017, does not replace the shareholders' meeting as a corporate body having a private authority.

157. If any section of the debt restructuring plan corresponding to a matter which is attributed to the shareholders' meeting is not approved at the February 7th ESM, this does not mean that the shareholders are not enforcing a court decision or no complying with the debt restructuring plan.

158. As shown in the Report, the regular, valid and effective constitution of will of Oi is an element to constitute the debt restructuring agreement, without which the debtor under restructuring is not binding upon the debt restructuring plan. This is a matter which refers to the existence of the legal transaction, and not its implementation.

159. If the February 7th ESM fails to approve of any of the sections of the plan, there is one simple solution: since no debt restructuring agreement between the debtor under restructuring and the collectivity of creditors subject to the effects of the measure will have been yet constituted in the Court-based Debt Restructuring of Oi, Creditors' Meeting will be called to proceed with the Court-based Debt Restructuring.

São Paulo, February 4, 2018.



Fábio Ulhoa Coelho

EXHIBIT C-2

Prof. Carlos Alberto Carmona Legal Opinion
(Arbitration)

CARLOS ALBERTO CARMONA

PHD PROFESSOR OF THE DEPARTMENT OF PROCEDURAL LAW OF
COLLEGE OF LAW OF THE UNIVERSITY OF SÃO PAULO
LAWYER IN SÃO PAULO

OPINION

JUDICIAL REORGANIZATION – SYSTEMATIC INTERPRETATION OF THE PROVISIONS OF THE BRAZILIAN CORPORATE LAW AND THE REORGANIZATION AND BANKRUPTCY LAW – POWERS OF THE SHAREHOLDERS' MEETING AND THE CREDITORS' MEETING – IMPOSSIBILITY OF APPROVAL OF JUDICIAL REORGANIZATION PLAN THAT DEALS WITH INTRA-CORPORATE MATTERS OF THE COMPANIES UNDER REORGANIZATION, WITHOUT PRIOR RESOLUTION AT A SHAREHOLDERS' MEETING – SOVEREIGNTY OF THE SHAREHOLDERS' MEETING TO RESOLVE THE MATTERS DESCRIBED IN ARTICLE 122 OF THE BRAZILIAN CORPORATE LAW – UNENFORCEABILITY OF THE JUDICIAL REORGANIZATION PLAN IN RELATION TO ACTS OF THE INTERNAL BODIES OF THE COMPANIES UNDER REORGANIZATION REGARDS INTRA-CORPORATE ASPECTS, WHILE NOT APPROVED IN A SHAREHOLDERS' MEETING.

Corporate, reorganization and arbitration Law – Existence of arbitration clause in the Bylaws – Absence of jurisdiction of the judicial reorganization and bankruptcy court to settle intra-corporate disputes – Maintenance of the validity and effectiveness of the arbitration clause after the approval of the request for judicial reorganization – Eventual dispute between shareholders, board of directors and the companies under reorganization proceedings to be settled by arbitration, pursuant to the arbitration clause of the Bylaws.

I. INTRODUCTION

1. Bratel S.À.R.L. **("CONSULTER"),** a shareholder Oi S.A. ("Oi"), represented by its attorneys, Mr. Tiago Schreiner Garcez Lopes and Mr. Guilherme França, consulted me regarding the preservation of corporate law within the context of the reorganization proceedings, mainly the possibility of the General Meeting of Oi Creditors, upon approval and validation of a judicial reorganization plan ("PRJ"), to amend the Oi Bylaws ("Bylaws") and impose obligations on the shareholders without any consultation, invading *manu militare* the powers of the general shareholders' meeting ("General Meeting").

2. The consultation seeks to analyze the dynamics and coexistence of legal relationships (corporate and reorganization) in the search for the preservation of the company and in the definition of the social role of the private property (whether it is related to credit, corporate or any other stakeholder).

3. Further, after delimiting the boundaries between the principles, standards, rights and obligations of the two legal relationships under dispute, this study will define the prevalence and effectiveness of the statutory arbitration agreement (which obliges all shareholders, directors, members of the Audit Committee of Oi and the Company itself) to adjudicate an eventual dispute regarding non-compliance with corporate rules that occurred with the presentation and disreputable approval of the PRJ.

II. PRESENTATION OF FACTS

4. The **CONSULTER –** a wholly-owned subsidiary of Pharol, SGPS S.A – is a minority shareholder of Oi, holding 22.24% of the total shares issued by it, and is interested in the recovery of the latter's financial situation. As it is publicly known, Oi is currently submitted to the judicial reorganization proceeding in progress at the 7th Corporate Court of the District of the Capital – RJ ("RJ Court")[1].

5. In this context, disagreements arose in the corporate sphere of Oi between groups of shareholders and administrators regarding the negotiation of the content of the PRJ with the Company's creditors, including the resignation of several Oi administrators for political-institutional issues. This dynamics, in the view of the RJ Court, hindered the regular continuation of the judicial reorganization proceeding.

6. Due to an alleged divergence between groups of shareholders and their impact on the performance of the members of the Board of Directors, the RJ Court pointed out that there would have been established *"a heated conflict over the reorganization plan for the Debtors to be effectively brought to the meeting for deliberation by the creditors. Each group is defending a different plan and, as well observed by the Public Prosecutor's Office, it is not the Court role to carry out an assessment of the advantages and disadvantages of each of them (...) The fact is that this divergence about the reorganization plan has caused a notorious turmoil in the company's management, as demonstrated by the controversial meeting of the Board of Directors of Oi S/A on 11.31.2017, which also generated an injunction granted by ANATEL. It should be noted that all of this occurred on the eve of the general meeting of creditors, which had to be postponed three times, in prejudice of the speed of the work. Within this framework, based*

[1] Case Records no. 0203711-65.2016.8.19.0001.

on the general power to grant interlocutory relief of the court, I deemed necessary to adopt a precautionary and provisional measure, which was intended only to guarantee the proper progress of the present reorganization, especially by allowing effective negotiation between the parties involved, without the elimination of any of the groups, in order to ensure the principle of preservation of the company."

7. Accordingly, in a decision handed down on November 29, 2010, being understood that there was "*an indication of consensus regarding the name of the Legal Officer who has worked for the company for decades to guide the companies under reorganization at this delicate procedural moment*", a consensus "*between the Executive Officers and the Board of Directors and consensus also with the main creditors who came to the file to request that the statutory directors of the companies under organization that have been negotiating the reorganization plan should remain in the conduct of the work*", the RJ Court appointed the Legal Officer, who also acts as Chief Executive Officer of the Company ("Chief Executive Officer"), "*as the person responsible to conduct and conclude negotiations with the creditors of this reorganization until 12/12/2017, date on which he shall personally present to this court the reorganization plan which will be voted at the General Meeting of Creditors, regardless of approval by the Board of Directors*". In addition, the RJ Court denied "the requests for suspension of the voting rights of the members of the Board of Directors of Oi S/A and of the minority shareholders included in the application pages 241.856/241.984 (items ii and iii) and application pages 243.730/243.751 (items i, ii and iv)."

8. Thus, the Chief Executive Officer negotiated the PRJ with the creditors and presented it to the RJ Court, without having discussed or consulted the members of the Board of Directors regarding its content. The plan presented had, among others, the following forecasts: ***(i)*** alteration of the structure of the Board of Directors provided for in the Bylaws, from 11 regular members

and 11 alternates, the Board of Directors would be composed of only 7 regular members (the "Transitional Board of Directors" - Cl. 9.2;) ***(ii)*** replacement of members of the Board of Directors elected by the shareholders and the election of new ones – who cannot be removed (Cl. 9.2 and Exhibit 9.2 to the PRJ) – to form the Transitional Council, whose names were provided in the PRJ itself; ***(iii)*** creation of a new Board of Directors, regardless of the rule set forth in the Bylaws and election at a shareholders' meeting, which cannot be removed either (the "New Board of Directors" – Cls. 9.3 and 9.5); ***(iv)*** provision that the New Board of Directors will not have alternates, contrary to what the Bylaws provides, and will be formed by 1 director already elected in the PRJ, as well as by 10 other names chosen by the Transitional Board of Directors itself out of 22 names selected by a HR consulting firm (Cl.9.3); ***(v)*** provision that the shareholders' meeting will merely "ratify" the choice of the New Board of Directors by the Transitional Board of Directors (Clause 9.3); ***(vi)*** provision of powers to Administrators in disagreement with the Bylaws (Cls. 9.1.1 and 9.3.1); ***(vii)*** increase of the Company's capital, including in addition to what is permitted in the Bylaws, by increasing the authorized capital (the PRJ provides that, if shareholders do not approve the increase in authorized capital, the RJ Court may cancel the need for such approval – Cl.3.3.3.5, 4.3.3.6, 6 and 10.3); and ***(viii)*** planning of issuance of debt securities without authorization of the Board of Directors, contrary to the provisions of the Bylaws.

9. On December 15, 1717, the Public Prosecutor's Office ("MP") stated in the records of the judicial reorganization, to indicate the "*injurisdicity*" of a series of provisions of the PRJ and to adduce ***(i)*** in relation to the issuance of shares provided for in the plan that Oi *"[as a corporation, which is, subject to a law of its own governance and thus it is unavoidable that any capital increase should be authorized by the Extraordinary General Meeting. It is true that it is not necessary or even feasible*

for this Extraordinary General Meeting to take place before the Ordinary General Meeting. However, the Public Prosecutor's Office does not believe that the meeting is dispensable on behalf of the specialty of the LFRE/2005 in relation to the Brazilian Corporate Law. The two microsystems operate in their respective areas" and that "in the case of a publicly traded company, the issuance must comply with the specific legislation and regulations of the CVM. Once the plan has been approved in such terms, it seems to the Public Prosecutor's Office that an Extraordinary General Meeting should be called to endorse the decision, even if it happens during the implementation of the plan"-, and (ii) regarding the alterations in the Bylaws suggested in the PRJ that *"the corporate restructuring or even the amendment of the Bylaws may be the subject of a resolution of the shareholders' meeting as a way to reorganize the activities of the debtor and obtain its recovery, it seems to the Public Prosecutor's Office that its implementation once more is in the hands of shareholders under the Brazilian Corporate Law."*

10. It is interesting to note that the Public Prosecutor's Office recorded that the content of the PRJ was based on a mere presumption that Oi's Board of Directors would act in a conflict of interest to prevent the Company's financial restructuring – a conduct that, if it occurred in fact, should not be sanctioned by the PRJ, but by specific demand set forth in article 64 of the LRF, filed before the RJ Court. In the words of Parquet representative: *"It is undoubtedly the case that the preparation of such clauses was inspired by the best intention of ensuring the fulfillment of the PRJ that will be approved by the creditors. However, the legal solution found for situations in which the company's administrator is on a collision course with its interests and obstructing the success of the plan is not the one presented in the draft. For the administrator or partner who incurs in such conducts the removal is provided pursuant to art. 64 of the LFRE/2005. Moreover, until the reorganization is concluded, any and all measures of reorganization and implementation of the plan that have not succeed, have this court as competent to take the proper action that seeks a correction of course. Such difficulties should not be presumed to occur; if the removal of the*

administrator/ shareholder/ director occurs, it is available to the reorganization court, which should not be limited to a rite tied up in the PRJ."

11. On December 20, 1717, the PRJ was approved by the General Meeting of Creditors of Oi, without prior deliberation in the Extraordinary General Meeting. Also adopting the understanding that such deliberation in the Extraordinary General Meeting is necessary for the approval of the PRJ, the **CONSULTER** requested, on December 28, 2017, based on the sole paragraph, "c", of article 123 of the Brazilian Corporate Law, the convening of an Extraordinary General Meeting to deliberate on the aspects of the PRJ of intra-company impact, as well as on the filing of an action of liability against the Chief Executive Officer.

12. In a violent reaction against the initiative – and with clear violation of the provisions of the Bylaws – Oi Board of Directors, neglecting the existence of an arbitration clause in the Bylaws (clause 68 of the Bylaws), requested the RJ Court (on January 5, 2018), the grant of an urgent relief (i) *"to determine that BRATEL and SOCIÉTE MONDIALE, as well as any shareholder of Oi S.A. refrain, by themselves and by third parties, including but not limited to the members of the board of directors appointed by such shareholders, from taking any act tending to* ***convene***, ***request that be convened****, practice or have any acts,* ***especially the corporate ones****, to be practiced, without the previous and express consent of this Court, which may impair or create obstacles to the fulfillment of the Judicial Reorganization Plan approved by the creditors of Oi Group,* ***(ii)*** *to determine the summons of the Chairman of the Board of Directors of Oi SA, Mr. José Mauro Mettrau Carneiro da Cunha, so that it observes and practices all acts necessary for the execution of the corporate acts set forth in Clause 9a of the approved Judicial Reorganization Plan, namely the creation of the Transitional Board of Directors as well as it refrains from carrying out any act tending to convene, request to be convened, practice or have any acts,* ***especially the corporate ones****, to be practiced, without the prior and express*

authorization of this Court, which may prevent or create obstacles to fulfillment of the Judicial Reorganization plan approved by the creditors of Oi Group", ***(iii) "the immediate suspension of effects of any call or the holding of any shareholders' meeting of the companies under reorganization, relating to matters subject to the approved plan or measures necessary for the fulfillment of the Plan (…), (iv) "the immediate suspension of the call and the holding of any shareholders' meeting by the companies under reorganization having as express or implied purpose, to challenge the decision of this Court, which appointed Mr. Eurico Teles to negotiate and submit a Judicial Reorganization Plan, as well as to deliberate on any measure that has the purpose of evaluating its acts and of the other directors who have assisted it in complying with said judicial determination, since the board of shareholders cannot sometimes appeal against the decision of the judicial reorganization court, and (v) in the event BRATEL, or any other shareholder, has already convened the aforementioned Extraordinary Shareholders' Meeting, whose purpose is challenging the decisions rendered by this Court - which is in danger of occurring as of 01.05.2018 - , the effects of this call shall be suspended"*** (our emphasis.). This request for an emergency measure has not yet been assessed by the RJ Court.

