UNIVERSITY OF BRASÍLIA
GRADUATE PROGRAM IN LAW

LUCIANO RAMOS DE OLIVEIRA

A Recuperação Judicial do Clube-Empresa no Brasil

BRASÍLIA
2025

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A Recuperação Judicial do Clube-Empresa no Brasil

Dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Laws at the University of Brasília – UnB.
Advisor: JOÃO COSTA-NETO

Brasília, 2025

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Approved on .....

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Aos meus pais, Lúcio e Delma, que, sob o peso das dificuldades, abriram meu caminho.
Tudo o que sou se construiu à sombra do que fizeram por mim.
Ao meu irmão Erickson por cada gesto silencioso de cuidado e por ser abrigo nos dias incertos.
Esta tese é também de vocês.
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ACKNOWLEDGMENTS

This work's completion signifies the culmination of a voyage filled with research, difficulties, and discoveries. In retrospect, I see that this road would not have been feasible without the institutions, friends, and mentors who helped me along the way in many ways.

I am thankful for the strong legal education, the supportive atmosphere for critical discussion, and the intellectual freedom that always provided to me at the UNIVERSITY OF BRASÍLIA – UNB.

I would like to express my gratitude to the MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW for their kind reception, rigorous academic program, and opportunities that have greatly enhanced my life and this work. My time there was genuinely life-changing.

I want to express my sincere gratitude to my adviser, JOÃO COSTA-NETO, for his confidence, careful direction, and stimulating discussions. His participation and mentoring have been a consistent and kind presence, providing me with lessons that I will carry with me well beyond my academic career.

I am especially grateful to FÁBIO LIMA QUINTAS, my lifelong mentor. His tenacity, kindness, and camaraderie serve as a beacon of inspiration for me on my path.

I am grateful for the constant support, the tolerance during my absences, and the everyday company of a group of people that walk with me with devotion and zeal at my firm, ARCHANJO, RAMOS E SARMENTO ADVOGADOS—my professional home. Every accomplishment made here is also a testament to our shared, constant work.

AYLON ESTRELA, CECILIA, EDUARDO NEHME, FERNANDO MACEDO, GABRIEL RHUDÁ, GREGOR, HENRIQUE PORTO, ISMET, JOÃO GUILHERME SARMENTO, MARCO ARCHANJO, PAULO MENDES, PEDRO PAGANO, AND RODRIGO OLÍMPIO are my friends who walked with me with love and joy. I am grateful for their friendship, our sharing of ideas, and all our conversations. Please consider yourselves equally honored and loved, as are all the other friends who are not listed here but whose support was evident in every word of encouragement.

I want to express my gratitude to everyone who helped make this dissertation possible, whether directly or indirectly.

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Brasília, September 1, 2025

ABSTRACT

OLIVEIRA, Luciano Ramos de. **A Recuperação Judicial do Clube-Empresa no Brasil.** Brasília, 2025, 186 pages. Doctoral Dissertation – Faculty of Law, University of Brasília – FDUnB.

This dissertation seeks to examine the (in)applicability of judicial reorganization—under the provisions of Law No. 11,101/2005 and Article 25 of Law No. 14,193/2021—to civil sports associations that have not changed their legal status to business corporations. The main study topic is whether, despite the contradiction between the reorganization framework and the legal-structural model of civil associations, non-business legal entities in the sports industry can legally access the judicial reorganization regime.
As a legal process based on commercial law, judicial reorganization assumes that the applicant has the legal status of a business concern. According to the Brazilian Civil Code, the Lei da SAF (Law on Football Corporations), and the Lei Pelé (Pelé Law), it is therefore not applicable to associative entities that are still amateur clubs.
The structural and financial crisis that many Brazilian football clubs—many of which are based on the associative model—are currently facing, as well as the recent legislative developments that led to the passage of Law No. 14,193/2021 (Lei da SAF), which was specifically created to provide an institutional pathway for the business restructuring of professional sports entities, serve as the rationale for this study.
The thesis is organized into six chapters and uses a deductive method together with a qualitative approach and a comparative legal technique:
The first chapter discusses the concepts of enterprises, associations, and the Brazilian football reality characterized by *cartolismo* (managerialism rooted in traditional club leadership); the second chapter examines the corporate football club model in comparative law, discussing both theoretical and practical aspects in Germany, France, Portugal, Spain, Italy, the United States, and England; the third chapter reviews the legislative evolution of Brazilian insolvency law and its relationship with US insolvency law; the fourth chapter outlines the Brazilian judicial reorganization process; the fifth chapter critically examines the reorganization framework in relation to pure civil associations; and the sixth chapter discusses an alternative financial restructuring option available to football clubs.
This study shows that the legal framework provided by Law No. 11,101/2005 is incompatible with the attempt to apply judicial reorganization to civil associations without converting them into or creating a business company.
This thesis examines the entire framework of judicial reorganization in Brazil, while also engaging in comparative law analysis to provide a broader perspective. By contrasting the Brazilian insolvency regime with foreign legal systems, the study seeks to clarify structural particularities, highlight points of convergence and divergence, and ultimately enhance the understanding of how the Brazilian legal order addresses corporate and associative crises. Such a comparative approach allows for a more comprehensive evaluation of the effectiveness, limitations, and potential reforms of the domestic system.
This study is a component of a larger research project on the comparative reorganization of businesses and sports organizations that was created by the University of Brasília's Research Group on Comparative Law and Romanistic Legal Systems.

Keywords: macroproject; judicial reorganization; civil associations; corporate football club; football; football corporation (*sociedade anônima do futebol*); comparative legal systems.

SUMMARY

SUMMARY

INTRODUCTION

The scope and potential of applying the judicial reorganization system to Brazilian sports organizations, namely football teams, which have historically been set up as non-profit civil associations, are examined in this study.

Given institutional and economic changes in the sports industry, the implementation of Law No. 14,193/2021 (Football Corporation Law, or SAF), and the increasing application of business law tools to resolve the financial problems impacting Brazilian football, specifically football clubs, the topic is relevant today.

Without the legislature having sufficiently modified the process to fit their legal framework, sports associations have started judicial reorganization actions. Even though these organizations are officially categorized as non-profits, their operations exhibit clear corporate traits, such as regularity, professionalism, the organization of production variables, and the pursuit of financial gain. This structural conflict is most noticeable in times of crisis when the judiciary is forced to apply business-oriented methods, including judicial reorganization, to businesses whose legal nature does not allow for such solutions under current insolvency law.

The topic's practical applicability is evident. The ongoing existence of national championships is at stake due to the persistent debt that many Brazilian clubs suffer. Asset spinoffs, the establishment of commercial entities to oversee football activities, and, more recently, the use of the centralized enforcement regime (*Regime Centralizado de Execuções*, or RCE) are some of the various legal options that have been investigated since the SAF was passed. However, because there is no particular process that applies to non-business entities, the admissibility of judicial reorganization applications filed by civil associations is unclear.

Considering legislation, case law, and comparable legal systems, the main research question is the following: To what degree can judicial restructuring be applied to (pure) sports associations under Brazilian law?

In addition to analyzing the statutory criteria that define the scope of Law No. 11,101/2005, this study examines how the judiciary has addressed normative gaps, and instead of or circumstances where the lack of a particular procedural framework has casted doubt on the feasibility and efficacy of reorganization proceedings started by such entities.

This dissertation argues that civil sports groups that have not adopted a business structure either before filing or as part of a reorganization plan are exempt from judicial restructuring. This position is consistent with existing bankruptcy/reorganization frameworks.

To address this issue, this study uses a comparative study, the interpretative functionalist method,[1] and a critical analysis of Brazilian positive law, the Superior Courts' case law, legal scholarship, and laws relevant to the sports industry (particularly the Pelé Law and the SAF Law) to address this issue. To understand how various jurisdictions have handled the shift from associative to corporate models in the context of sports, this study analyzes the doctrines and legal experiences of eleven nations: AUSTRIA, GERMANY, CHILE, CHINA, COLOMBIA, SPAIN, THE UNITED STATES OF AMERICA, FRANCE, ENGLAND, ITALY, AND PORTUGAL.