13. On January 8, 2018, the PRJ was approved, and the RJ Court rejected the opinion of the Public Prosecutor to decide that *"the pertinent amendments, including the Company's bylaws, approved in the PRJ, do not require the execution of an Extraordinary General Meeting and can be carried out by the management bodies of the company, based on the authorization granted at the creditors' meeting, as provided for in the LRF, which is a special law in relation to the Brazilian Corporate Law on the matter. (...) The will of the creditors must be respected, even being prohibited the practice of any act – whether by a shareholder, member of the board of directors or administrator of the company – that has the purpose of preventing the fulfillment of the reorganization plan approved in due accordance with*

the law. The Chairman of the Board of Directors is also responsible for the immediate and effective compliance with the approved plan, as soon as it is ratified, ensuring, among other things, the provisional conditions of corporate governance and conversion of debt into shares, according to the creditors' sovereign decision".

14. Right after the approval of the PRJ, the **CONSULTER** filed a petition for reconsideration to: ***(i)*** request compliance with art. 50 of the LRF, *'because, by mentioning the means of judicial reorganization to be provided for in the plan, it have emphasized that the plan must observe 'the pertinent legislation in each case' (article 50, caput, LRF),* noting that *"The LRF was careful to be very clear so that there would be no questions as to the need to comply with the regulations that will apply to the implementation of the plan (...) in evidence the need to prepare the judicial reorganization plan in an overall legal perspective, respecting the applicable rules",* ***(ii)*** affirm that the decision that approved the PRJ *"represents a true judicial intervention in a publicly-held company – the fact is that, with the powers to conclude negotiations with creditors and personally present the PRJ, the Board of Directors took the opportunity to, without holding a single share issued by the Company, assume its absolute control, including redesigning the governance structure of OI, providing for an irregular capital increase of the company, in violation of the Bylaws and flagrantly defying the decisions and rights of the General Shareholders' Meeting, and even including a forecast of suppression of the company's social will by expression of the Judiciary"* and, finally, ***(iii)*** request a *"partial reconsideration of the decision that approved the plan only so that the approval of the following Clauses of the PRJ Board of Directors do not occur until the Extraordinary General Meeting convened for February 7, 2018, even though the holding or not of the Extraordinary General Meeting is a matter that is not under the jurisdiction of this Court: Clause 9 and sub-clauses (Governance), Clause 4.3.5 and sub-clauses (Restructuring of Bonds) and Clause 6 and sub-clauses (Capital Increase), including in connection with the payment of any Commitment Premium provided for in Clause 6.1.1.3 upon delivery of shares at the discretion of the Creditors and/or without the actual contribution of funds" and the "application of the provisions of Clause 13.1 and 13.7 of the PRJ Board*

of Executive Officers, suspending the effectiveness of said provisions until the said Extraordinary General Meeting is held, without prejudice to other provisions of the Plan already approved by the Court".

15. On January 31, 2018, the Public Prosecutor's Office filed an appeal against the decision that approved the PRJ, reiterating, among others, its understanding of the need for the boards of the companies under reorganization to call an Extraordinary General Meeting to deliberate on the measures of the PRJ, observing the provisions of the Brazilian Corporate Law.

16. Once more, the words of the Public Prosecutor's Office should be analyzed: "*The success in fulfilling the PRJ must be achieved through conciliation between the decision of the creditors, the LFRE/2005 and the Brazilian Corporate Law. This will only occur with the calling of the Extraordinary General Meeting by any of those authorized in the bylaws of the companies. If the due formalization and accomplishment of the measures approved by the Ordinary General Meetings is not carried out by the shareholders, there would be a chance of non-compliance with the plan and unjustified resistance to attract on those who have refused not only the measures provided for in article 64 of LFRE/2005, but also responsibility for the losses that they cause to companies, their creditors and shareholders. This plan implies the adoption of a series of measures to be taken by the debtors, resulting in the reform of their bylaws, capital increase, election of directors, the issuance of subscription bonuses. The Public Prosecutor's Office is convinced that these complex measures must be obtained in the compliance phase of the approved plan, a phase that has only just begun. There should be no risk that decisions of such importance will in future be deemed null and void!"*

17. This is, in a summary synthesis, the succession of the facts, proven by the parts of the records that were presented to me.

III. The Consultation

18. Before the facts presented, the **CONSULTER** formulated the following questions subject to the consultation that I am now engaged in:

a. *"Pursuant to the LRF and the Brazilian Corporate Law, could the PRJ approved by the general meeting of creditors and legally approved in the approving decision amend Oi bylaws and/or alter other intra-corporate issues whose amendment the Brazilian Corporate Law requires approval of the general shareholders' meeting?"*

b. *"Pursuant to the provisions of Oi Bylaws and considering the existence of an arbitration clause in the Bylaws, does the RJ Court or other body of the Judiciary have jurisdiction to suspend the holding of the Extraordinary General Meeting of February 07 and/or to decide on a possible conflict involving Oi, its administrators and its shareholders based on the argument of existence of noncompliance with aspects of the PRJ for whose implementation the Brazilian Corporate Law requires the approval of the general shareholders' meeting?"*

c. *"Does the Judiciary have jurisdiction over a possible conflict between the Company, the shareholders and the administrators involving non-compliance with corporate and governance rules set forth in the PRJ?"*

19. Before answering the questions made, I outline some important premises and concepts for the comprehension of the reasoning developed.

IV. THE CONVERGENCE OF TWO SPECIAL DIPLOMAS: SYSTEMATIC INTERPRETATION OF THE BRAZILIAN CORPORATE LAW ("LSA") AND THE REORGANIZATION AND BANKRUPTCY LAW ("LRF")

(a) Oi Bylaws and the rules of the Brazilian Corporate Law

20. In the case of corporations, the Bylaws are for the corporation as the Federal Constitution is for the sovereign State. In relation to their instrumental character, the founding shareholders – and all others who may integrate the company in accordance with the rules laid down in the Bylaws and the law – draw the rules that they deem most appropriate to regulate *intra-corporate and extra-corporate* relations creating, within the limit of the law, quorums, positions, bodies and procedures defined for the election of administrators, increase of capital stock and issuance of debentures, these rules aiming at ensuring predictability, legality and security for decision making and externalization of the will of the company.

21. Obviously, the freedom that shareholders have to create and/or alter the rules contained in the Bylaws must be framed within the formal and substantial limits provided by Law. Here are some examples of such legal restriction of the autonomy of the will: ***(i)*** Article 6 of the LSA stipulates that the capital stock can only be modified in compliance with the provisions of the Law and the Bylaws (Articles 166 to 174), and the latter provisions emphasize the need for a resolution to increase or decrease the capital stock by General Meeting; and ***(ii)*** Article 122 of the LSA stipulates that it is the sole power of the Shareholders' Meeting to determine changes to the Bylaws or to dismiss and elect new administrators. As it can be seen, the LSA itself prevents certain rules without the convening of the General Meeting, establishing a rigid separation of powers between the various bodies of the Company.

22. Oi Bylaws, in turn, provides, among other provisions, ***(i)*** in its article 6, that "*the Company is authorized to increase the capital stock, upon resolution of the Board of Directors ...* ***(ii)*** *in its article 15, that "[the] General Meeting shall be convened by the Board of Directors, or in the manner set forth in the sole paragraph of Article 123 of the Brazilian Corporate Law" -,* ***(iii)*** *in its article 21, that "in addition to the other responsibilities provided for by law and in these Bylaws, it is the sole responsibility of the Shareholders' Meeting to: (i) elect and remove the members of the Board of Directors and members of the Audit Committee;* ***(iii)*** in its article 23, that the *Board of Directors is composed of 11 (eleven) regular members and an equal number of alternates, each alternate being tied to an effective member, all elected and removed by the General Meeting, with a unified mandate of 2 (two) years, reelection being permitted, subject to the provisions of article 69" and* ***(iv)*** *in its article 32, which is the responsibility of the Board of Directors "ii. to convene the General Meeting, and "iv. to elect and dismiss, at any time, the Company's Officers, setting their duties, subject to legal and statutory provisions."*

23. The LSA and also the Bylaws provide that the performance of changes in the statutory rules, election and/or removal of directors and increase of capital, among others, must occur at the General Shareholders' Meeting.

(b) Purpose, principle and limitation of the Judicial Reorganization

24. The purpose of the reorganization is to allow the reorganization of the debtor's activities, thereby making it possible to overcome the crisis that affects it. It is about insolvency proceedings established for the preservation of the company, satisfaction of the interest of creditors and different stakeholders (suppliers, employees and civil society). **Preserving the company and satisfying the creditors** are not acts that exclude each other: the two actions are concomitant and combined, so that the insolvency proceeding is not an authorization for the devastation of the company under a recovery regime, much less permission for

a generalized take over (whether of the judge, or of the creditors) that makes the shareholders' rights clear.

25. Under the Brazilian law system, the maintenance of the debtor in the conduct of business (caput of article 64 of the LRF) and the establishment of a stay period (during which there is suspension of actions and executions, according to article 6 of the LRF) are the structuring pillars of the LRF, in order to overcome the crisis and undermine its causes.

26. On the one hand, there is (momentary) stability and cessation of the financial crisis, with the suspension of actions and executions; on the other hand, the debtor is left in the conduct of the business because of its deep (and very special) entrepreneurial knowledge, avoiding sudden changes and interruptions in the administration and additional learning costs that a new administration would require. It is assumed that the debtor knows – better than all – its business; it can understand with more acuity the reasons of the crisis and take with greater serenity the measures for its overcoming. **In this aspect, the principle of debtor-in-possession in business reorganization is the rule, the dismissal of the management (and, if applicable, the controller) being the exception (see article 64 of the LRF).**

27. With this principle it is established that the control and administration of company persist: the company continues to be represented by its administrators and its corporate will continues to emanate from its deliberative bodies. The company (the "debtor" under the law) and its bodies continue to be headed by its controller and the legal entity is not destroyed: the company's Bylaws (the backbone of the company) remain full and intact despite the reorganization regime.

28. In spite of the fact that the reorganization allows a sharing of the power of control with creditors (due to the constant negotiating tension that exists between the company in crisis and the creditors) and to subject the company to legal restrictions and to the **supervision** of the judge and the trustee, the controlling shareholder continues to boast its power and the company in crisis, despite everything, keeps its legal identity intact and unscathed, with the regular operation of its governing bodies. It should be reminded that the verb **to supervise** means to watch, examine, verify. It does not mean intervene, recreate or reassemble.

(c) The nature of the reorganization plan

29. The judicial reorganization is a procedure that organizes the renegotiation of debts between debtors and creditors, under the supervision and inspection of third parties (judicial administrator and judge), in order to protect the interests of stakeholders (i.e., it aims to protect all persons affected by the business activity).

30. If, on the one hand, the judicial reorganization occurs through a proceeding, which arises from the filing of a lawsuit, subjecting itself to rigid systems of powers, burdens, procedural powers and duties (with the relevant preclusions) with different interests and concluding with one judgement, on the other hand, on the judicial reorganization, there is the coexistence of different elements and rules of corporate law, with the definition of business strategies for reorganization, specific rules for divestitures and acquisitions of assets, effects of the reorganization on creditors, shareholders and debtors, as well as the repercussion of such effects on the market and in society, among other substantial determinations.

31. The procedural aspects of judicial reorganization do not suppress its nature as a consensual legal business, because in the reorganization plan there is an uncontested negotiating/obligatory content. There are bargains (sacrifices of the different parties involved) to obtain the novation of debts of the company in crisis. This fact reveals the expression of the will (in fact, of the collective will of the mass of creditors and of the debtor according to the corporate will coming from its different bodies).

32. In fact, the General Meeting of Creditors has powers to approve, suggest modifications (proposal) or reject the reorganization plan, determining the type of judicial reorganization (paragraph of I article 35 of the LRF), that is, as a rule (excepting the strict event of *cram down*[2]), the definition of the reorganization does not depend on judicial protection, but rather on the debtor's ability to adjust with its creditors a means of rescuing the company. This is what remained defined by the Court of Justice of the State of São Paulo, in judgments reported by Associate Judge Manoel Pereira Calças (honorable professor of Commercial Law of the College of Law of Largo São Francisco):

[2] According to the article 58 of the LRF, if the legal requirements are met, the judge will grant judicial reorganization based on a plan that has not been challenged or has been approved by the General Meeting of Creditors pursuant to article 45 of the same law. In this article the contractual nature is embodied, since the agreement of wills cannot undergo interventions of the judge. On the other hand, according to §1 of art. 58, it would remain for the Judge to grant judicial reorganization "based on a plan that did not obtain approval according to article 45, provided that, at the same meeting, it has cumulatively obtained: I – the favorable vote of creditors representing more than half the value of all the credits present at the meeting, regardless of classes; II – the approval of 2 (two) classes of creditors pursuant to art. 45 of this Law or, if there are only 2 (two) classes with voting creditors, the approval of at least 1 (one) of them; III – in the class that has rejected it, a favorable vote of more than 1/3 (one third) of the creditors, computed pursuant to §§ 1 and 2 of article 45 of this Law." It is a regulation of Anglo-Saxon origin called *cram down*. In a discretionary way, by the narrow way of the law, the judge imposes the plan to the conflicting parties. However, the imposed plan corresponds to the will of the majority of the creditors, not being configured in an arbitrary act, which would maintain the contractual character of the regulation.