There are five chapters in this dissertation. The first chapter looks at the Brazilian legal definition of enterprise and the conflict between professional sports governance and the common practice of *cartolismo*—traditional and frequently unofficial club management.

With a thorough examination of the legal frameworks, legislative changes, and administrative practices put in place in many nations—ITALY, SPAIN, PORTUGAL, ENGLAND, GERMANY, AND THE UNITED STATES OF AMERICA—the second chapter delves into the phenomenon of the corporate football club in comparative law.

The third chapter examines the development of Brazilian insolvency law prior to the adoption of Law No. 11,101/2005 and its historical comparison with advancements in US insolvency law. The fourth chapter examines the application of judicial restructuring in the Brazilian legal system, including its rules, guiding principles, procedural phases, and areas of application.

The dissertation's fifth chapter discusses the categorization of pure sports groups under the reorganization system set forth by Law No. 11,101/2005. This section of the study offers critical evaluations and investigates potential legal remedies to prevent the doctrinal and procedural dead ends that can occur when reorganization procedures are used to non-business entities—particularly non-profit civil associations—without the appropriate procedural adaptation.

The study concludes by outlining the Centralized Enforcement Regime (*Regime Centralizado de Execuções*)—a different method for reorganizing football clubs—and the debates surrounding its use by sports associations under SAF Law.

[1] ERNST RABEL**,** 'Aufgabe und Notwendigkeit der Rechtsvergleichung' (1924) 13 *Rheinische Zeitschrift für Zivil- und Prozessrecht*; ERNST RABEL**,** 'Comparative conflicts law' (1949) 24 *Indiana Law Journal*; RALF MICHAELS**,** 'The Functional Method of Comparative Law', in Mathias Reimann and Reinhard Zimmermann (org)*, The Oxford Handbook of Comparative Law* (Oxford, Oxford University Press, 2019).

1. COMPANY, FOOTBALL, AND CARTOLISMO IN BRAZIL

1.1 HISTORICAL FOUNDATIONS AND THE TRANSITION FROM CIVIL TO COMMERCIAL LAW

In contrast to common law, business law developed historically as a modification of legal frameworks intended to control economic and business activities. In this sense, the goal of business law was to define specific organizations, values, and regulations that are necessary for conducting business.[2]

Legal scholars have recognized many historical eras that contributed to the development of business law's consolidation. However, before looking at these phases, it is crucial to emphasize before the modern era.

As CESARE VIVANTE[3] notes, Roman law did not necessitate a separate legal discipline devoted to business matters in Rome, despite being made up of legal institutions that might

[2] cf PAULO ROBERTO COLOMBO ARNOLDI, *Teoria geral do direito comercial: introdução à teoria da empresa* (São Paulo, Saraiva, 1998) 16; WAGNER JOSÉ PENEREIRO ARMANI et al, *Direito Comercial - Teoria Geral da Empresa & Direito das Sociedades* (Campinas, AFJ 2022) 30; JOÃO COSTA-NETO AND LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen Juris 2023).

[3] cf CESARE VIVANTE, *Istituzioni di diritto commerciale* (Milão, Editora U.HOepli, 1894), CESARE VIVANTE, *Instituições de Direito Comercial* (Sorocaba, Editora Minelli 2007) 19; ALEXANDRE AUGUSTO DE CASTRO CORRÊA**,** 'Existiu, em Roma, direito comercial?' (1970) 65 *Revista da Faculdade de Direito, Universidade de São Paulo* 67–10.

satisfy the practical demands of commerce (*l'actio exercitoria*[4]*; receptum argentarii*[5]*; e tsabulariourum*, for example), However, FRANÇOIS MOREL notes that the Romans refrained from giving commercial law special attention since doing so would have gone against their goal of legal unity and were instead motivated by a preference for legal abstraction[6].

Because civil and commercial acts were not distinguished in Rome, legal institutions applied to both regardless of the parties or the type of transaction, negating the need for specific treatment.[7] Therefore, from a unitary Romanist perspective, to argue that Roman law had no role in the development of commercial law is to ignore the consolidation of fundamental institutions of private law.

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[4] The concept and applicability of *actio exercitoria* can be found in ANTONIO ANZARA; ERNESTO EULA, *Novissimo digesto italiano*, Torino, Unione Tipografico Editrice Torinese, 1968, p.271: "L' actio exercitoria (cfr. D. 14, 1, C 1. 4, 25, Lenel, §101) trovô la sua prima applicazione nell'ipotesi che un paterfamilias avesse posto un suo filius o un suo servus al comando di una nave (inqualitá di magister navis), incaricandolo per conseguenza di compiere le oparazioni di affari connesse con questa funzione: per ele obbligazioni assunte dal sottoposto magister, il creditore aveva azion in solidum contro il parter familias armatores, cioé contro l' exercitor navis (Gai, 4, 71). Sucessivamente, l1 actio exercitoria fu ammessa, nei confronti del pater exercitor, anche nel caso in cui questi avesse designato come magister navis un extraneus alla sua famiglia, cioé il servus di un altro o addirittura (caso assai poco frequente nel sistema economico-commerciale romano) una persona libera: la qualitá di magister dell'extraneus faceva si che il creditore di lui potesse (e nel caso sel servus magister dovesse) intentare l'azione in solidum contro l'exercitor preponente (cfr. ancora Gai, 4, 71). Se poi il paterfamilias aveva incaricato una persona delle funzioni di exercitor in ordine ad una certa nave e il preposto aveva nominato per quella nave un magister, si aveva la possibilità di due actiones exercitoriae contro il pater: l'una per i debiti contratti dal sottoposto come exercitor e l'altra per i debiti contratti dal magister navis (D, 14, 1, 5, 1) (v. anche << Exercitor>>)". Cf. F. GALGANO, Le anime moderne del diritto privato romano. *Contratto e impresa/Europa*, v. 1, p. 141-155, 2010.; PIETRO CERAMI; ALGO PETRUCCI, *Diritto commerciale romano / Profilo storico*, [s.l.], 2010; LUIGI CAPOGROSSI COLOGNESI, *La costruzione del diritto privato romano*, Bologna, Il Mulino, 2016. Cf. ANDREAS M. FLECKNER, *Corporate Law Lessons from Ancient Rome*. Available at:https://corpgov.law.harvard.edu/2011/06/19/corporate-law-lessons-from-ancient-rome/#more-18213. PASQUALE STANISLAO MANCINI traz algumas considerações sobre o período: "Era uso, o prescrizione legislativa? Non troviamo nel corpo del Diritto romano frammento alcuno, che faccia dei libri um'obbligazione ne pei commercianti nè pei privati. Trobiamo però tale comune consuetudin attestata, e supposta anzi in moltissimi tosti, e riconosciuta dagli antichi interpreti dei libri in giudizio, com tutti gli effetti, nel caso di rifuto, che sarebbero derivati, qualora la legge li avesse espressamente prescriti". PASQUALE STANISLAO MANCINI, *Enciclopedia giuridica italiana: della scienza, della legislazione e della giurisprudenza*, Milano, Società Editrice Libraria, 1884, p.3.

[5] cf PATRICIO-IGNACIO CARVAJAL RAMÍREZ, *Receptum argentarii (I). Nota sobre las garantías bancarias abstractas en el Derecho Romano y Justinianeo* (Ars boni et Aequi, 1, 2005) 127–48

[6] "*Un troisième motif enfin, c'est que l'existence d'un droit particulier aux comeerçants choquait au plus haut point l'ideé que les Romains avaient de l'unité du droit*". FRANÇOIS MOREL. Les juridictions commerciales au Moyen-Age: étude de droit comparé. Paris : Arthur Rousseau, Éditeur, 1897, p. 15. Nesse ponto, Marco Cian: « Gli storici insegnano che il diritto commerciale è il frutto del genio italiano ed europeo dell'epoca tardomedievale. Nel Vicino Oriente antico, in Grecia e nell'Impero romano esistevano attività produttive (agricole ed artigianali) e traffici locali e a lunga distanza, ma – secondo l'opinione comune – non esisteva un diritto commerciale, cioè un corpo articolato di norme specificamente rivolto alla loro disciplina e distinto da quello destinato a regolare i rapporti non commerciali: le relazioni giuridiche nascenti da tali attività erano soggette al diritto civile e, se norme speciali, anche di particolare interesse, non mancavano 1, queste non raggiunsero mai una numerosità e un grado di organicità tali da poterle erigere a sistema ». MARCO CIAN, *Diritto commerciale. I Diritto dell'impresa*, Torino, G. Giappichelli Editore, 2017, p. 3.