"(…) the legal system confers on the reorganization plan approved by the general meeting of creditors the nature of a contract that is constituted of free negotiation between creditors and debtor companies, which is complemented by the judicial decision granting the reorganization. Thus, if there are no appeals or if any appeals are rejected, it is recognized that the contract signed constitutes a perfect legal act, which is consecrated in an adjectival decision of 'judged thing'".

32. And also:

"Appeal. Judicial reorganization. Substantial and deep change to the proposed judicial reorganization plan without observance of reasonable advance notice for the attendance of all creditors. Violation of the principles of loyalty, trust and objective good faith. Contractual nature of the judicial reorganization that requires, in the pre-contractual phase, trustworthy, honest and ethical conduct, under penalty of objection to the objective good faith of art. 421 of the Brazilian Civil Code. The freedom to contract must be exercised under the social function of judicial reorganization. Intelligence of art. 421 of the Brazilian Civil Code. Appeal provided to annul the General Meeting, ordering the calling of other conclave, in which the plan observes the rules of art. 53 of Law No. 11.101/2005".[3] [4]

34. The plan creates a new situation, with the novation of the credits (article 59 of the LRF), changing the relation between the debtor and the creditors, and *"the approval of a judicial reorganization plan approved by the creditors is subject to [strictly] to judicial review of legality*" (see statement No 44 of Conference on Commercial Law). The reorganization plan, therefore, is a business entered into between the debtor in crisis and its different creditors.

3 TJSP. AI no. 0038422-30.2012.8.26.0000 -J. on 10/02/2012, DJe 10/04/2012.
4 TJSP. AI no. 0032073-45.2011.8.26.0000. -J. on 10/18/11. DJ 10/19/2011.

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(d) The means for the Judicial Reorganization and the need for holding the general meeting for approval of the PRJ

35. The decisions on the future of the corporation are exercised in accordance with the powers of its corporate bodies. In this particular case, specifically regarding the judicial reorganization, it is up to the shareholders to approve the application of this regulation made by the company, then presented by its administrators, pursuant to art. 122, IX of the LSA. The aforementioned rule establishes the authority of the shareholders' meeting to authorize the application for bankruptcy (which also applies to judicial reorganization) and/or to ratify the request for judicial reorganization made on an emergency basis (that is, *without* the prior holding of the meeting) by the administrators or by the Board of Directors, but with the agreement of the controlling shareholder. In this case, an Extraordinary General Meeting shall be convened to deliberate on the matter.

36. Following the same logic, after the approval of the judicial reorganization proceeding, pursuant to the caput of art. 53 of the LRF[5], it is for the debtor – represented by the administration or by the Board of Directors, if the Bylaws so provides – to propose a judicial reorganization plan.

37. The instruments that can be used by the debtor to structure (negotiate) its reorganization plan – such as changes in the composition of the management bodies, change in its shareholding control, shared management, etc. – do not

[5] Art. 53. *The reorganization plan shall be submitted by the debtor in court in the non-extendable period of 60 (sixty) days as of the publication of the decision granting the judicial reorganization proceeding, under penalty of bankruptcy conversion, and shall contain ...).*"

detract from the legal regime and the implications that each means presupposes and requires (formally and substantially) according to the relevant legislation. Indeed, Article 50 of the LRF – which lists exemplarily many forms and proposals to set up a restructuring and reorganization plan – is clear in determining that ***"the relevant legislation must be observed in each means".***

38. The fact is that some of the resolutions taken by the creditors' meetings are dependent on the resolution of the shareholders' meeting. In fact, the recovery process allows the adoption of a broad set of measures aimed at reorganizing the company and overcoming the economic and financial crisis, as it can be seen from the provisions of Article 50 of the LRF. The debtor can use different instruments to obtain the recovery of the company with the adhesion and approval of the creditors. The range of instruments exemplified by the LRF overflowed measures of mere extension of debt and the application of negative goodwill to cover changes in the structure of the company in crisis making the desired recovery more palatable and legitimate.

39. The LRF, however, has not established a special rule regarding the formation of the will of the debtor company regarding the implementation of the means of recovery listed in art. 50 of said LRF. There is no express or implied revocation of any LSA standard (also special law). In fact, the LRF was clear to refer to the relevant legislation (to the LSA, *in casu)* the approval of the reorganization plan every time it involves a change of corporate character: since **"the legislation pertinent to each case must be always observed"**.

40. As it can be seen, if the reorganization plan contains measures whose

implementation by the LSA (articles 121 and 122) is subject to the approval of the General Shareholders' Meeting (private power), there will be an imposition on those involved (debtors and creditors) to submit the proposals contained in the PRJ for approval or not at said Meeting. The power of the corporate body is private and non-imperative, in the exact terms of the LSA. The valid and effective will of the debtor only emanates from this body.

41. The determination contained in the LRF (article 50) meets the requirements contained in the corporate law for the adoption of certain measures and restrictions of the rights of shareholders and the Company's business. In other words, there is no perceived incompatibility between the two laws (LRF and LSA) regarding the requirements of the reorganization law and the corporate law, but rather perfect synchronicity in the game of sacrifices (and bargaining) of the rights of the obligatory adjustment by which the reorganization plan is established. Certain provisions cannot be imposed, since they depend on the formation of the will of the legal entity in a regular, valid and effective manner, in the manner disciplined by the LSA. That is to say, until the General Shareholders' Meeting is not held, the matter in the reorganization plan does not become binding, regular or valid.

42. The interpretation of the RJ Judge concerning Article 50 of the LRF – in the sense that such a law would be special in relation to the LSA and would thus authorize the use of the means listed therein to serve unconditionally to the creditors' interest – is *contra legem*. As already seen, the LRF itself subordinates the use of means for the recovery of Oi to the strict compliance with the applicable legislation, and therefore compliance with articles 6, 122, 123, 166, 174 of the LSA, Articles 50 and 64 of the LRF and articles 18, 21, 23 and 32

of the Bylaws of Oi.

(e) Fiduciary duty of the administrators

43. The appointment and dismissal of administrators of a corporation occurs, as discussed above, by institutional means, pursuant to item II of art. 122 of the LSA: such acts are the exclusive power of the General Shareholders' Meeting. Prohibited the abusive action, the shareholders may appoint and remove administrators – *ad nuntum* – who cease to act in accordance with the Bylaws or who act without the diligence required for the position, even in the absence of practice of any of the acts envisaged in the paragraphs of article 64 of the LRF.

44. Thus, the reorganization court, even if it replaces the administrators (therefore, the controller of the business management), for some of the reasons related to the paragraphs of art. 64 of the LRF, cannot ignore, in its legality judgment, the need to comply with the application of legislation relevant to the approval of the plan.

45. Also, the *sponte sua* administration, even if elected or backed by the reorganization court for negotiation of the plan, cannot ignore its statutory and legal duties of which it is imbued, pursuant to articles 153 and 154 of the LSA. The administrator cannot replace the formation of the shareholders' will in s meeting. The formation of the will of the debtor company does not change with the replacement of the administrator or with the suspension of the debtor-in-possession, and cannot be modified with the reorganization plan, unless there is agreement to do so, since all are required to comply with

the relevant legislation.

46. Thus, for example, the appointment of administrators, with the transfer of control, will continue to be subject to regulatory standards (Resolution no. 101/99 and caput article 97 of Law 9.427/97), and shall be submitted for the approval of the General Shareholders' Meeting. The approval of a spin-off, incorporation, merger or transformation of the company must follow w and comply *"the terms of the current legislation"* (item II of article 50 of the LRF).

47. Nothing in the LRF requires a change, albeit momentary, in the corporate regime of certain instruments placed at the disposal of the debtor, but which must be negotiated and approved by the right holders. Thus, the judicial reorganization does not constitute an exception regime capable of derogating guarantees granted by other microsystems in this case, the LSA itself – but rather a regime that aims, as far as possible, to maintain normalcy in the Company's life, preserving the coherence and the systems dialogue.

48. Therefore, the decision that approved the PRJ in spite of the holding of a Meeting should be reformed so that the provisions of the PRJ related to the amendment to the Bylaws, to the election and dismissal of administrators, and to the increase of capital were previously resolved in the General Meeting. Only after the approval of such provisions, in strict compliance with the provisions of the Law and the Bylaws, can they be effectively approved and carried out.

V. REASONS WHICH LED TO THE APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER AND THE APPROVAL OF THE PRJ WITHOUT PREVIOUS AUTHORIZATION FOR HOLDING OF THE GENERAL MEETING

49. The approval of the PRJ by the RJ Court, upon the defense that the holding of a General Meeting to deliberate on its provisions would be disposable, is directly related to the reasoning of the decision that appointed the Chief Executive Officer to prepare, negotiate and present the PRJ, issued on 11.29.2017. At that time, the judge adopted a pragmatic solution: in an attempt to promote the speed of the procedure and overcome the deadlock regarding the content of the PRJ – caused by the aforementioned conflict between creditors, shareholders and administrators of Oi – he appointed the person that, in its eyes (the Chief Executive Officer), had greater adherence among the aforementioned groups and the ability to lead the dealings with creditors and present the PRJ more quickly in court. In order to be sure that the performance of the Chief Executive Officer would not be influenced by the Board of Directors of Oi, the judged also allowed it (Chief Executive Officer) to act independently of the authorization of that corporate body and of any resolution at a General Meeting.

50. However, the discretion of the judge must find limit in the dictates of the law. It would not be possible for the RJ Court to use the aforementioned solution only to overcome the situation of political and institutional conflict that currently occurs in the corporate sphere of Oi. In fact, it is very pertinent the reference of the old jargon made by the **CONSULTER** in the expression by which requested the reconsideration of the decision that approved the PRJ: the ends do not justify the means.

51. As well stated by *Parquet* – properly performing its role as inspector of the law – the submission of the provisions of the PRJ that deal with changes to the Bylaws, election and dismissal of administrators, increase of capital and issuance of debentures to the General Meeting is indispensable and must be observed for the regular progress of the judicial reorganization proceeding, under penalty of reform at the venue.

52. In this regard, the appointment of the Chief Executive Officer according to the decision of 11.29.2017 and the consequent negotiation and approval of the PRJ without the participation of the Board of Directors and the holding of a General Meeting are procedural acts that violate the LSA and the LFR, since it would be incumbent upon the Board of Directors – as a body that represents the shareholders' will (even though by majority principle) – to participate and deliberate on the content of the PRJ.

53. The decisions issued by the RJ Court on 11.29.2017 and 01.08.2018 – under the pretext of pragmatism – took into account only the interests of creditors and violated the interests of Oi shareholders, since provisions were approved, provisions that should be deliberated (and eventually could be vetoed) by the latter at a General Meeting.

54. The RJ Court could not presume that the administrators of Oi would perform acts that impeded the regular development of the judicial reorganization, denying them the possibility of performing their statutory and legal functions, granting this power to the Chief Executive Officer. It is also noted that the stipulation of the duties of the directors of Oi is exclusively the responsibility of the Board of Directors, which once again shows the irregular intervention of the Judiciary

Power within the scope of the Company's intra-corporate relations.

55. As pointed out by the Public Prosecutor's Office, in the event that the members of the Board of Directors obstructed the judicial reorganization of Oi – which is only allowed to exhaust the subject matter – it would be left to the impaired and interested creditors to file suit on the basis of Article 64 of the LRF.

VI. ARBITRATION AND JURISDICTION OF THE RJ COURT

56. As permitted by article 109, paragraph 3, of the LSA, Oi shareholders inserted into the Company's Bylaws, on 09.15.2015, an arbitration clause which elected CAM BM&F Bovespa as the arbitration body responsible for administering corporate dispute (clause of the Bylaws).

57. From the reading of such a provision, it is provided that, regarding its subjective scope, it was reserved to the arbitral court "*any dispute and controversy*" that could arise between *"[the] Company, its shareholders, administrators and members of Audit Committee"* and therefore all of them are bound by the arbitration agreement, because they have freely agreed to it.

58. Regarding the objective limits of the claims to be resolved by the arbitration, the text of the arbitration agreement stipulates that the claims must be on the *"application, validity, efficacy, interpretation, violation and its effects of the provisions contained in the Brazilian Corporate Law, in the company's bylaws, in the regulations issued by the National Monetary Council, the Central Bank of Brazil and the CVM, as well as in other standards applicable to the operation of the capital market in general, in addition to those contained in the Level 1 Regulation, Rules of Arbitration, the Sanctions Rules and the Level*

1 Participation Agreement for Corporate Governance.

59. The full validity and effectiveness of the arbitration agreement is therefore verified, since it is executed by persons capable of contracting and restricted to available and patrimonial rights, as provided for in article 1 of the Arbitration Law, at the same time as the requirements set forth in Article 109, §3, of the LSA are also met.

60. The supervening of Oi judicial reorganization does not invalidate the validity and effectiveness of the said arbitration clause in the Bylaws. This is because – as opposed to what would occur in a bankruptcy proceeding – the judicial reorganization, whose processing was approved on 06.26.2016, is not aimed at the liquidation of the Company, but rather to a temporary restructuring which allows the maintenance of its activities and, thus, allows the fulfillment of its obligations towards creditors, generating jobs and stimulating the economy.