[7] ALEXANDRE AUGUSTO DE CASTRO CORRÊA**,** 'Existiu, em Roma, direito comercial?' (1970) 65 *Revista da Faculdade de Direito, Universidade de São Paulo* 70

ANTONIO MENEZES CORDEIRO[8] challenges the assertion made by authors CARLO FADDA, HUVELIN, GIUSEPPE VALERI, PIETRO CERAMI, and ALDO PETRUCCI that commercial law originated in the medieval boroughs and disproves the notion that it was foreign to Roman law, especially the opinions of PARDESSUS and GOLDSCHMIDT. According to MENEZES CORDEIRO, a number of "commercial" institutions were included in Roman law. CERAMI e PETRUCCI[9] claim that Roman law included the following: (i) banking operations; (ii) corporations and marine trade operations; (iii) individual and collective business organizations; and (iv) corporations engaged in the slave trade.

There were indications of a particular area of expertise in commercial (mercantile) law as early as ancient Greece. ALEXANDRE AUGUSTO DE CASTRO CORRÊA points out that Greek law contained both statutory and customary provisions (*emporikói nómoi*) and that commercial proceedings (*emporikái díkai*) were subject to special regulations. However, as MARCO CIAN[10] has pointed out, there was a lack of precise systematization.[11]

During its early stages (12th to 16th century), commercial law (still known as mercantile law) focused on the subject (subjectivist approach), with economic relations becoming more important because of the emergence of professions, trade guilds, and substantial economic growth.

HENRI PIRENNE has pointed out that evidence of trade alliances dates to the 10th century, which is significant. Even if words like *guilda* and *hansa* are used all over Europe, it would be incorrect to believe that the associative aspect of business is a German phenomenon. Pirenne contends that the cooperative habit is present in all facets of economic life, notwithstanding regional differences; *fratrias, charteias*, and merchant enterprises are a few examples. What was important was a shared belief: Collaboration was necessary for commerce to thrive.[12]

To control the behavior of economic agents,[13] legal regulations were developed for commercial transactions. Additionally, the need for the establishment of commercial courts to

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[8] cf ANTONIO MENEZES CORDEIRO, *Direito Comercial* (Coimbra, Almedina, 2022) 48

[9] cf PIETRO CERAMI AND ALDO PETRUCCI, *Diritto commerciale romano / Profilo storico* ([s.l.], 2010) 337

[10] cf MARCO CIAN, *Diritto commerciale. I Diritto dell'impresa* (Torino, G. Giappichelli Editore, 2017) 3

[11] cf ALEXANDRE AUGUSTO DE CASTRO CORRÊA, 'Existiu, em Roma, direito comercial?' (1970) 65 *Revista da Faculdade de Direito da Universidade de São Paulo*

[12] HENRI PIRENNE, *Medieval Cities: Their Origins and the Revival of Trade* (Princeton University Press, 1925) 124

[13] HENRI PIRENNE discusses the progressive regulation of the economic sector during the early decades of the 11th century: 'Public authority at the same time took him under its protection. The local princes whose task it was to preserve, in their counties, peace and public order—to which pertained the policing of the highways and the safeguarding of travellers—extended their tutelage over the merchants. In doing so they did nothing more than to continue the tradition of the State, the powers of which they had usurped, In that agricultural empire of his, Charlemagne himself had given careful attention to the maintenance of the freedom of circulation. He had issued

settle disputes emerged.[14] The accumulation of regionally specific customs and practices throughout history necessitated the establishment of specialized courts that could administer justice in a timely and reliable manner.[15]

When the actions of merchants began to differentiate them from other people who were not regarded as merchants the second stage of the evolution of commercial law began. The definition of what constituted a commercial act was established by legislation, and all other acts were either regarded as either civil acts or defined under a different legal category. This objective phase, which was focused on commercial acts, was dominated by the French (Napoleonic) system.[16]

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edicts in favor of pilgrims and traders, Jew or Christian, and the capitularies of his successors attest to the fact that they remained faithful to that policy. The emperors of the House of Saxony followed suit in Germany, and the kings of France, after they came into power, did likewise. The princes had, furthermore, every interest in attract-_ ing numerous merchants to their countries, whither they brought a new animation and where they augmented bountifully the revenues from the market tolls(…)The counts early took active measures against highwaymen, watching over the good conduct of the fairs and the security of the routes of communication. In the eleventh century, great progress had been made, and the chroniclers state that there were regions where one could travel with a sack full of gold without running the risk of being despoiled. On its part, the Church punished highwaymen with excommunication, and the Truces of God, which it initiated in the tenth century, protected the merchants in particular. But it was not enough that merchants be placed under the safeguard and the jurisdiction of the public authority. The novelty of their profession had further consequences. It forced a law made for a civilization based on agriculture to become more flexible and to adapt to the fundamental needs that were imposed upon it. Judicial procedure, with its rigid and traditional formalism, its delays, its methods of proof as primitive as the duel, its abuse of the absolutory oath, and its "ordeals" which left the outcome of a trial to chance, was a perpetual nuisance for the merchants. They needed a simpler legal system, more expeditious and more equitable. At the fairs and markets, they elaborated among themselves a commercial code (jus mercatorum), of which the oldest traces can be noted from the beginning of the eleventh century'. HENRI PIRENNE, *Medieval cities: their origins and the revival of trade* (Princeton University Press, 1925) 132–33.

[14] cf <https://lexicmariner.mmb.cat/img/consolat.pdf>

[15] 'It must have constituted for them a sort of personal law, the benefits of which the judges had no motive for refusing them. The contemporary texts which make allusion to it unfortunately do not make clear its terms. There is, however, no doubt that it was a collection of usages born of business experience and which spread from place to place commensurately with the spread of trade itself. The great fairs, where merchants from various countries came periodically and which had a special tribunal charged with rendering speedy justice, must have seen from the very beginning the development of a sort of commercial jurisprudence, the same everywhere despite differences in country, language, and national laws. The merchant thus seems to have been not only a free man but a privileged man as well. Like the cleric and the noble, he enjoyed a law of exception. Like them, he escaped the demesnial and seignorial authority which continued to bear down upon the peasants'. cf HENRI PIRENNE, *Medieval cities: their origins and the revival of trade* (Princeton University Press, 1925) 134. Cf.: *Ma, come pur vedremo in appresso, noi non crediamo che i rapporti fra diritto civile e diritto commerciale debbano condurre ad escludere praticamente I'stensione analogica del campo del diritto commerciale propriamente dito. [...] Crediamo quindi all''esistenza di principô generali di diritto commerciale ossia di norme generali valevoli per tutto e solo il campo della materia commerciale, e crediamo altresì che il diritto commerciale, malgrado la sua innegabile frammentarietà, si presti ad uno studio organico e sistematico, e possa quindi la sua conoscenza dar luog ad una scienza autonoma, la scienza del diritto commerciale*". ALFREDO ROCCO, *Principii di diritto commerciale: parte generale*, Torino, Unione Tipografico-Editrice Torinese, 1928, p.76-80.

[16] "69. Origine - La notion de l' "acte de commerce par nature" a été maintenue par le législateur en 1872 ; et la doctrine en a construit la théorie. Or, c'est une notion tout à fait artificielle. Elle résulte uniquement de la maladresse des rédacteurs du Code de 1807 et de leur souci d'éviter le reproche d'avoir rétabli, en consacrant l'existence des tribunaux de commerce, une juridiction professionnelle comme il en existait sous l'Ancien Régime (…) Comme l'écrit M. Ripert, "si tout acte fait par un commerçant est présumé acte de commerce, il n'y a d'intérêt à reconnaître l'existence d'actes de commerce par nature que lorsqu'il s'agit d'actes passés par des non-

Through the Commercial Code of 1850 (Law No. 556 of June 25, 1850), which governed commercial acts under Regulation No. 737 of the same year,[17] Brazil adopted the objective phase of commercial law (centered on acts of commerce) in 1850. Essentially, only after the act was recorded in the law did commerce—and thus the application of commercial rules—exist. Otherwise, the act would be subject to other legal regulations rather than commercial law.

1.2 THE CONCEPT OF COMPANY IN BRAZIL

The enterprise theory (activity-based approach), which was included in the Civil Code of 2002, is the following stage, which is still being developed within the Brazilian legal system. The Civil Code was chosen over a separate Commercial Code after much discussion among Brazilian jurists about the necessity of combining civil and commercial obligations into a unified legal framework. 'This unifying spirit reflected in the law—namely, the 1850 Code—has remained unchanged over time and is also evident in the Civil Code of 1916', SYLVIO MARCONDES observed, adding that 'the unification of obligations under Brazilian civil law is a true, and indeed evolutionary, tradition of our legal system'.[18]

Originally called mercantile law, business law developed historically to specifically control the commercial behavior of agents involved in economic activity. Since it includes organizations and procedures unique to business life that normal civil law cannot adequately regulate, its development demonstrates the independence of business law.[19]

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commerçants"». JEAN VAN RYN, *Principes de Droit Commercial* (t. I, Bruxelles, Établissements Émile Bruylant, 1954) 63–79 ; JOSEPH HEMARD, 'Détermination des professions assujetties au risque professionnel et théorie des actes de commerce' (1903) 17 *Annales de Droit Commercial et Industriel Français, Étranger et International* 178.

[17] "Art. 4 - Ninguém é reputado comerciante para efeito de gozar da proteção que este Código liberaliza em favor do comércio, sem que se tenha matriculado em algum dos Tribunais do Comércio do Império, e faça da mercancia profissão habitual (artigo nº 9).". <https://www.planalto.gov.br/ccivil_03/leis/lim/lim556.htm.> « Art. 19. Considera-se mercancia: § 1º A compra e venda ou troca de effeitos moveis, ou semoventes para os vender por grosso ou a retalho, na mesma especie ou manufacturados, ou para alugar o seu uso; § 2º As operações de cambio, banco, e corretagem; § 3º As emprezas de fabricas; de commissões; de depositos; de expedição, consignação, e transporte de mercadorias; de espectaculos publicos; § 4º Os seguros, fretamentos, risco, e quaesquer contractos relativos ao commercio maritimo; § 5º A armação e expedição de navios.". <https://www2.camara.leg.br/legin/fed/decret/1824-1899/decreto-737-25-novembro-1850-560162-publicacaooriginal-82786-pe.html> cf SALUSTIANO ORLANDO DE ARAUJO COSTA. *Código commercial do Brazil: annotado com toda a legislação do paiz que lhe é referente, com os arestos e decisões mais notaveis do tribunaes e juizes, concordado com a legislação dos paizes estrangeiros mais adiantados, com um vasto e copioso appendice, tambem annotado, contendo não so todos os regulamentos commerciaes, como os mais recentes actos do governo, quer sobre bancos e sociedades anonymas, quer sobre impostos, dispensando consultar-se a Collecção das leis do Imperio* (Rio de Janeiro, Laemmert, 1896)

[18] cf SYLVIO MARCONDES. *Questões de direito* mercantil, Saraiva: Rio de janeiro, 1977, .29.

[19] cf JOÃO COSTA-NETO; LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen

All these traits suggest that organized economic activity focused on the production or distribution of products or services[20]—a concept enshrined in Article 966 of the 2002 Civil Code[21]—is at the heart of the definitions and topics of business law. Whether they were centered on the subject (as a member of a trade guild) or on commercial conduct (as in the Commercial Code of 1850), earlier definitions of commercial law were unworkable. New economic sectors that need proper legal protection have emerged because of the market's dynamic and innovative nature, which the first and second phases' frameworks were unable to support.[22]

Although the Brazilian law did not specifically define what a business enterprise is, GLADSTON MAMEDE highlights certain essential components that help legal interpreters understand its legal meaning: i) organized structure: 'an activity carried out with an organized structure of assets and procedures aimed at generating appropriable wealth—in other words, profit or a return on capital'; ii) professional activity: 'a continuous sequence of actions aimed at fulfilling the stated business objective'; iii) professional activity: 'the structuring of tangible and intangible assets, organized for the successful execution of the intended business purpose, is the focus now instead of the act (act of commerce)'; iv) social identity: 'the community-oriented element of the business, which has a socially acknowledged existence, is referred to when the legislator uses the expression "is considered an entrepreneur"'[23].

Juris 2023); cf UMBERTO NAVARRINI: 'Veniamo ora a veder nel complesso patrimoniale che eglipone in movimento nell'ambiente del traffico, come essa si rinforzi e si estenda coll'opera di ausiliari, quali garanzie circondino il suo svolgimento. Dopo aver detto questo, che há in sè certamente uma portata generale, ma che riferiamo qui particolarmente alle persona singole'. UMBERTO NAVARRINI, *Trattato elementare di diritto commerciale*, vol 2 (4th edn, Torino, Unione Tipografico-Editrice Torinese 1935) 1; Cf. CÁSSIO MACHADO CAVALLI, *Empresa, direito e economia: elaboração de um conceito jurídico de empresa no direito comercial brasileiro contemporâneo a partir do dado teórico econômico* (Porto Alegre, Universidade Federal do Rio Grande do Sul 2012) 53

[20] 'Ciò che qualifica l' imprenditore è, a mio avviso, uma attivitâ economica (cosi come um'attività economica qualificava il commerciante) della quale, nelle prossime lezioni, fisseremo piû precisamente le caratteristiche'.

[21] Cf. JOSÉ CARLOS MOREIRA ALVES, *A unificação do direito privado brasileiro – de Teixeira de Freitas ao novo código civil* (São Paulo, Quartier Latin, 2010) 384

[22] Cf. GAETANO PRESTI et al: 'La vicenda italiana del XIX secolo è coerente com questo quadro. Perso il ruolo propulsivo delle origini quando la lex mercatoria era stata in gran parte il frutto dei mercanti e dei giuristi italiani, l'Italia – arrivata in ritardo all unità politica e alla rivoluzione industriale – è quase uma fotocopia di quello francesse; e l'impostazione non muta nel successivo codice di commercio del 1882, ove peraltro si avverte anche l'influenza tedesca. Da segnalare è tuttavia, che nel 1888 vengono aboliti in Iltalia i tribunali de commercio (tuttora esistenti in Francia), ricoducendo l'applicazione delle norme speciali del codice di commercio all'autorità giudiziaria ordinaria. La storia potrebbe continuare, ma le evoluzioni successive tendono a confondersi con i problemi dell' attualità. Conviene allora, prima di riprendere il filo per inquadrare le prospettive del diritto commerciale, soffermarsi più analiticamente sulle peculiari vicende normative del Novecento italiano'.
GAETANO MARIA GIOVANNI PRESTI et al., *Corso di diritto commerciale* (Bologna, Zanichelli Editore 2015) 6–7

[23] Cf. RICARDO LUPION AND FERNANDO ARAUJO: RICARDO LUPION; FERNANDO ARAÚJO, *15 anos do Código Civil: direito de empresa, contratos e sociedades*, Porto Alegre, Editora FI, 2018, p.20. Cf. ANTÔNIO MARTINS FILHO, Waldemar Ferreira e a evolução doutrinal do direito mercantil, *Revista da Faculdade de Direito da Universidade de São Paulo*, v. 45, 1950, p. 242–243. Cf. FÁBIO KONDER COMPARATO. Origem do direito comercial. *Revista de Direito Mercantil, Industrial, Econômico e Financeiro*, ano 35, n. 103, jul./set. 1996. On the notion of business

The defining elements presented by GLADSTON MAMEDE have already been used as a basis for characterizing a business enterprise within non-profit civil associations,[24] even though their legal nature, accounting regime, and statutory definitions show that such elements alone are insufficient to classify them as business entities.