61. Although Article 6 of the LRF stipulates that "*the approval of the processing of judicial reorganization suspends the limitation period and all actions and executions in respect of debtor A,* for the period of 180 days *(stay period),* the very provision concerned states that not all the demands are covered by such suspension, expressly excluding the actions of collection of gross amount and tax executions[6]. In this context, the arbitration claims shall continue, since they are of a purely cognitive nature and are not capable of reducing the assets of the company under reorganization[7], as

[6] § 1. It shall be continued in the court in which the claim is taking place that requires a gross amount"; [...] § 7 Tax executions are not suspended by the granting of judicial reorganization, except for the concession of installments pursuant to the National Tax Code and specific ordinary legislation".

[7] CIVIL PROCEDURAL LAW AND JUDICIAL REORGANIZATION. ARBITRAL PROCEEDING. The harmonic coexistence of the arbitral and state jurisdiction is allowed, provided that the corresponding powers, which have an absolute nature, are respected. Precedent (...) 3. Jurisdictions are not mutually exclusive, since the arbitration

are those that deal with non-compliance with the LSA and/or Oi Bylaws.

62. By this, it is meant that the RJ Court does not have *vis attractiva* on all the processes that involve Oi[8]. In spite of this, it is possible to consider, eventual constrictive acts arising from lawsuits not conducted by the RJ Court that should be practiced against the Company will be assessed in the first place by the RJ Court. In relation to the cognitive phase of the proceeding, it has powers only to decide on issues related to the relations between the Company and its creditors, and must ensure the effectiveness of the acts practiced by the recovery of the company, pursuant to the LRF.

63. In light of article 64 of the LRF – which is positive as the *debtor in possession* principle, as already mentioned – the company's activities during the judicial reorganization continue, as a rule, to be conducted by its original administrators. That is, the capacity to practice the acts of civil life is not withdrawn from the Company. In addition, although article 66 of the LRF determines that "[*after the assignment of the request for judicial reorganization, the debtor cannot dispose of or encumber the assets or rights of its permanent assets*", this legal order does not make the asset

proceeding is purely cognitive in nature and does not have the power to affect the property of the company under reorganization, which can only be the subject-matter of constriction after passing through the examination of the reorganization Court, which cannot be submitted or suppressed by a possible arbitral award that recognizes the nullity of the board meeting that ended up with the filing of the reorganization. 4. Conflict of jurisdiction known and qualified to declare the jurisdiction of the arbitral tribunal to proceed with the arbitration proceeding. (...) In addition, after the approval of the judicial reorganization, the proceeding must follow its course, not glimpsing the event of an arbitration – possibly annulling the meeting of the board of directors that deliberated for the filing of the reorganization – have the ability to submit or to suppress the reorganization Court, in view of the fact that it is up to this Court to evaluate any repercussion of the arbitration award that concludes that there have been corporate wrongdoing by TCI and its managers. 4. In light of the foregoing, I declare the jurisdiction of the arbitral tribunal to examine the case submitted to it, canceling the decision of the reorganization Court that determined its suspension" (STJ; CC 152.348/GO; Rapporteur Minister Luis Felipe Salomão; j. 12.13.2017).

[8] This is again the case law interest: *"For this very reason, I stated in decision of page 496, that the intra-corporate disputes shall be settled in the appropriate judicial arena and not in the context of the judicial reorganization proceeding."* (TJSP; Instrument of Appeal 0154311-66.2011.8.26.0000; Rapporteur Minister Manoel de Queiroz Pereira Calças, 01.24.2012).

unavailable, since it only makes the previous consultation with the RJ Court on the possibility of the encumbering the assets mandatory. The same can be said in relation to the restriction provided for in article 101 of the General Telecommunications Law, which only determines the need for Anatel's authorization in case of sale of reversible assets of the telecommunication provider.

64. It provides that the purposes of the judicial reorganization and the rules governing it do not invalidate the rules laid down in the LSA or create a differentiated legal framework for the internal acts of the company under reorganization. There is no change in the rights of shareholders in the intra-corporate context solely because there are non-private interests in favor of the Company's economic and financial recovery. Therefore, there is no change in the validity and effectiveness of clause 68 of the Bylaws as a result of the decree of judicial reorganization[9] - due to the fact that the Company remains fully capable of contracting and the rights subject to the statutory arbitration clause remain patrimonial and available – reason why the reservation to the arbitration jurisdiction by that provision remains in force.

65. It is imperative to recognize, therefore, that the RJ Court does not have jurisdiction to judge claims involving Oi, its shareholders and administrators and that relate to violations of the LSA and/or compliance with the rules set forth in the Bylaws, under the arbitration agreement laid down in clause 68 thereof.

[9] Pursuant to Statement 06 of the First Conference on the Prevention and Judicial Settlement of Disputes of the National Council of Justice (2016): *"The processing of judicial reorganization! or decree of bankruptcy does not authorize the trustee to refuse the effectiveness of the arbitration agreement, does not prevent the initiation of arbitration proceedings, nor suspends it.."*

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66. Within the objective limits of the arbitration clause, all the matters related to and arising from the bylaws in which it (the clause) is inserted, among them the right of a shareholder to call and hold a general meeting for dismissal and election of administrators, verify abuses of shareholder rights and/or management rights; and resolve actions of responsibility when there is a violation of the law or the Bylaws.

67. The principle of *vis attractiva* in the RJ Court regarding corporate relations does not subsist, since the reorganization court has jurisdiction only to ***(i)*** assess and judge credit relationships (such as credit value and classification); ***(ii)*** verify the recovery effects of these relationships (such as voting rights relative to their class); ***(iii)*** exercise the inspection of the judicial reorganization (observing the regularity of the performance of the Trustee, the Committee of creditors, the debtor, the creditors); ***(iv)*** ensure the dialogue between debtor and creditors, (to veto conflicts of interest in the negotiating dynamics between the Parties); ***(iv)*** approve the reorganization plan, if applicable, or decree bankruptcy, among others. In other words, civil, administrative, criminal or corporate claims remain outside the jurisdiction of the reorganization court.

68. Even if the reorganization plan changed the rules of the Bylaws – **with authorization and approval at a shareholders' meeting** – the arbitration would be the necessary (competent) field to discuss disputes related to or arising from the company's bylaws to the partners, the company and the administration.

69. In fact, there is a clear distinction between the powers of the arbitral tribunal and that of the reorganization court, which does not intertwine; but they coexist harmoniously side by side. This is because, to the arbitral tribunal, intra-corporate disputes covered by the arbitration agreement, which deal with legal relations between **shareholders, Oi and its management,** shall be submitted. This would be the case, for example, of action seeking the accountability of the Chief Executive Officer for approving the plan without having previously consulted the Board of Directors and submitted its contents to the General Meeting – contrary to the Company's Bylaws – in violation of its fiduciary duties (see item IV, "e", supra). Another example, always taking advantage of the case concerned, would be the discussion on the shareholder right to call the General Meeting. Therefore, it is not a matter of discussing, in the arbitral tribunal, matters pertaining to the validity and effectiveness of the PRJ, its approval and ratification by the RJ Court, and any acts related to the activity of supervising the judicial reorganization proceedings performed by that court.

VII THE PRINCIPLE OF PRESERVATION OF THE COMPANY AND COMPLIANCE WITH THE PUBLIC ORDER RULES

70. It should be pointed out that there is no legal or economic reason to give effect to the reorganization plan only approved by the community of creditors gathered in the meeting, ignoring its rejection by shareholders or, worse, avoiding its appreciation at a shareholders' meeting, as dictated by the LSA. There is no way of saying that the approval of the reorganization plan will always imply preserving the principle of preservation of the company.

71. On the other hand, there are plans that could endanger the life of the company, lead to profound corporate dissent, confer disproportionate and illegitimate advantages on only a portion of creditors, provide essential rights of minority shareholders, and create administrative castes above the law. Negotiation between creditors and debtors (backed by partners when the law provides) allows the recovery of the company to transcend an armistice regarding the default crisis and watch for fundamental changes in the development of the economic activity, attacking the causes that have weakened the company and led it to a situation of shortage.

72. In order to apply the principle of preservation of the company, the Judiciary cannot look the other way when there is a provision that offends a rule of public order or is abusive. The judicial control is aimed at verifying the legality of the plan:

> *"The submission by the debtor of a reorganization plan, as well as its approval by the creditors, whether for the lack of opposition or the votes in a meeting of creditors (articles 56 and 57 of the LRRJ), are acts of expression of will. In regulating the judicial reorganization, in fact, the Law submits to the will of the collectivity directly interested in the realization of the credit the power to express an opinion and authorize the procedures of economic recovery of the company in difficulties, coming to a solution of consensus. Thus, in fact, the judge should not interfere with the sovereign will of the creditors, changing the content of the judicial reorganization plan, except in cases expressly authorized by law (e.g.: article 58, §1, of the LFRJ).*
>
> *The obligation to respect the content of the expression of will, however, does not imply that it is impossible for the judge to promote control over the lawfulness of the actions decided in the meeting. Any legal business, even in the private sphere, represents a sovereign expression of will, but which is only valid if, pursuant to art. 104 of the*

CC/02, it arises from capable agent by use of the manner provided and not prohibited by law, and if it has a legally, possible, determinate or determinable purpose. In the absence of these elements (of which, with addition of others, the grounds of nullity provided in articles 166 and following of CC/02, as well as of nullity of articles 171 et seq. of the same legal rule), the legal business is invalid. The decree of nullity of a legal business in general does not imply interference by the Government, in the free expression of will of the parties. It implies, in fact, government control precisely on the freedom of this expression, or on the lawfulness of its content.

[...]

The will of the creditors, when approving the plan, must be respected within the limits of the Law. The sovereignty of the meeting to evaluate the conditions in which the economic recovery of the company in crisis will take place cannot be surpassed to the legal conditions of the expression of will represented by the Plan. In the same way that two individuals are forbidden to include in an agreement a clause that leaves at the discretion of one of them depriving the legal business of its effects, the same power cannot be conferred on a debtor under judicial reorganization. The Law is the limit both in one and the other event." [10]

73. The position of the Superior Court of Justice is established accordingly, according to Statement no. 1105 of Jurisprudence in Theses, edition no. 37: *"Although the judge cannot analyze the aspects of the economic feasibility of the company, it has the duty to ensure the legality of the judicial reorganization plan in order to prevent creditors from approving items that are in disagreement with the legal*

[10] STJ, REsp no. 1.314.209/SP, 3rd Panel, Rapporteur Minister Nancy Andrighi, judged on 05/22/2012, DJe 06/01/2012.

rules."

74. The nature of the corporate relationship does not change its taxonomy because of the judicial reorganization. Likewise, the rules of the LRF does not prevail over the LSA system, especially there is nothing in the law that determines the prevalence of its rules on the rules of the internal governance of the companies. So much so that the rules applicable to corporations are also directed at defenses of interests which are not purely private, such as protection of investment and savings and the development of the capital market. The principle of the preservation of the company cannot be used generically to suppress legal interests of equal stature.

VIII. ANSWERS TO THE QUESTIONS OF THE CONSULTER

75. Based on all that I have set out, I answer below the questions I have been asked:

i. *"Pursuant to the provisions of the LRF and the LSA, could the PRJ approved by the general meeting of creditors and legally approved in the Approving Decision alter Oi Bylaws or alter other intra-corporate matters for whose amendment the LSA requires approval by the general shareholders' meeting?"*

No. The PRJ could not have been approved by the General Meeting of Creditors of Oi and ratified by the RJ Court without prior deliberation regarding its contents by the shareholders in General Meeting, in compliance with articles 122 and 123 of the LSA. Accordingly, the PRJ or its approval does not have the power to change Oi Bylaws or modify

other intra-corporate issues for which the LSA and the Bylaws require the approval of the General Meeting and the direct participation of the Board of Directors. There is no supremacy of the interests of the creditors over the interests of the shareholders, as it derives from the LRF itself, article 50, caput, the need to comply and maintain the application of the provisions of the LSA in the judicial reorganization of Oi.

ii. *"Does the RJ Court or other body of the Judiciary have jurisdiction to suspend the holding of the Extraordinary General Meeting of 02/07 and/or to decide on any conflict involving Oi, its administrators and its shareholders involving noncompliance with aspects of the PRJ for whose implementation the LSA requires the approval of the general shareholders' meeting?'*

No. In the case of a dispute related to compliance with the LSA and the rules set forth in the Bylaws – such as the possibility of convening a General Meeting by BRATEL and/or Oi's administrators – there was a reservation to the arbitration jurisdiction as a result of the arbitration clause (clause 68 of the Bylaws), which remains fully in force, even after the approval of Oi's judicial reorganization.

iii. *Would the Judiciary have jurisdiction over a possible conflict between the Company, shareholders and administrators involving non-compliance with corporate and governance rules set forth in the PRJ?*

Oi Bylaws contains an arbitration clause that submits to arbitration all matters related to the *"application, validity, efficacy, interpretation, violation and its effects of the provisions contained in the Brazilian Corporate Law, in the company's bylaws, in the regulations issued by*

the National Monetary Council, the Central Bank of Brazil and the CVM, as well as in other standards applicable to the operation of the capital market in general, in addition to those contained in the Level 1 Regulation, Rules of Arbitration, the Sanctions Rules and the Level 1 Participation Agreement for Corporate Governance. **It provides that the application, effectiveness, validity or interpretation of corporate and corporate governance rules of the Company is objectively included in the scope of the arbitration clause of the Bylaws, so that its discussion (among the shareholders, the company and the administration) will be carried out necessarily in the arbitration sphere.**

It is what seems to me, to the best of my knowledge.