It is important to note that Brazilian legislation expressly excludes those who engage in intellectual professions of a scientific, literary, or artistic nature from the definition of enterprise (Article 966, sole paragraph, of the Civil Code), unless the practice of such a profession constitutes an element of a business enterprise. Therefore, the Brazilian legal system has incorporated the various historical phases of business law: first, as *mercantile law* [25] (focused on members of trade guilds); second, as *commercial law* (centered on acts of commerce);[26] and now, as *enterprise law* (centered on economic activity).

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activity under Italian commercial law, GAETANO PRESTI *et al*: "Nella terminologia legale, quindi, <<imprenditore, azienda e impresa>> corrispondono, rispettivamente, alle categorie <<soggetto, oggetto, attività>> benché talvotla, soprattutto, nella legislazione speciale più recente, lo stesso legislatore non sai coerente com tale nomenclatura (cfr. ad esempio, nello stesso codice civile, l' art. 2195, comma 2, ove il termine <<impresa>> viene usato in senso soggettivo e si allude ad attività esercitate dalle imprese)". GAETANO MARIA GIOVANNI PRESTI *et al*., *Corso di diritto commerciale*, Bologna, Zanichelli Editore, 2015,p.15. Cf. JOSÉ XAVIER CARVALHO DE MENDONÇA, *Tratado de Direito Comercial Brasileiro*, 5. ed., São Paulo, Saraiva, 1954; WAGNER JOSÉ PENEREIRO ARMANI *et al*., *Direito Comercial - Teoria Geral da Empresa & Direito das Sociedades*, Campinas, AFJ, 2022.

[24] cf LUIZ ROBERTO AYOUB AND DIONE VALESCA XAVIER DE ASSIS, 'A legitimidade ativa no processo de recuperação judicial' In *Moderno direito concursal – análise plural das leis n.º 11.101/05 e nº 14.112/20* (São Paulo, Quartier Latin, 2021) 82; cf VINICIUS FIGUEIREDO CHAVES, 'Em busca da dignidade científica do direito comercial brasileiro', *Revista Brasileira de Direito Empresarial* (2019) 5(2) 77–97 <https://indexlaw.org/index.php>

[25] cf OSCAR BARRETO FILHO, 'A dignidade do direito mercantil, São Paulo', *Revista da Faculdade de Direito da USP* (1973) 68(2) 17–18; cf Marcos Paulo de Almeida Salles, *A autonomia do direito comercial e o direito da empresa* (Revista da Faculdade de Direito, Universidade de São Paulo, vol 105, 2010); ERICK VIDIGAL, 'A Lex Mercatoria como fonte do Direito do comércio internacional e a sua aplicação no Brasil', *Revista de Informação Legislativa*, Brasília (2010) 186(47) 171–193; ARMANDO CASTELAR PINHEIRO AND JAIRO SADDI, *Direito, economia e mercados* (Rio de Janeiro, Elsevier 2005); LEVIN GOLDSCHMIDT, *Storia universale del diritto commerciale* (Torino, Utet, 1913); JOHN ARMOUR et al., 'What is corporate law?' in *The anatomy of corporate law. A comparative and functional approach* (Oxford University Press 2017); RUDOLPH STAMMLER, *Wirtschaft und Recht nach der materialistischen Geschichtsauffassung: Eine sozialphilosophische Untersuchung* (Berlin, Von Veit & Comp. 1896); CLÓVIS CUNHA DA GAMA MALCHER FILHO, 'A autonomia do direito privado e a necessidade de um novo código comercial: a abrangência do anteprojeto' in *COELHO* (Fábio Ulhoa); TIAGO ASFOR ROCHA LIMA AND MARCELO GUEDES NUNES, *Novas reflexões sobre o projeto de direito comercial* (São Paulo, Saraiva, 2015); MARINA ZAVA DE FARIA, *A autonomia do direito comercial e a (re)codificação do direito comercial brasileiro* (São Paulo, Quartier Latin, 2021); REINIER KRAAKMAN et al., *The anatomy of corporate law: a comparative and functional approach* (Oxford University Press 2017); CALIXTO SALOMÃO FILHO, *Teoria crítico-estruturalista do direito comercial* (São Paulo, Marcial Pons 2015); RACHEL SZTAJN, 'A incompletude do contrato de sociedade' (2004) *Revista da Faculdade de Direito*, Universidade de São Paulo, 283–302

[26] cf ASCARELLI: 'L'art. 8 del codice di commercio sancisce che sono commercianti coloro che compiono atti di commercio per professione abituale, e le società commerciali. Sono cioè commercianti: le persone fisiche, che compiono professionalmente e abitualmente degli atti di commercio; le persone giuridiche, constitute com lo scopo di compiere uno o più atti di commercio'; TULLIO ASCARELLI, *Intituzioni di diritto commerciale* (Milano, Dott. A. Giuffrè Editore 1938) 30. Mario Libertini destaca: "Un'interessante ricostruzione del percorso, che va dall'individualismo proprietario ottocentesco (dominante anche nella teoria giuscommercialistica del "commerciante" e degli "atti di commercio"), al superamento dello stesso nel periodo fascista, con l'affermarsi della teoria dell'impresa come istituzione, in un quadro di riconosciuto dominio statale (vicenda in cui l'a. indica

It becomes clear, then, that a precise understanding of the legal notion of 'enterprise' in Brazil directly affects all facets of business law. By adopting a restrictive view of the concepts of 'entrepreneur' and 'e business corporation',[27] the legislation excluded other economic agents—even those not pursuing profit—from the special treatment afforded by business law, particularly in matters of insolvency. Indeed, the judicial reorganization, out-of-court reorganization, and bankruptcy procedures provided by Law No. 11,101/2005 are reserved exclusively for entrepreneurs and business corporations (Article 1 of the statute).

Today, the concept of enterprise and the idea of professionalization (organized economic activity) have gained prominence in the Brazilian football sector, particularly following the recognition of civil sports associations as legitimate parties to seek judicial reorganization despite their legal nature not qualifying them as business entities. A landmark case occurred in March 2021: FIGUEIRENSE FUTEBOL CLUBE, a civil association, became the first football club in Brazil to be recognized as having standing to request judicial reorganization.[28]

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come protagonisti Rocco e Mossa), fino alla ripresa di individualismo nel periodo postfascista, con la teorizzazione della libertà di iniziativa economica come libertà individuale e il rafforzamento della tutela di diritti individuali di consumatori ed azionisti, può leggersi in F. MAZZARELLA, Percorsi dell'individualismo giuridico. Dal proprietario all'azionista delle multinazionali, in Materiali per una storia della cultura giuridica, 2004, 37 ss".Cf. MARIO LIBERTINI, *Diritto civile e diritto commerciale. Il metodo del diritto commerciale in Italia*, [s.l.], Rivista delle Società, 2013, p. 15; MARIO LIBERTINI, *Le fonti private del diritto commerciale. Appunti per una* discussione. Riv.dir.comm., 2008, GIUSEPPE TERRANOVA, *Elogio dell'approssimazione. Il diritto come esperienza comunicativa*, Pisa, Pacini Giuridica, 2008; JÜRGEN BASEDOW, 'The state's private law and the economy—Commercial law as an Amalgam of public and private rule-making' (2008) 56(3) *The American Journal of Comparative Law* 703–722