Carlos Alberto Carmona

PhD Professor of Procedural Law of the College of Law of University of São Paulo

EXHIBIT C-3

Prof. Sérgio Campinho Legal Opinion
(Commercial/Insolvency Law)

LEGAL OPINION

Summary: I – The Consultation. II – The Opinion. II.1 – The Management as body of the Company. II.2 – The Duties of the Members of Administration. II.3 The Company's Interest (Corporate Interest) – II.4 - The Definition of the Company's Interest. II.5 – The Nature and Purpose of the Judicial Reorganization. II.6 – The Fiduciary Duties of the Members of Administration and the Reorganization of the Company. II.7 – The Powers of the General Shareholders' Meeting in the Judicial Reorganization. III – The Answers to the Questions.

I – THE CONSULTATION

Mr. Demian Fiocca, member of the board of directors of Oi S.A. – under Judicial Reorganization, has consulted me on the fiduciary duties of the members of administration of a publicly-held company under Judicial Reorganization.

Thus, he formulated the following questions:

1st QUESTION: When a company enters into judicial reorganization, are the members of the administration somehow required to provide its capital to the creditors, or is the duty of the members of the administration to negotiate with the creditors to submit a economically feasible plan for the company, whether it is approved by the majority in a meeting of creditors? In other words, in an environment of Judicial Reorganization, does the duty of trust and loyalty, imposed by arts. 153 and 155 of the LSA oblige the member of the management to opt for a plan that gives preference to the payment to creditors to the detriment of the interest of the shareholders in the capital of the company, or does it obliges it to choose a point of convergence between both interests, especially in light of the company's economic and financial needs, so that it can recover in the long term?

2nd QUESTION: More directly, in the Judicial Reorganization environment, do the members of the management of the company have fiduciary duties to protect its capital, or, based on a reorganization procedure, can the members of the management use the company's capital in negotiations with its creditors?

3rd QUESTION: In the Judicial Reorganization, do the members of the management have the duty to pay the highest possible amount to creditors or shall they comply with the protection principle of the company, in order to allow it to recover from the situation of economic-financial crisis?

4th QUESTION: Can the executive board of the company file a Judicial Reorganization plan which established a capital increase without the prior approval from the EGM? What would be the consequence of the lack of such approval for the Judicial Reorganization process (as a procedural relation) and for the reorganization plan (as a legal business)?

The Consulter contextualizes its consultation as above:

As it is already known by you, I am a member of the board of directors of Oi S.A. – under judicial reorganization, regularly appointed since September 2016, according to the bylaws and the law, with my appointment previously approved by ANATEL in the beginning of this year for the exercise of the position.

Within this scope, I have participated both in Oi's board and committee in the discussions and resolutions on the conditions for the restructuring of the liabilities of the Company. Not only me, but also the majority of the board, has given preference to the restructuration proposal that, in our view, seems to be the more reasoned and reasonable one, as it allows the highest possible return to the pre-bankruptcy creditors (whether by the extension and replacement of the old debt with a new debt, or the conversion of the debt into capital), at the same time it maintains the value of the interest of the current equity structure of the Company to the maximum.

Recently, I was surprised by a group of creditors that required not only my removal as member of the board of directors, but also the removal of other members of the board and the suspension of the voting right of two relevant shareholders of the Company, under the pretext that, if we select this restructuring option, we would be violating our fiduciary duties as members of the management, as we would be privileging exclusively the interests of the shareholders, to the detriment of what they consider to be the Company's real interest.

In my view, and I anticipate that I have no legal qualification, although I have wide experience as a member of the management of publicly-held companies and public and private financial institutions, I have always considered that the trust and commitment of a member of the management are, above all, with the generation of value for all the group of shareholders, and only in the event that there is a particular interest of a shareholder that does not coincide with the interest of that group, some type of conflict could be established between the Company's interest (of the group of shareholders) and that of one or more shareholders. It is difficult to me understand any kind of conflict when the exercise by the management, on an objective basis, generates value for all group of shareholders, not a benefit to one or the other exclusively. In any case, as I told you, I am not a lawyer; I would therefore like you to clarify to me – including to guide my position in the debates to be held under the subject in the board – on the basis of law, case-law and legal writings [...].

II – THE OPINION

In view of the questions presented and the factual situation described in the consultation, I chose to divide the present legal opinion into the following topics, in order to make the presentation more didatic and objective;

a) The management as a body of the company.

b) The duties of the members of the management.

c) The company's interest (the corporate interest).

d) The definition of the company's interest.

e) Nature and purpose of the Judicial Reorganization.

f) The fiduciary duties of the members of the management and the reorganization of the company.

g) The powers of the general shareholders' meeting in the Judicial Reorganization.

h) The answers to the questions.

I therefore will present the development of each of the above topics below.

II.1 – MANAGEMENT AS A BODY OF THE COMPANY

The joint-stock company, as a legal entity, expresses itself through its corporate bodies. They are responsible to produce and reflect internally and externally the corporate will.

The powers that coexist and operate in the environment of formation, structuring and corporate action (powers of deliberation, management and supervision) demand proper ordering and distribution, which ensure them efficiency and harmony in their corresponding means of exercise. They are, in the final *ratio*, that make present the corporate will. When a body expresses itself, it is reflecting that will. The legal entity of the company expresses itself through its bodies. They are those who affirm internally and externally the legal identity of the company. To them, therefore, no legal identity is assigned. This is of the company. And it is whom is bound and exercises rights through its bodies[1].

The notion of body, as Luis Brito Correia explains, leads us to the idea of a core of assignment of functional powers, exercised by one or more individuals that are invested in it, to form and express the will attributable to the legal entity[2].

In the publicly-held company, the corporate bodies are: the general shareholders' meeting,

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[1] Sérgio Campinho. *Curso de Direito Comercial: Sociedade Anônima.* 2ª ed. São Paulo: Saraiva, 2017, p. 273

[2] *Os Administradores de Sociedades Anônimas.* Coimbra: Almedina, 1993, p. 203.

the board of directors, the executive board and the audit committee.

Although each body has assignments that are private and therefore not assignable, they are not arranged horizontally in the structure of the company. They are organized, on the other hand, in a hierarchical manner. This hierarchy should not be understood as a submission of a body to the other, since each one, as already said, is provided by the law with its proper and non assignable functions, but by the fact that there are bodies that are placed in a superior position, as they guide the election of members of the other body and, also, within the limits of the law, make decisions that will impose certain behaviors to the other bodies.[3]

In the publicly-held company, the management model is dualistic, characterized by the existence of two different management bodies: the board of directors and the executive board. This system clearly promotes the bipartition between the management functions (execution and presentation of the company), which is exercised by the executive board, and strategic decision making and supervision of the management activities (general orientation of the company's business and supervision and analysis of the results of the management), which are performed by the board of directors.

The board of directors and the executive board, as corporate bodies, consist of cells or centers of assignment of powers, part of the structure of the company, with the purpose of promoting the coordination of the corporate life.[4] The people vested with the role of exercising the corresponding powers are simply holders or members of the body of which they participate. Acting as members of a corporate body, they enjoy a fiduciary position before the company.

II.2 – DUTIES OF MEMBERS OF THE MANAGEMENT

Law No. 6.404/76 expressly deals in several of its provisions with the duties of the members of the management of the company (executive officers and members of the board of directors). Some of these duties are found in specific topics dealt with by the law. Examples are the convening of a general meeting (article 123), the disclosure of management documents (article 133) and the attendance at the general meeting (article 134, §1). But the legislation of anonymity systematically reserves a specific section to address the main duties of the members of the management, which consist of the duty of diligence (article 153), the duty to meet the company's purposes (article 154), the duty of loyalty and secrecy (article 155), the duty of not to conflict with the interests of the company (article 156) and the duty to inform (article 157). It reflects, therefore, a special list of duties, with the pedagogical scope of setting the standard of behavior and performance of the managers of the company's interests. This standard model is constructed from a concept, often abstract, that is extracted from the normative text, to delineate a desired and expected behavior. Thus, its evaluation will be made in the light of the case concerned, given the specificities that compose it, to reflect whether the behavior conformed or not to the conceptually desired and

[3] Marcelo Vieira von Adamek. *Responsabilidade Civil dos Administradores de S/A (e as Ações Correlatas).* São Paulo: Saraiva, 2009, p. 16.
[4] Sérgio Campinho. *Curso de Direito Comercial: Sociedade Anônima.* 2[3] ed. São Paulo: Saraiva, 2017, p. 274.

expected model.

In view of the central matter which is the subject-matter of the consultation, it is appropriate to point out, in this context, the duties of diligence, of meeting the corporate purposes exercised by the company and the loyalty.

The duty of diligence, pursuant to Article 153 of the Brazilian Corporate Law, means that the member of the management must, in the exercise of its duties, employ the care and diligence that every active and noble man usually employs in the management of its own business. This conduct standard suggests a careful and prudent performance, expected of the management agent of a company in situations similar to the management of a particular business, in order to establish a link of performance that best serves the interests of the company. Its action must be based on good faith and the conviction that it is acting in order to better serve the interests of the company. But that's not all. In the verification of its conduct, it is necessary to work with the notion that the accomplishment of the duty of diligence must also undergo the technical and professional qualification to carry out the task for which it was elected. This qualification should be consistent with the knowledge of the activity that is corporate purpose and ordered by a judicious judgment in the execution of its functions[5] [6].

In the judgment of its conduct, in the face of a concrete situation, what is ultimately to be evaluated is whether it has had a diligent performance, based on the skill required for the position, and not the result, properly, of its performance, as the duty of diligence is a obligation of means and not of result.

The duty to carry out the purposes of the company operated by the company consists of the conjugation and consideration of the legitimate interests of the shareholders, employees and the community in which it operates, aiming at satisfying the requirements of the common good and the social role of the company (article 154) . Its performance must be marked by independence, always prevailing corporate interest on the private interest of any individual or group internal or external to the company. The pursuit of this objective involves the search for an economically useful result for the shareholders (the profit that motivates them to be gathered in a company), balanced with the well-being of the employees and with respect to the rights and desires of the community. In order to reach the social purposes, it does so without neglecting the demands of the common good and the social role of the company, which is always revealed by the respect for the rights and interests that surround it [7].

Ultimately, the duty of loyalty is theoretically stated from the assertion that the member of the management must serve with loyalty to the company and keep reservation about its business. But its concreteness is intended to be achieved by an exemplary cast of prohibited conducts (article 155). In certain events, the violation of the duty of loyalty is imbricated with the lack of duty of diligence. An example of this is the omission of the member of the management in the exercise or

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[5] Sérgio Campinho. *Curso de Direito Comercial: Sociedade Anônima.* 2ª ed. São Paulo: Saraiva, 2017, p. 316

[6] Sérgio Campinho. *Curso de Direito Comercial: Sociedade Anônima.* 2ª ed. São Paulo: Saraiva. 2017, p. 317

[7] Sérgio Campinho. *Curso de Direito Comercial: Sociedade Anônima*. 2ª ed. São Paulo: Saraiva, 2017, p. 319

protection of the company's rights or, when, in order to obtain advantages for itself or for others, it ceases to take advantage of business opportunities of interest of the company (item II of article 155)[8].

Technically, according to Antônio Menezes Cordeiro, the management, from a particular angle, reveals a potestative right: it translates the normative permission that the members of the management must decide and act, in material and legal terms, within the scope of the rights and duties of the company Although it is a right, it is a functional or fiduciary right[9]. And this means, therefore, that the powers assigned by law to members of the management, are powers-functions, always to be exercised in order to achieve the company's interest.

[8] *Manual de Direito das Sociedades: Das Sociedades em Especial. 2ª* ed. Coimbra: Almedina, 2007, v. 1, p. 797

II.3 – THE COMPANY'S INTEREST (CORPORATE INTEREST)

The corporate interest is revealed from the common interest of the company's shareholders to the realization of the corporate end.

The corporate end (corporate purpose), like that of any company from the advent of the Brazilian Civil Code of 2002, is that of obtaining profit, by executing the corporate purpose.

The corporate purpose, in turn, consists of the economic activity of production or circulation of goods or services carried out by the company, for the purpose of profit (Law no. 6.404/76. article 2 c/c Brazilian Civil Code, articles 966, 981 and 982). The corporate purpose is, therefore, the set of economic activities that the company exploits or intends to develop, pursuant to the bylaws. The primary function of the corporate purpose is to define, therefore, the type of company or economic activity that the company will dedicate to achieve its final purpose, which is essentially to generate profits for shareholders.[10].

Considered in its abstract sense, the corporate interest translates, therefore, into the orientation of achieving profit maximization from the efficient exploitation of he corporate purpose[11].

This guideline is also found in the *Principles of the American Law Institute*, recommending that "the business conduct should be conducted in order to increase business profit and the and shareholder gain"[12].

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[10] Rubens Requião presents an interesting distinction between "corporate purpose" and "corporate end". Here are his words: "The confusion of the concept between corporate end and corporate purpose is common, but there is no reason for it. The corporate purpose, defined in a precise and complete manner in the bylaws (article 2, §2), indicates the kind of productive activity of the company; whereas the corporate end is, as already mentioned, the pursuit of profit". *(Curso de Direito Comercial.* São Paulo: Saraiva, 2012, v. 2, p. 312).

[11] The corporate interest is in a didactic manner summarized by Coutinho de Abreu, being timely the quotation: "the corporate interest has to be the common interest of the partners (as partners): in a same company, some partners (as such) will normally have divergent interests of the other partners – as regards participation in corporate bodies and the maintenance or increase of their respective positions (and corresponding power) in the company. The corporate interest is not made of these divergences of interests. Rather, it is made of the community of interests of the members. But not from any community. It is only qualified as a corporate interest, when it is linked to the common cause of the constituent act of the company – which is, as a rule (we already know), the profitable scope (every partner wants to profit by participating in the company); any other collective or common interest held by the members no longer deserves such qualification." *(Curso de Direito Comercial: Sociedades.* Coimbra: Almedina, 1999, p. 291-292).