[27] In French law, as late as 1954, there was still no clear definition—particularly in the Commercial Code—of what constituted an 'enterprise': '39. Détermination des entreprises en droit positif. — Rationnellement le Code de commerce devrait définir le caractère propre des entreprises commerciales ou, à défaut d'une définition abstraite et générale, en indiquer la liste. Le Code qui nous régit consacre, d'une manière empirique d'ailleurs, une solution intermédiaire passablement boiteuse. La loi énumère tout d'abord les "actes" commerciaux et cette énumération nous procure indirectement une liste des entreprises commerciales, puisque les actes dits de commerce "par nature" impriment un caractère commercial à l'activité des personnes physiques qui font profession et aux sociétés qui ont pour objet de les accomplir. La coïncidence n'est d'ailleurs qu'approximative : la liste légale des actes de commerce est, en effet, quelque peu hétéroclite : le législateur place côte à côte des "opérations", des "entreprises" et des institutions juridiques (les titres à ordre ou au porteur). L'explication doit en être recherchée dans l'origine historique de la théorie des actes de commerce (1). Mais, d'autre part, le législateur fait place aussi à un critère purement formel : les sociétés dont l'objet n'est pas l'accomplissement d'actes de commerce, peuvent "emprunter" les formes des sociétés commerciales. Elles jouiront alors de la personnalité juridique et seront soumises au régime des sociétés commerciales. Cette réforme, timidement introduite par la loi du 14 juin 1926, est très imparfaite (2); elle contient cependant en germe la possibilité d'une rénovation complète de notre droit commercial. Le législateur a dû reconnaître, à cette occasion, que le critère de ce qui est "commercial", ce sont des méthodes, c'est-à-dire une forme, bien plus qu'une matière. Sous réserve de cette extension fragmentaire du droit commercial à des entreprises qui ont adopté certaines formes, l'on peut dire que la liste des entreprises économiques admises par le droit positif dans le secteur, arbitrairement limité, du droit commercial se trouve exprimée, sous une forme à la fois indirecte et confuse, dans les articles 1er à 3 du Code de commerce (dont il faut rapprocher l'article 1er des lois coordonnées sur les sociétés commerciales). Cette liste doit même être considérée comme limitative'. JEAN VAN RYN**,** *Principes de droit commercial* (Tome premier, Bruxelles, Établissements Émile Bruylant 1954) 46–47

[28] Tribunal de Justiça de Santa Catarina, Apelação Cível 5024222-97.2021.8.24.0023, Relator Desembargador Torres Marques, Julgado em 18 de março de 2021.

1.3 THE LEGISLATIVE EVOLUTION OF BRAZILIAN INSOLVENCY LAW UP TO LAW 11.101/2005

During the imperial era, bankruptcy law in Brazil[29] emerged[30] and developed over the course of at least five separate eras.[3132]

The first stage started with the passage of Law No. 556 of 1850, also known as the Commercial Code of 1850, notably Book III, 'On Bankruptcies'. According to this clause, a debtor's failure to make payments could result in bankruptcy[33] (Article 797), and under Articles

[29] The topic is part of the research that was published in 2023 in the book: JOÃO COSTA-NETO AND LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen Juris 2023)

[30] During the colonial period, Brazil relied heavily on Portuguese legislation to regulate commercial relations, including matters related to bankruptcy law. cf JOSÉ DA SILVA LISBOA, *Princípios de direito mercantil e leis de marinha* (Rio de Janeiro, Academica 1874); RODRIGO TELLECHEA, JOÃO PEDRO SCALZZILLI, AND LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina, 2018) 159

[31] 'Insolvency systems profoundly reflect the legal, historical, political, and cultural context of the countries that have developed them. Thus, even countries that share a common legal tradition, such as the United States, England, Canada, and Australia, display marked differences in how they approach both business and personal bankruptcies.16 Countries with different legal traditions, such as those within Continental Europe and Japan, currently have even more divergent bankruptcy systems, though many are moving toward the U.S. models. Given the vast cultural differences around the world, and the history of each country's economy and attitudes about money and debt, there is no one-kind-ts-all bankruptcy system for enterprises or individuals. New insolvency systems must instead reflect how individual nations have experienced the growth of market economies, and how, philosophically, countries have viewed debt. Bankruptcy systems are social tools. As such, they are value-laden and must be drafted with care to reflect the particular values of a culture. Yet the extensive availability of credit requires a face-saving way out of financial failure. Providing such a way out is a challenge many nations will face as credit is used more extensively in the new modern economy. This Article attempts to aid this transition in some small way, by helping inform the decisions made within developing systems'. NATHALIE D. MARTIN**,** 'The role of history and culture in developing bankruptcy and insolvency systems: the perils of legal transplantation' (2005) 28 *Boston College International and Comparative Law Review* 4–5 . Cf. 'Le décret de 20 mai 1955 apporta des innovations réjouissantes. Désormais la différence entre commerçant de bonne foi mais malchanceux et celui de mauvaise foi est établie. Ce décret accorda au débiteur victime d'aléas la possibilité de bénéficier d'un concordat amiable et de procéder à des négociations avec ses créanciers pour obtenir des délais de paiement ou des remises de dettes. Ce concordat amiable est appelé également « pacte d'atermoiement ou moratoire général » […] Par la suite, l'ordonnance du 23 septembre 1967 a apporté une nette amélioration qui a instauré la procédure de suspension provisoire des poursuites à l'égard des entreprises d'intérêt national ou régional. Une procédure qui a rapidement disparu, car elle n'a jamais pu s'imposer comme procédure de prévention. Elle fut abrogée par la loi n°85-99 du 25 janvier 1985 relative au redressement judiciaire et la liquidation judiciaire'. Cf. NAHID LYAZAMI**,** *La prévention des difficultés des entreprises: étude comparative entre le droit français et le droit marocain*, Tese de Doutorado, Université de Toulon, Toulon, 2013; MARCIO SOUZA GUIMARÃES**,** *Recuperação de empresas*. In: COSTA, Thales Moraes. (Org.). Introdução do Direito Francês - Vol II. 1ed.Curitiba: Juruá, 2009, p.413. For further reference on the broader influence of French law on Brazilian law, see: ANTONIO JUNQUEIRA DE AZEVEDO, 'Influência do direito francês sobre o direito brasileiro' (1994) 89 *Revista da Faculdade de Direito* 183–194; LUÍS MANUEL TELES DE MENEZES LEITÃO, *Direito da Insolvência*, 5. ed., Coimbra, Almedina, 2013, p.38; SANDRA FRISBY**,** "The effect of the Enterprise Act 2002: research into corporate insolvency", In: WOLF-GEORG RINGE *(Org.). Current issues in European financial and insolvency law: perspectives from France and the UK*, Oxford, Hart Publishing, 2009, pp. 17–44.

[32] cf MAURO RODRIGUES PENTEADO, *Comentários à Lei de recuperação de empresas e falência: Lei 11.101/2005* (São Paulo, Revista dos Tribunais, 2007) 64

[33] cf MAURO RODRIGUES PENTEADO, *Comentários à Lei de recuperação de empresas e falência: Lei 11.101/2005* (São Paulo, Revista dos Tribunais, 2007) 64

798, 799, 800, and 802 of the Code,[34] bankruptcy could be deemed 'fortuitous', 'culpable', or 'fraudulent'.