[12] *Principles of Corporate Governance Analysis and Recommendations.* Saint Paul, Min.: American Law Institute Publishers, 1994, v. 2, p. 20.1.

When commenting the essential and indefeasible right of sharing the corporate profits, Joaquín Garrigues points out: "It is practically the most important right, because it directly serves the profit-seeking purpose of every shareholder. Whoever enters into a joint-stock company proposes, above all, to have a productive position for its capital" [13].

The members of the management, therefore, must exercise their assignments and powers in order to meet the purposes and interests of the company, that is, they must always act to achieve the development of the corporate purpose in the most profitable way possible[14].

The modern joint-stock company, legitimate source of concreteness of the big or the macro company, must always be oriented and directed to satisfy its shareholders with the dividends, but without losing the perspective of watching over the different interests present in the company and resulting from its action. It should not be conducted by its shareholders and directed by its members of the management only in the cold and isolated perspective of profit maximization, used for the exclusive benefit of its shareholders. The company developed by it reflects a real living organism, with multiple relationships with third parties, whose interests must respect and promote in the achievement of the corporate end.

Its members of the management – as members of the management of a private company – should strive to maintain maximum profitability for their shareholders, who are the suppliers of capital, which they must preserve. However, this performance cannot be neglected, but otherwise harmonize with other interests: those of employees, service providers, suppliers, creditors, consumers and the general public.

II.4 – DEFINITION OF THE COMPANY'S INTERESTS

In most of the resolutions taken or the acts coming from the corporate bodies of the company, the issues involved refer to the adequacy of the corporate interest or its convenience. In this dimension, the principle of structuring hierarchy of bodies[15] prevails.

As previously stated, the organic hierarchy presupposes the legitimate position of one body over the other, in the sense that a decision, taken within the limits of law and the bylaws, by a hierarchically superior body, will impose certain behaviors on others.

This functionality justifies legitimizing the general shareholders' meeting as the upper body to define the company's interest, since the shareholders are the only ones who contribute to the capital and run the risk of the venture, that is, the risk of losing that capital in case of failure[16].

In other words, the power of the majority in the resolutions of the general shareholders' meetings –majority principle of resolutions - that is guaranteed by the Brazilian Corporate Law to

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[13] *Curso de Direito Mercantil.* 7ª ed. Madri: Imprenta Aguirre, 1982, tomo I, p. 519.
[14] Nelson Eizirik. *A Lei das S/A Comentada.* S5o Paulo: Quartier Latin, 2011, v. 11, p. 359.
[15] Alfredo Lamy Filho: José Luiz Bulhões Pedreira. *A Lei das S.A.* 3ª ed. Rio de Janeiro: Renovar, 1997, V. I, p. 821.
[16] Alfredo Lamy Filho; José Luiz Bulhões Pedreira. *A Lei das S.A. 3ª* ed. Rio de Janeiro: Renovar, 1997, V. I, p. 821.

define what the interest of the company is, results from the fact that the shareholders are the only ones contributing to the capital, which is indispensable for the regular operation of the company and the development of its company. In addition, they bear the risk of losing that capital in the event of failure.

The predominance of the majority will is the legal instrument necessary to guarantee the efficient flow of the corporate life.

And this concept of common sense is affirmed by Berardino Libonati[17]:

> It is simply out of the world to imagine that members of the management are completely foreign to the line of action decided by the partners who designate them in a kind of a dangerous management abstraction – as it is often emphasized by the law theory – for the corporate balance, in which, no matter what one says, they are partners (not members of the management) who risk their investment.

Analyzing the power of guidance of the company, from the point of view of the controlling shareholder, Fábio Konder Comparato[18] highlights:

> There is no doubt that the power of analysis and decision about the opportunity and convenience of exercising the business activity, in each conjunctural situation, is up to the owner of the control power, and only to it. It is a prerogative inherent in its right to command, which cannot be ignored, as we point out, in tribute to an anarchic or communitarian concept of the joint-stock company.

As already pointed out, the management of the company exercised by the company is the exclusive power of its management bodies – board of directors and executive board (article 139 of Law No. 6404/76). And, therefore, these members of the management are not passive instruments of decisions of other bodies and, much less, of the controlling shareholder. They must always oppose to any command violating the law or the corporate bylaws or usurper of their private powers. As the corporate powers are institutionally divided among the different bodies that compose it, each one is provided with sovereignty within the scope of their private powers.

However, this does not mean, of course, that the members of the management place themselves outside the orientation defined by the shareholders. After all, they are who choose them and put their capital at risk. The final command concerning the definition of the company's interests is the responsibility of the holder of the political power: the general shareholders' meeting or the controlling shareholder[19], if any.

In fact, members of the management concretize the corporate will, expressed through the vote of the shareholders in the general meetings. Along with the duty to manage, the members of

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17 *Il Problema della Validità dei Sindacati di Voto: Situazione Attuale e Prospettive.* In: Sindacati di Voto e Sindacati de Blocco a Cura de Franco Bonelli e Pier Giusto Jaeger. Milão: Giuffrè, 1993, p. 22.
18 *O Poder de Controle na Sociedade Anônima.* 3ª ed. Rio de Janeiro: Forense, 1983, p. 306-307.
19 Alfredo Lamy Filho; José Luiz Bulhões Pedreira. *A Lei das S.A.* 3ª ed. Rio de Janeiro: Renovar, 1997,

the management enjoy a power that is assigned to them by the stock community, without which they could not plan, guide and execute the corporate activities. They are responsible for practicing all the acts necessary for the full accomplishment of the corporate will always aiming at the efficient execution of the company purpose to generate results to be shared by the partners.

II.5 – NATURE AND PURPOSE OF THE JUDICIAL REORGANIZATION

The Judicial Reorganization, based on the profile that Brazilian law assigns to it, is shown as a sum of measures and efforts that must be carried out by those agents involved in the procedure, having as scope the reorganization and restructuring of the company in crisis. In this strategy of overcoming the crisis of the company, measures of different types must be taken: economic-financial, economic-productive, organizational and legal [20].

In the list of these measures, of course, there is the definition of the method of payment of the creditors subject to its effects. A sacrifice will often be demanded for the receipt of their credits, altering the conditions originating their right, in favor of the conservation and the social role of the company. This sacrifice is based on the ethics of solidarity[21], which relegates the egoistic defense of the individual rights to a secondary dimension, in favor of solidary and equitable solutions, with the sharing of the sacrifice among all those involved in the process to save the company in crisis, before the undeniable social and economic values that it represents for the community in which it operates.

The company, from the perspective of an economic-productive unit, is recognized as a producer of goods, services, jobs and taxes that guarantee economic and social development. There is therefore interest in its preservation as a center of economic and social balance. The company is not only interest of its owner – the entrepreneur or the business company – but also of several other actors in the economic arena, such as workers, service providers, investors, suppliers, credit institutions, the Government and, in short, the economic operators in general. That is why the solution to the crisis of the company goes through a stage of balance of the public interests, collective and private, that coexist in it. Its preservation consists in conserving the "social asset" generated by it [22].

From a procedural point of view, the Judicial Reorganization expresses itself as a collective procedural act, in order to promote the meeting of the wishes of the debtor and its creditors, with a view to creating an agreement between them and, thus, overcome the crisis of the company by the debtor, everything being processed under the direction and supervision of the Judge of Law.

The Judicial Reorganization institution is thus a judicial agreement with a novative

[20] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8ª ed. São Paulo: Saraiva, 2017, p. 31-32.
[21] Jorge Lobo. *Comentários à Lei de Recuperação de Empresas e Falência* (Coordenadores Paulo Fernando Campos Salles de Toledo e Carlos Henrique Abrâo). 3ª ed. São Paulo: Saraiva, 2009, p. 131.
[22] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8ª ed. São Paulo: Saraiva, 2017, p. 129-130.

feature.[23] [24]

It is a judicial agreement, because the government seal is required (Judge of Law). The seal of the judicial authority represents a measure of judicial policy. The judge acts as *a guardian of the legality of the plan*[25]. The judicial control thus makes it possible to exclude objections to its validity and effectiveness. The procedure for graning the Judicial Reorganization contributes to reducing the sources of error during the execution of the plan, as well as gives creditors the opportunity to verify that their interests have not been impaired.[26].

The novation feature is expressed in law, providing that the Judicial Reorganization plan implies novation of the credits prior to the request, and binds the debtor and creditors subject to it (article 59 of Law No. 11.101/2005).

This agreement, in my view, turns out to be plurilateral. And so it is fair because it involves an indefinite number of parties, whose services are directed to the attainment of a common end. Even if opposing interests can be noted[27], they are integrated, directed, coordinated to achieve this common end: sanitation of the state of economic and financial crisis in which the debtor is found, in order to allow the maintenance of the source of production, the job of workers and the composition of the interests of creditors, promoting the preservation of the company, its social role and the stimulus to economic activity (article 47 of Law No. 11.101/2005).

The social role of the company, as already known, translates into a duty of collaboration[28], which demands the joint contribution of the Government and individuals to the achievement of those objectives outlined in law (i.e. article 47 of Law No. 11.101/2005). The materialization of these objectives, based on the idea of social role of the company (property of the production assets), can only be achieved by means of harmonic performance that encompasses all potentially conflicting interests[29].

Also, it cannot be forgotten that article 47 of Law No. 11.101/2005 establishes an order of priority to be served in the Judicial Reorganization, which must necessarily lead to the entire negotiation and final completion of the reorganization plan. Its main objective is to maintain "the producing source", that is, the business activity, recovering the company. It is only from there that

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[23] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8ª ed. São Paulo: Saraiva, 2017, p. 34.

[24] This clear finding is also made by Lídia Valério Marzagão: "Thus, it is verified that, from the effectiveness of this new Law, we will be retrieving a system already adopted in our Country in the last century, and there will be no questions on the contractual nature of the Judicial Reorganization that, at first, requires the effective participation of all the creditors represented in general meeting of creditors, who will have the power to approve or not the reorganization plan submitted by the debtor" (In: Rubens Approbato (Coord.), *Comentários à Lei de Falências e Recuperação de Empresas*. São Paulo: Quartier Latin, 2005, p. 93)

[25] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8ª ed. São Paulo: Saraiva, 2017, p. 33.

[26] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8ª ed. São Paulo: Saraiva, 2017, p. 33.

[27] Among the debtor and its creditors and among the creditors themselves, which gather according to a class criteria (article 45 of Law no 11.101/2005) in a meeting for voting the plan.

[28] Vera Helena de Mello Franco e Rachel Sztajn. *Falência e Recuperação da Empresa em Crise*. Rio de Janeiro: Elsevier, 2008, pg. 284.

[29] Vera Helena de Mello Franco e Rachel Sztajn. *Falência e Recuperação da Empresa em Crise*. Rio de Janeiro: Elsevier, 2008, pg. 282.

one can seek the satisfaction of the individual interests of creditors. Overcoming the crisis of the company involves weighing all its conjoint and identifed interests.

Well traducing this point of view are the words of Manoel Justino Bezerra Filho[30], in commenting on the mentioned precept:

> For this reason, Law, not by chance, it established an order of priority in the purposes that it aims to pursue, placing as its first objective the "maintenance of the production source", that is, the maintenance of the business activity as fully as possible, with which it will also be possible to maintain the "employment of workers". Once maintained the business activity and the employees' job, it will then be possible to satisfy the "interests of the creditors". This is the order of priorities that the Law has established – Law's comprehensive examination can state whether the purpose will be met. However, Law's efficiency for the intended purpose will only be known with practice over time, since the final evaluation is made by the actual results obtained. As Jorge Lobo (Forensic Magazine 379) recalls, for the proper application of law there must be consideration of the purposes and principles, always considering that the solution of the conflict itself will be casuistic, subject to the alternatives that present themselves as skilled for the solution of the problem. Should the judge always have in view, as a guiding principle, the priority that the law established for the "maintenance of the production source", that is, the reorganization of the company.

This order of priority which inspires the Judicial Reorganization and, as a consequence, must inspire the drawing up of the judicial agreement, creates for the parties an obligation to observe a conduct compatible with the economic and corporate purposes objectively sought by the negotiating operation.

II.6 – FIDUCIARY DUTIES OF THE MEMBERS OF THE MANAGEMENT AND REORGANIZATION OF THE COMPANY

The Judicial Reorganization reveals, as already highlighted, the legal nature of a judicial agreement. It seems like a judicial agreement, with a feature of novation, achieved through a reorganization plan approved between the debtor and its creditors and judicially endorsed. It is a true process of sacrifice, in which the powers of the debtor suffer limitations and the rights of creditors restrictions. [31]In order to achieve the purposes of the company's restructuring, the debtor

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[30] *Lei de Recuperação de Empresas e Falência*. 10ª ed. São Paulo: Revista dos Tribunais, 2014, pg. 144-145.

[31] According to the legal theory set out in the French law, these limitations and restrictions are of the nature of "sacrifice procedures". In this regard, the lesson from Yves Guyon: "Les procédures collectives sont des procédures de sacrifice qui limitent les pouvoirs du débiteur et qui restreignent les droits des créanciers. Aussi ne peuvent-elles s'ouvrir que si des conditions strictes sont remplies tant du point de vue du fond (Chapitre I) que de la forme (Chapitre II)" (Droit des Affaires. 9e ed. Paris: Economica, 2003, tome 2, p. 105).

and its creditors are required to cooperate. Selfish individual interests must be turned away in favor of saving the company in crisis, but economically and financially feasible.