There were two legal remedies available to individual and collective enterprises in financial distress under the Commercial Code of 1850:[35] the submission of a *concordata* or the request for a moratorium. After the commencement of bankruptcy proceedings ('*quebra*'), the *concordata* could only be requested, necessitating the appointment of an administrator and the deliberation of the creditors to ascertain the most advantageous course of action.[36][37]

The Code was heavily criticized at the time,[38] even though it signaled a change away from European models and toward a homegrown approach to bankruptcy. The bankruptcy process was viewed by commentators of the time as 'the greatest harm to the very interests it sought to protect'[39] because it was long, expensive, and too complicated. The case of IRINEU

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[34] cf MAURO RODRIGUES PENTEADO, *Comentários à Lei de recuperação de empresas e falência: Lei 11.101/2005* (São Paulo, Revista dos Tribunais, 2007) 64

[35] cf MAURO RODRIGUES PENTEADO, *Comentários à Lei de recuperação de empresas e falência: Lei 11.101/2005* (São Paulo, Revista dos Tribunais, 2007) 64

[36] cf MAURO RODRIGUES PENTEADO, *Comentários à Lei de recuperação de empresas e falência: Lei 11.101/2005* (São Paulo, Revista dos Tribunais, 2007) 64

37 In the United States, during this period, the federal government passed three distinct bankruptcy statutes in the nineteenth century before the 1898 Act: the 1800, 1841, and 1867 statutes. Both were put into effect in reaction to economic crises and were later overturned. Interestingly, the combined regulatory efficacy of these three legislations was only sixteen years. TODD J. ZYWICKI and DAVID A. SKEEL**,** 'The past, present, and future of bankruptcy law in America' (2003) 101(6) *Michigan Law Review* 2018; 'The first federal bankruptcy law was passed on April 4, 1800, eleven years after the ratification of the Constituition. Pressure had been brought for a national bankruptcy law by a crash in 1792, but nothing was done untul 1797, when another panic caused widespread ruin an the imprisonment of thousands of debtors. Robert Morris, one of the main financiers of the Revolution, spent three years in debetor's prison owing $ 12 million, and Supreme Court Justice James Wilson fled from Pennsylvania to avoid a like fate. The 1800 Act finally was passed, carryng by but a single volte in the House. Federalist representatives of commercial interests pushed the bill, while the law was opposed by anti-Federalist southerners and agricultural sympathizers. The 1800 Act was designed as a temporary measure, to sunset in five years, but actually was repealed after only three'. CHARLES JORDAN TABB, 'The History of the Bankruptcy Laws in the United States' (1995) 3 *American Bankruptcy Institute Law Review* 5,14; JÉRÔME SGARD, *Bankruptcy Laws: Part of a Global History* (2009) <https://www.researchgate.net/publication/228396805_Bankruptcy_Laws_Part_of_a_Global_History>; DAVID A. SKEEL JR., *The genius of the 1898 Bankruptcy Act* (Faculty Scholarship, Paper 720, 1999); *The evolution of U.S. Bankruptcy law: a time line*. <https://www.rib.uscourts.gov/newhome/docs/the_evelution_of_bankruptcy_law.pdf>; cf. 17 US (4 Wheat) 122 (1819); *Ogden v. Saunders*. 25 US (12 Wheat) 213 (1827).

[38] cf MARIA CELESTE MORAIS GUIMARÃES, *Recuperação Judicial de Empresas – Direito Concursal Contemporâneo* (Belo Horizonte, Editora Del Rey 200) 53–54

[39] cf SALUSTIANO ORLANDO DE ARAUJO COSTA*, Código commercial do Brazil: annotado com toda a legislação do paiz que lhe é referente, com os arestos e decisões mais notaveis do tribunaes e juizes, concordado com a legislação dos paizes estrangeiros mais adiantados, com um vasto e copioso appendice, tambem annotado, contendo não so todos os regulamentos commerciaes, como os mais recentes actos do governo, quer sobre bancos e sociedades anonymas, quer sobre impostos, dispensando consultar-se a Collecção das leis do Imperio* (Rio de Janeiro: Laemmert, 1896)

EVANGELISTA DE SOUZA, VISCOUNT OF MAUÁ,[40] who was refused entry to a suspensive *concordata,* [41] serves as an example of this excessive rigidity and administrative delay.

The Chamber of Deputies enacted Legislative Decree No. 3,065 of 1882 in response to cases like that of MAUÁ. The Commercial Code was amended by this Decree, which resulted in the reduction of the quorum required for the approval of the suspensive *concordata* to a majority of those present at the creditors' meeting. Additionally, the *concordata por abandono* (*concordata* by abandonment) was established.[42]

Decree No. 917 of 1890[43] was passed during the Republican era, when the regime change was accompanied by social and political unrest. Redefining bankruptcy, which was formerly predicated on a state of insolvency to one that is now defined by payment default, was one of its main contributions.[44] Later initiatives to strengthen the bankruptcy system included the passage of Law No. 5,476 of 1929,[45] Law No. 2,024 of 1908,[46] and Law No. 859 of 1902.[47]

Following the suggestions of a committee made up of eminent jurists NOÉ AZEVEDO, JOAQUIM CANUTO MENDES DE ALMEIDA, SYLVIO MARCONDES MACHADO, PHILAPELPHO AZEVEDO, HAHNEMANN GUIMARÃES, and LUÍS LOPES COELHO,[48] Decree-Law No. 7,661 was passed in 1945. The act was drafted during the Estado Novo authoritarian dictatorship and, as a result, carried strong indications of excessive state intrusion in private concerns,[49] even if it reflected significant theoretical input from prominent legal scholars. Notable instances include the extension of court authority over bankruptcy procedures and its limitation to commercial enterprises.[50]

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[40] cf ALBERTO DE FARIA**,** *Mauá* (Rio de Janeiro, Pongetti e Cia 1926)

[41] To obtain a suspensive *concordata*, the consent of the majority of creditors was required, provided they represented at least two-thirds of the total claims.

[42] cf RODRIGO TELLECHEA, JOÃO PEDRO SCALZZILLI, AND LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina 2018) 175

[43] cf ANTÔNIO MARTINS FILHO, 'Waldemar Ferreira e a evolução doutrinal do direito mercantil' (1950) 45 *Revista da Faculdade de Direito da Universidade de São Paulo* 242–243.

[44] cf RODRIGO TELLECHEA, JOÃO PEDRO SCALZZILLI, AND LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina 2018) 179

[45] cf RODRIGO TELLECHEA; JOÃO PEDRO SCALZZILLI; LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina 2018) 189

[46] cf RODRIGO TELLECHEA; JOÃO PEDRO SCALZZILLI; LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina 2018) 183–186; ANTÔNIO MARTINS FILHO, 'Waldemar Ferreira e a evolução doutrinal do direito mercantil' (1950) 45 *Revista da Faculdade de Direito da Universidade de São Paulo* 242–43

[47] cf RODRIGO TELLECHEA; JOÃO PEDRO SCALZZILLI; LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina 2018) 183

[48] cf RODRIGO TELLECHEA; JOÃO PEDRO SCALZZILLI; LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina 2018) 189

[49] cf RODRIGO TELLECHEA; JOÃO PEDRO SCALZZILLI; LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina 2018) 191

[50] cf ANTÔNIO MARTINS FILHO, 'Waldemar Ferreira e a evolução doutrinal do direito mercantil' (1950) 45 *Revista da Faculdade de Direito da Universidade de São Paulo* 242–43

The framework of judicial rearrangement (then called '*concordata*', either preventative or suspensive) was one of the most important modifications brought about by this Decree-Law. The *concordata* had previously operated as a negotiated agreement between creditors and debtors. However, under the new administration, it was imposed by the courts in support of a debtor who was 'honest but unfortunate' and who satisfied specific legal requirements. Due to this change, the *concordata* became what was known as a 'legal favor',[51] which had a detrimental effect on the Brazilian insolvency system by paralyzing or ossifying the instrument.[52]

By denying debtors the right to voluntarily provide repayment conditions to creditors and depriving them of the power to decide whether to accept such terms, Decree-Law No. 7,661 imposed significant restrictions. Together with a delayed and inflexible procedural framework that did not adapt to the demands of the market,[53] this transfer of authority to the judiciary ultimately caused the bankruptcy and *concordata* processes to fail in practice.[54]

A 'pendular movement not only between the direct protection of the debtor's or creditors' interests, but also between the roles attributed to the latter and to the judge during the collective proceeding'[55] was discovered by Brazilian bankruptcy law after sixty years of operation under Decree-Law No. 7,661. Legal academics[56] pushed for a fundamental overhaul of the current insolvency system within the time frame covered by Decree-Law No. 7,661, reorienting the emphasis to the rehabilitation of viable companies and the swift liquidation of those that were judged unviable. As a result, the idea of protecting the business would no longer be just a goal the State judge would pursue through an onerous *concordata* proceeding[57]; rather, it would develop into a more comprehensive justification for safeguarding commercially successful companies in accordance with dominant social and economic interests.