In the universe of the company under reorganization, their bodies should functionally interact to prepare and approve the Judicial Reorganization plan that best fits the needs of the company, with particular emphasis on the general meeting, the board of directors and the executive board.

Clearly, the corporate interest should be shaped by this crisis reality. Profit maximization will share space with measures aimed at maintaining the production source and the employment of workers, and the rational composition with creditors.

All interests must be adequately weighed in order to impose the least sacrifice on those involved in the restructuring process.

Within this environment, the preservation of the company can only be rationally achieved by balancing the interests involved in the process of its restructuring. Thus the serious and excessive disrespect to the rights of the agents who participate in it should not be supported in favor of the greater argument of the promotion of the reorganization of the company in crisis.

With this purpose, the members of the publicly-held company under reorganization – notably when there is no defined controller, due to the high degree of shareholding dispersion – must take care to the maximum for the preservation of the interests and investments of the shareholders held in the company, essential in the past for its capitalization and economic capacity to develop its purpose, in a manner they do not concretely jeopardize the success of the negotiation, preparation and closing of the restructuring plan of the company. This is the point of balance that must be sought and attained.

Contrary behavior goes in disrepute and contrary to the precept that the publicly-held company should serve as a true instrument of democratization of capital, compromising the interaction of the medium-scope and the end-scope of this corporate organization with the fiduciary duties of the members of the management.

The protection of shareholders' equity rights does not disappear under the company's reorganization regime. It is possible to be relativized in light of the weighing of the interests at stake in the negotiation and approval of a feasible plan for the company and its creditors, but it should never be subjugated and, much less, annihilated.

It is incumbent upon the member of the management, in the exercise of the judgment of convenience and opportunity, to consider all such values in the concerned case. But as members of the management, they should aim at preserving the investments made by shareholders, within the limits of rational and reasonable negotiation of the plan. Dilutions, with the reduction of the participation of the former shareholders in the capital, can occur. But they must always be very well balanced and grounded. And reorganization method that can be used, but always with the rigor of the extreme need for reorganization.

If there is an alternative method to promote the restructuring of the company in crisis, less

costly to the shareholders and also efficient in order to obtain a consistent and reasonable plan for all the interests involved in the reorganization process, it should be recognized by the members of the management. Only in this way they will be balancing the profuse values that guide their duties of diligence and loyalty to the purposes of the company.

II.7 – POWERS OF THE GENERAL SHAREHOLDERS' MEETING IN THE JUDICIAL REORGANIZATION

The harmonious interaction between the corporate bodies, as already noted, is a requirement in the company's governance. This position takes on special importance in the state of crisis faced through a process of Judicial Reorganization. All efforts must converge to obtain a plan that well balances the interest of the company (corporate interest) and the interest of the creditors. After all, it translates into an instrument of cooperation for the preservation of the value of viable companies[32].

Creditors, it is true, are active subjects in this process. Their effective participation in the restructuring solutions allows new formulas to be made available for its realization. However, this performance of creditors should not involve abuse, represent the opportunist take of political power of the company, in contempt of the former shareholders, naturally weakened by the state of crisis. The creditor will act and vote in the protection of its legitimate interest, which, however, should not be divorced from the scope of preservation of the company, its social role and the stimulus to the business activity[33].

The creditor shall, in this reorganization process, respect the operation of the corporate bodies, refraining from creating illegitimate and unjustifiable conflicts. The creditor must not use the state of crisis to enjoy advantages that depend on an unreasonable counterpart of the debtor and its suppliers of capital – the shareholders. This conduct deserves to be repudiated within the scope of the guidance that represses the abuse of law, which will therefore remain as long as the holder expressly exceeds the limits imposed by its economic or social purpose, by the good faith and good manners (article 187 of the Civil Code)[34]. This position of the creditor is inconsistent with the purpose that the legal system designs to overcome the state of crisis, in which, it should be repeated, both the debtor and the creditors suffer restrictions to their powers and rights, all for the preservation of the company.

The operation of the general shareholders' meeting does not lose its fundamental role in

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[32] Luiz Roberto Ayoub; Cássio Cavalli. *A Construção Jurisprudencial da Recuperação Judicial de Empresas.* Rio de Janeiro: Forense, 2013, p. 218.

[33] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8" ed. São Paulo: Saraiva, 2017, p. 101.

[34] On the subject, rich is the lesson of Gustavo Tepedino, Heloisa Helena Barboza and Maria Celina Bodin de Moraes: "The category of abuse of rights arose precisely in order to repress the acts that, although practiced with strict compliance with the law, violated its spirit. [...] Nonetheless, the notion of abuse is maintained as a conduct that, although licit, is shown to be inconsistent with the purpose that the order intends in that factual circumstance to achieve and promote. The subject of the abuse of law is an axiological assessment of the exercise of a certain subjective juridical situation – not only of subjective rights, but also of potential interests, legal powers, etc. – in the light of the values set out in the civil-constitutional order" *(Código Civil Interpretado Conforme a Constituição da República.* Rio de Janeiro: Renovar, 2004, v. 1, p. 341).

the conduct of the reorganization process. This supreme power – but not absolute – in the definition of all business related to the corporate purpose and in the defense and development of the legal entity (article 121 of Law No. 6.404/76) should not suffer from paralysis in the company's Judicial Reorganization process. It should not be forgotten that in the Brazilian legal system of reorganization, it is the one that defines the filing of the Judicial Reorganization process (Law No. 6.404/76, article 122, item IX and sole paragraph) and, for logical reasons, it should not undermine its proper orientation within the *interna corpori*s scope of the company.

Indeed, however, as the Judicial Reorganization characterizes itself as a process of sacrifice, this corporate body experiences a relative loss of power. However, even though the creditors community may monitor the company's governance under Judicial Reorganization, this participation of creditors should not degenerate into disruption in the conduct of the corporate activity, which is expressly protected and encouraged by law (article 47 of Law no. 11.101/ 005, final part).

Not even can this influence of creditors – which must be cooperative and not hostile – imply the compulsory alteration of the power of control, when the figure of the controlling shareholder is identified.

In short, one should not admit, even in the face of the relativization of the powers of the general shareholders'meeting or the controlling shareholder, if any, the imposition of a reduction in the ownership of the stockholding and the measures and powers thereof.

It shoud not be disregarded, as opportunely enlighten by José Afonso da Silva, that the company is configured from the ownership of the means of production, through which the economic power and the business domination power is performed, in the private sphere[35]. This is because, according to the aforementioned author, our Constitution is capitalist based, fully relying on the private appropriation of the means of production and private initiative, thus consecrating a market economy.[36]

And the private ownership of the means of production belongs to the entrepreneur or to the business enterprise. In the case of companies, the ownership of these means of production does not stem from a spontaneous generation, but as a logical and unreliable consequence of the capitalization promoted by the partners, through transfer of securities or assets of its private assets to that of the legal entity, empowering it economically to reach its purpose.

Thus, the reduction of the participation of the former shareholders and the disposal of the control can be presented as methods of reorganization (Law no. 11.101/2005, article 50, items III and VI), but always as a result of the negotiation and as a free and aware option of the shareholders of the company under Judicial Reorganization.

The Reorganization and Bankruptcy Law, in its article 50, is of unmistakable clarity when imposing the compliance with the legislation pertinent to each formula of reorganization that will be drawn in the plan. This results in the unconditional obligation to comply, in the case of companies, with the rules of Law no. 6404/76 for the implementation of the disposal of control or

[35] *Comentário Contextual à Constituição*. 8ª ed. São Paulo: Malheiros, 2012, pg. 727.
[36] *Comentário Contextual à Constituição*. 8ª ed. São Paulo: Malheiros, 2012, pg. 724.

increase of capital.[37]

On the subject, I wrote[38]:

> Relevant is to draw attention to the legal caveat in the sense that each measure that may be adopted in the plan as a form of reorganization should observe the material conditions of its validity and the procedures provided in the corresponding legislation. With this, the Reorganization and Bankruptcy Law does not create new environment to support the implementation of operations in disregard to the provisions in the own legislation. The reorganization is not, therefore, a situation of exceptional age of such extension to be supported if the operation is carried out in disrepair with its legal regulation, which will follow the same course for solvent or insolvent companies and businessmen.

I think, therefore, that the members of the management cannot impose to the shareholders the dilution of their participations, by means of the capitalization of the credits. It is necessary that the capital increase, with this effect, be approved by the general shareholders' meeting, which should take this decision (Law no. 6.404/76, article 166). In authorized capital companies, the definition of the increase, implemented within the limit authorized in the bylaws, can be granted to the board of directors. But it is certain that, in the case it is exhausted, the increase is the sole power of the general shareholders' meeting.

III – ANSWERS TO THE QUESTIONS

Given the above, I will objectively answer the questions of the consultation.

1st QUESTION: When a company enters into judicial reorganization, are the members of the administration somehow required to provide its capital to the creditors, or is the duty of the members of the administration to negotiate with the creditors to submit a economically feasible plan for the company, whether it is approved by the majority in a meeting of creditors? In other words, in an environment of Judicial Reorganization, does the duty of trust and loyalty, imposed by arts. 153 and 155 of the LSA oblige the member of the management to opt for a plan that gives preference to the payment to creditors to the detriment of the interest of the shareholders in the capital of the company, or does it obliges it to choose a point of convergence between both interests, especially in light of the company's economic and financial needs, so that it can recover in the long term?

The members of the management of a publicly-held company under Judicial Reorganization, for all the foregoing, should always seek to negotiate and approve an economically feasible plan for the purposes of the company and that obtains approval by a legitimate majority and legally established in the general meeting of creditors. The fiduciary duties of the members of the management shall guide their actions to, in the reorganization plan, preserve as far as possible

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[37] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8ª ed. São Paulo: Saraiva, 2017, p. 166.

[38] Sérgio Campinho. *Curso de Direito Comercial: Falência e Recuperação de Empresa.* 8ª ed. São Paulo: Saraiva, 2017, p. 166.

the equity position of the former shareholders in respect of the capital provided by them. Thus, it will be acting with concrete stimulus to the economic activity, prestiged and defended in the Law no. 11.101/2005 itself, in its article 47, final part. They must pursue a balancing point for the preservation of the interests of shareholders and creditors in the effective exercise of the cooperation power that the process imposes on the parties involved in order to result in the least possible sacrifice of those interests in pursuit of the reorganization.

2nd QUESTION: More directly, in the Judicial Reorganization environment, do the members of the management of the company have fiduciary duties to protect its capital, or, based on a reorganization procedure, can the members of the management use the company's capital in negotiations with its creditors?

The members of the management of the company cannot impose to shareholders the reduction of their respective capital.

The proposal of such dilution, in fact, should not be considered by the management when there is a less damaging means to obtain the approval of the Judicial Reorganization plan of the company.

3rd QUESTION: In the Judicial Reorganization, do the members of the management have the duty to pay the highest possible amount to creditors or shall they comply with the protection principle of the company, in order to allow it to recover from the situation of economic-financial crisis?

In the Judicial Reorganization, the members of the management shall seek to compose credits held against the company in the best possible manner in order to serve the interests of creditors, promoting their adherence to the plan, but without neglecting the equity ownership held by shareholders. The overcoming of the crisis shall result from an adequate composition of interests involved, in order to serve them in a sensible and reasonable manner. It is neither sensible nor reasonable for members of the management of a publicly-held company to negotiate a plan which results in a compulsory capital reduction of old providers of such capital, the shareholders. An extreme and radical measure discourages equity investment, conspiring against the economic activity promotion considered as a whole.

4th QUESTION: Can the executive board of the company file a Judicial Reorganization plan which established a capital increase without the prior approval from the EGM? What would be the consequence of the lack of such approval for the Judicial Reorganization process (as a procedural relation) and for the reorganization plan (as a legal business)?

No. In the case of this consultation, the capital increase is the private power of the general shareholders' meeting and such power cannot be assigned.

In view of the inexistence of a legitimate statement from the debtor regarding the capital increase, which may only become validly materialized by means of its competent body (the general shareholders' meeting), the proposal submitted by the executive board is not valid. As such, in light of the defect in the debtor's will, the corresponding plan cannot be submitted to the approval of the general creditors' meeting and it cannot be subject to the legality control exercised by the reorganization judge.

This is my opinion, to the best of my knowledge.

Rio de Janeiro, December 12, 2017.

EXHIBIT C-4

Prof. Francisco Satiro Legal Opinion
(Commercial/Insolvency Law)

Francisco Satiro
Commercial Law Professor
Law School of the
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São Paulo, December 4th, 2017

To
Flávio Galdino
Gustavo Fontes Valente Salgueiro
João Mendes de Oliveira Castro
Galdino, Coelho, Mendes Advogados
Av Rio Branco, 138, 11° andar
20040-002 — Rio de Janeiro - SP

Ref: Opinion on Oi - Plan and internal competence

Dear Sirs,

is an honor to receive your request for my opinion on certain matters involving the judicial recovery of the Oi Group, I anticipate below my conclusions on the prepared questions. The final document will be submitted within the requested period.

Kind regards,

Francisco Satiro

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Conclusions on the prepared questions

1. In light of articles 53 and 56, paragraph 3, of Law 11,101/05, and especially in light of the legislative process that culminated in the enactment of said law, can it be argued that the Brazilian legislator's option was to grant the recovering company the exclusive prerogative to prepare and submit its own judicial recovery plan? In this sense, can it be said that the recovering company's management *has no duty nor obligation* to consider or submit to internal approval the alternative plans "submitted" by creditors or a group of creditors?

There is no doubt that the reorganization model adopted by Brazil (the judicial recovery) is based on the following dynamics: only the debtor initiates the procedure and the plan; and only the creditors provide their approval. This is the power balance underlying the procedure.

As for the procedure, there is no means in our system that would allow a creditor (or several, or even all) to initiate a judicial recovery procedure. That is the unambiguous wording of the first part of article 48 ("*The judiciary recover may be initiated by the debtor who....*"), corroborated by the provision of article 105 (The debtor *undergoing economic-financial crisis who considers that they do not comply with the requirements to apply for judicial recovery*...") and the documents required by article 51. A judicial recovery procedure may not be initiated by the creditors. If the company is in crisis, creditors may petition for its liquidation by means of a bankruptcy filing. Nothing prevents the creditors, after the declaration of bankruptcy, from attempting to continue the business or sell it as a whole, without prejudice to its continuity. The preservation of the company is in fact a value behind bankruptcy. In this regard, article 75 refers to the debtor's removal but asserts that one focus of the bankruptcy procedure is "*...to preserve and optimize the productive use of the company's assets and productive resources, including intangible assets."*

The plan is a legal business involving two parties: on the one hand the debtor; on the other, all creditors[1]. The Law clearly sets forth the dynamics of its formation. Accordingly, the plan is, pursuant to the Law, also an exclusive prerogative of the debtor ("*Article 53. The recovery plan will be submitted by the debtor in court ...*").

The decision to grant the debtor alone the ability to submit the plan is not accidental. During the legislative process, before the approval of Law 11,101/2005, the possibility of granting creditors the prerogative to submit an alternative plan[2] was under consideration.

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[1] Some would argue that the plan constitutes a multilateral contract, in terms of the concept described by Ascarelli. This is not how I see it. I believe that the debtor-creditor relation is an ordinary circumstance of "exchange" (as opposed to multilateral) and reciprocity of rights and obligations. The fact that one of the parties (plan) consists of a large number of agents is not enough to make it a multilateral contract.

[2] In this sense, please see the version of 1993 Bill n. 4,376-B, which set forth, article 9, paragraph 5, that *"If plans are submitted by a third party, the debtor will be heard within ten days to confirm that the debtor assumes the obligations under the plan, and bankruptcy shall proceed in case of refusal" (*Diário da Câmara dos Deputados, 03.12.1999, Suplemento, p. 5). In the 2003 version, close to its enactment, several amendments maintained this possibility*: "Art. 44. In case the documentation requirements set forth in the previous article are complied with, the request shall be analyzed within ten (10) days to determine the Judicial recovery, and the court shall appoint the trustee and order that a Recovery Committee be established, when applicable, pursuant to article 59 hereof, both of which will perform their duties according to this law;*
ii – within 20 (twenty) days counted as from the publication of the bid referred to in paragraph 10 of this article, the creditors may express their opinion on the debtor's request, its procedural requirements and especially on the recovery plan submitted, and the creditors may:
a) challenge it, in whole or in part;
b) challenge it and submit an alternative plan, or
c) challenge it and request the debtor's judicial liquidation." (Amendment n. 82 - Diário da Câmara dos Deputados, September 6th, 2003, fl.

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However, the final decision set forth the debtor's exclusive prerogative. The Ministry of Finance team behind the economic fundamentals of the final version of Law 11,101/2005 that was passed by the Brazilian Congress explained the decision to grant the debtor the exclusive prerogative to submit the plan:

> *"The understanding that each company and each sector have their own characteristics and particularities informed the option of granting the debtor the responsibility to submit a debt restructuring proposal in order to constitute a recovery plan for the company.*[3]*"*

This is only one of the justifications. There are other reasons for this legislative choice. First, by granting the debtor the prerogative to initiate the procedure and submit the plan, the Law provides the debtor with some security. This is very relevant because otherwise there would be an even greater incentive for debtors to postpone the decision to apply for judicial recovery. Second, there is a power balance: the debtor must submit their proposal, while creditors must approve it. Finally, it is the debtor — and indirectly its partners and administrators — who will be impacted by the implementation of the plan. I explain. The plan involves strategic decisions regarding the debtor's performance of economic activities. And like any business activity, the implementation of the measures set forth in the plan entails taking risks. It would not make sense for creditors to decide what risks the debtor will undergo in their future business activities, especially since, pursuant to article 50, there are many and diverse measures that can be adopted to solve the company's crisis (several of them, as this case shows, requiring internal corporate structure measures). If this were the case, there would be a constant incentive for the debtor to opt for settlement in light of the uncertain, that is, what might be imposed by the creditors.

Of course, in terms of negotiation, it is desirable that the parties be open to proposals that contribute to a better collective solution. This possibility is covered by article 56, paragraph 3, of Law 11,101/2005, which maintains the logic of the debtor's control over the plan's content and the creditors' decision about its approval. Creditors' suggestions to amend the plan must be met by "the debtor's express agreement" in order to produce effects. Anyway, these will always be "suggestions". There is no provision in Law 11.101/2005, or in the Brazilian Corporate Law, requiring the company's management to consider or submit to internal approval the alternative plans submitted by creditors.

43745). A similar provision was included in article 53 of the Amendment n. 128 (p. 43852).

[3] LISBOA, Marcos de Barros et al. A racionalidade econômica da nova lei de falências e de recuperação de empresas. in **Direito falimentar e a Nova Lei de Falências e Recuperação de Empresas: Lei**, v. 11, 2005.

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2. Given that Oi is a joint-stock company, can it be said that this exclusive prerogative to prepare and submit a judicial reorganization plan presupposes, *in abstrato*, the approval of the competent corporate bodies to do so, in light of the corporate law and the company's bylaws?

The Brazilian Corporate Law grants the Shareholders' Meeting the power to decide on the application for bankruptcy or judicial recovery (article 122, IX). Only in urgent cases may the management apply for it, but then only with the express consent of the controlling shareholder — if any — and subject to subsequent ratification by the Shareholder's Meeting (article 122, sole paragraph).

The recovery measures, however, are not exclusive to the Shareholder's Meeting – and they could not be. There is no specific provision on judicial recovery plans in the Brazilian Corporate Law. In general, since the Board of Directors is responsible for the rough direction of the company's business (article 142, I), there seems to be no doubt that it has the final decision on the judicial recovery plan. However, this general competence does not exclude any exceptional competence set forth in the Brazilian Corporate Law. Article 50, by listing some of the possible recovery means, points out several measures allocated to specific bodies. Thus, if the plan provides for the company's merger, incorporation or spin-off, it must be submitted to and approved by the Extraordinary Shareholders' Meeting, pursuant to article 122, VIII. The same goes for capital increases.

In any case, the plan is not an ordinary management act of the company and, therefore, requires the approvals arising from the competence allocation set forth by the Brazilian Corporate Law.

3. In the event that any creditor suggests to the Creditors' Meeting any amendment to the judicial recovery plan submitted by the Company, can the Company's officers agree to submit the proposed amendment to the creditors before each amendment suggestion is previously approved by the Company's competent bodies? In light of this question, how should the trustee and the Company's officers proceed if any creditor suggests amendments to the Company's judicial recovery plan?

The plan is not an ordinary management act. It is not the executive board's original responsibility to define its terms or its amendments. If the executive board is authorized to submit a plan already approved by the competent bodies (Board of Directors, Shareholder's Meeting and possibly the financial committee), its amendment will require a new approval, unless there is an express authorization for the executive officers to act at their own discretion, and only regarding matters that are not the exclusive competence of other bodies. After all, one should keep in mind that the exclusive competences set forth by the Brazilian Corporate Law may not be delegated.

The trustee is responsible for supervising the judicial recovery process to ensure good results. In this sense, the trustee closely monitors the debtor's activities (article 22, II, a) and must ask for information necessary for the involved parties to make their decisions (article 22, I, d). Although there is no specific provision, I believe it follows from the trustee's general duty of diligence, formalized by the provisions above, the need to constantly check the powers of the debtor's representatives, especially in light of a potential amendment of the plan.

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With regard to the officers, aware of their limitation due to the competence allocation under the Brazilian Corporate Law, there is no other accepted behavior other than submitting the matter to the competent body before expressing themselves as representatives of the company on matters that were not expressly approved, under penalty of breaching the duty of diligence and accountability, and, of course, rendering the act null and void.

4. In the absence of one or more corporate approvals by the Company's relevant corporate bodies:
a. What are the legal and procedural consequences of this absence for the process of the plan's approval?
b. Would the judicial recovery court be in any way entitled to remedy this lack of approval and, consequently, impose on the recovering company a plan made by one or more creditors — -in a sort of reversed cram down? Would the law somehow, directly or indirectly, explicitly or implicitly, authorize said measure by the Court?
c. How would it be possible to reconcile the system of the managers' personal responsibilities defined by the law (Brazilian Corporate Law, articles 158 and 159) with the fact that it would be imposed on the Company a recovery plan that was not approved by one or more corporate bodies?

a. The judicial recovery plan is a legal business. Its execution requires that those involved have enough powers to be binding to each other. As for the creditors, the manifestation of will is made by means of deliberation of the majority at the relevant Creditors' Meeting. The powers of the creditors' representatives must be verified by the trustee through the evaluation of the representation documentation that must be submitted at least 24 hours beforehand (article 37, paragraph 4, Law 11.101/2005). Although there is no specific provision, the powers of the debtor's representatives must also be constantly verified by the trustee. After all, the creditors and the court cannot approve a plan without the prior and valid statement of the debtor. And it is possible that a suggestion of amendment to the plan will occur during the Meeting due to the negotiation of the parties. In this case, according to article 56, paragraph 3, the debtor must expressly be in favor of the amendment for it to produce effects.

This does not mean that there is no control over the powers of the debtor's representatives. The powers allocated to certain bodies are essential to the balance of the corporate structure. In this sense, the Brazilian Corporate Law is compatible with Law 11,101/2005. Therefore, the fact that the company is under judicial recovery does not justify the violation of the structural rules of internal competence. As a joint-stock company, it is necessary that the acts performed by the debtor's (officers or attorneys in fact) be authorized by the competent bodies with sufficient powers to do so. The act performed by those without sufficient powers or without the specific authorization of the competent corporate body will be null and void for all intents and purposes.

b. There is no legal provision that would allow the judicial reorganization court to replace the management and bind the company. The judicial recovery and the plan are the exclusive prerogative of the debtor pursuant to Law 11,101/2005. The possibility of replacing the debtor's will with a judicial decision, besides not being set forth by Law 11,101/2005, would definitely violate the balance underlying the negotiation process that justifies the judicial recovery.

c. The nullity of the act does not exempt the manager who breached the bylaws from the

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responsibility to compensate for damages caused by said act. The manager will be civilly liable pursuant to the terms of articles 158 and 159 of the Brazilian Corporate Law for all losses arising from their behavior. Moreover, the manager will be held administratively liable, as the case may be, for breaching the manager's fiduciary duties.

5. Focusing on the concrete case, and considering that (i) in the course of Oi's judicial recovery a group of creditors, historically known to be hostile to the Company's judicial recovery, has been trying to impose a voting on an "alternative plan", which sets forth, among other measures, the conversion of approximately R$ 26.1 billion of credits into capital; and (ii) article 5 of the Company's bylaws sets forth that the capital stock is R$ 21,438,374,154.00 and article 6 establishes that the authorized capital limit is R$ 34,038,701,741.49, will you please answer the following:
a. In light of the provisions of article 166 of Law 6,404/76, could the Company's board of directors approve such capitalization without the approval of the shareholders' meeting?
b. What is the consequence for directors who approve such capitalization without complying with the provisions of the bylaws and of the corporate law?
c. What is the consequence of this lack of approval for the judicial recovery process (as a *procedural relation*) and for the recovery plan (as a l*egal business*)?

a. The capital increase falls within the specific competence of the Shareholders' Meeting, pursuant to article 166. There is, however, the possibility for the Shareholders' Meeting to include in the bylaws the authorization to increase capital regardless of statutory change (authorized capital, articles 166, II and 168 of the Brazilian Corporate Law). In that case, the bylaws will set forth the authorization for the Board of Directors to carry out the capital increase within the established limits. But even in this case, the competence to define the limit of capital that may be increased belongs to the Shareholders' Meeting, and the Board of Directors may only carry it out pursuant to said authorization and only to the necessary extent. Therefore, the company's board of directors could not approve the conversion of approximately R$ 26.1 billion of credits into the Company's capital, if article. 5 of the Company's bylaws sets forth that the capital stock is R$ 21,438,374,154.00 and article 6 that the authorized capital limit is R$ 34,038,701,741.49.

b. the approval of a capital increase by a body without competence to do so is null and void. Board members who approve it and breach the Law and the bylaws will be civilly liable (articles 158 and 159) for damages caused as well as administratively liable (articles 152 and 154 of the Brazilian Corporate Law and article 11 of Law 6.385/76) for breaching the duty of care or of the duty of avoiding a conflict of interests before the Brazilian Securities and Exchange Commission, given that it is a publicly-held company.

c. any provision of a judicial recovery plan that aims at increasing the capital beyond the authorized capital limit (R$ 34,038,701,741.49) will only be effective upon approval by the Shareholders' Meeting. There is no substitute for this requirement, even more so since it is a publicly-held company. As for the judicial recovery process, for the purposes of article 52, the Oi Group submitted a valid plan. It may only be replaced by the submission of another valid plan.

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