The adoption of Law No. 11,101 of 2005 was ultimately the result of this theoretical turning point and the obvious need for reform. SHEILA CEREZETTI points out that for the first

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[51] cf ANTÔNIO MARTINS FILHO, 'Waldemar Ferreira e a evolução doutrinal do direito mercantil' (1950) 45 *Revista da Faculdade de Direito da Universidade de São Paulo* 191
[52] cf ANTÔNIO MARTINS FILHO, 'Waldemar Ferreira e a evolução doutrinal do direito mercantil' (1950) 45 *Revista da Faculdade de Direito da Universidade de São Paulo* 191
[53] cf ANTÔNIO MARTINS FILHO, 'Waldemar Ferreira e a evolução doutrinal do direito mercantil' (1950) 45 *Revista da Faculdade de Direito da Universidade de São Paulo* 192
[54] cf ANTÔNIO MARTINS FILHO, 'Waldemar Ferreira e a evolução doutrinal do direito mercantil' (1950) 45 *Revista da Faculdade de Direito da Universidade de São Paulo* 193
[55] cf SHEILA CHRISTINA NEDER CEREZETTI, *A Recuperação Judicial de Sociedade por Ações: A preservação da empresa na lei de recuperação e falência* (São Paulo, Malheiros, 2012) 74
[56] cf RODRIGO TELLECHEA; JOÃO PEDRO SCALZZILLI; LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina, 2018) 195
[57] cf JOÃO PEDRO SCALZZILLI AND LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo: Almedina, 2018) 78

time, Brazilian positive law eliminated antiquated ideas like the *concordata* and moratorium and developed procedures intended especially to help businesses overcome crises. By rejecting the notion that a debtor's assets must necessarily be liquidated in the event of financial hardship, the legislation prioritized, where practical, the payment of creditor claims through business survival.[58]

Significant modifications were introduced by Law No. 11,101 of 2005 with the goal of reviving functioning firms. These innovations included judicial and extrajudicial reconstruction methods designed to avoid premature dissolution. In keeping with this goal, the statute's Article 47 lays out precisely what the judicial restructuring framework is intended to achieve.[59]

Although Law No. 11,101 of 2005 has received a lot of acclaim, SHEILA CEREZETTI notes that the law also offered a fresh viewpoint on the bankruptcy procedure itself, especially through Article 75. This clause requires that the debtor's estate be realized jointly, giving the preservation and efficient use of the business's assets, productive resources, and operations top priority.[60]

It is worth noting that even prior to the drafting and enactment of Law No. 11,101 of 2005, Brazilian legal scholarship—particularly the work of NELSON ABRÃO[61]—had already emphasized the importance of preserving the company as a cornerstone of the social function of property. Furthermore, the legislature [62] did not anticipate any inherent conflict between the ideal of enterprise preservation and the possible misuse of reorganization instruments in its quest to advance the public interest. It was recognized that, in most circumstances, implementing such remedies for the benefit of the group would not stop these advantages from eventually being extended to businesses that were no longer viable and were therefore on the verge of going out of business.[63]

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[58] cf RODRIGO TELLECHEA, JOÃO PEDRO SCALZZILLI, AND LUIS FELIPE SPINELLI, *História do direito falimentar: da execução pessoal à preservação da empresa* (São Paulo, Almedina, 2018) 79

[59] In footnote no. 177, SHEILA CEREZETTI outlines the similarity between the wording of Article 47 of Law No. 11,101 of 2005 and Article L.620-1 of the French Commercial Code (Code de commerce): "*II est institué une procédure de redressement judiciaire destinée à permettre la sauvegarde de I'enterprise, le maintien de L'activité et de l' apurement du passif*". Ibidem, 80

[60] cf SHEILA CHRISTINA NEDER CEREZETTI, *A Recuperação Judicial de Sociedade por Ações: A preservação da empresa na lei de recuperação e falência* (São Paulo, Malheiros, 2012) 82

[61] cf NELSON ABRÃO, *O novo direito falimentar: nova disciplina jurídica da crise econômica da empresa* (São Paulo, Revista dos Tribunais, 1985) 11

[62] cf NELSON ABRÃO, *O novo direito falimentar: nova disciplina jurídica da crise econômica da empresa* (São Paulo, Revista dos Tribunais, 1985) 11

[63] Cf. PAULO DIAS DE MOURA RIBEIRO, *A função social da propriedade*, Revista Brasileira de Direito Comparado, n. 38, Rio de Janeiro, Instituto de Direito Comparado Luso-Brasileiro, 1º sem. 2010, p. 125-126

A significant gap had previously emerged between the idea of saving struggling companies and the capabilities of the current legal system to facilitate such preservation[64] under the previous framework of Decree-Law No. 7,661 of 1945. According to WALDO FAZZIO JUNIOR,[65] Decree-Law No. 7,661 represented a corporate model typical of an antiquated national economy. In contrast to the reorganization-focused framework later implemented by Law No. 11,101 of 2005,[66] it treated credit as a simple contractual obligation and neglected to consider the wider market repercussions of insolvency.

It is important to remember that the new law introduces a new era[67] in the national legal framework pertaining to financially troubled firms,[68] reshaping the paradigm of Brazilian bankruptcy law. The development of legal tools and the modification of guiding principles to facilitate the recovery and reorganization of profitable enterprises characterize this new stage. The implementation of the *stay period* regulation, which gives financially distressed enterprises temporary protection from enforcement actions and the breathing room they need to recover, is a perfect illustration of this attempt to support corporate rehabilitation.

Legislative changes were still required to enhance the regulations and procedures controlling corporate reorganization and bankruptcy processes, even if Law No. 11,101 of 2005 changed the national framework pertaining to financially challenged firms. Law No. 14,112 of 2020 was consequently passed.

A number of noteworthy modifications are introduced into the Brazilian legal system by the legislation-altering parts of the 2005 Judicial Reorganization and Bankruptcy Law, especially in the following areas: (i) modifications to the stay period that permit a one-time, extraordinary extension; (ii) processing reorganization cases with priority; (iii) the introduction of the 'preliminary verification' procedure, which permits judges to designate a professional to evaluate the financial status reported by the distressed company; (iv) statutory regulation of both procedural and substantive consolidation of companies within the same corporate group; (v) allowing creditors to submit a reorganization plan; and (vi) integrating conciliation procedures into the judicial reorganization process.

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[64] Cf.; RUBENS APPROBATO MACHADO, *Visão geral da Nova Lei 11.101, de 09 de fevereiro de 2005 que reforma o Decreto-Lei 7.661, de 21.06.1945 [...]*, São Paulo, Quartier Latin, 2005.
[65] Cf. WALDO FAZZIO JÚNIOR, *Nova lei de falência e recuperação de empresas*, São Paulo, Atlas, 2005, p.17.
[66] Cf. ADRIANA VALÉRIA PUGLIESI GARDINO**,** *A falência e a preservação da empresa: compatibilidade?*, Tese de Doutorado, Universidade de São Paulo, São Paulo, 2012, pp. 271–272.
[67] Cf. SHEILA CHRISTINA NEDER CEREZETTI, *A Recuperação Judicial de Sociedade por Ações: A preservação da empresa na lei de recuperação e falência*, São Paulo, Malheiros, 2012, p.85.
[68] Cf. SHEILA CHRISTINA NEDER CEREZETTI, *A Recuperação Judicial de Sociedade por Ações: A preservação da empresa na lei de recuperação e falência*, São Paulo, Malheiros, 2012, p.85.

Brazilian insolvency law has undergone structural changes influenced by foreign[69] legal systems, particularly US bankruptcy law.[70;71] This study, as noted by CEREZETTI,[72] can be enriched through an in-depth analysis of US bankruptcy and restructuring law, given that the American system was a pioneer in adopting legislative reforms aimed at overcoming economic crises by addressing corporate distress through a reorganization-oriented approach. According to CEREZETTI, US insolvency law evolved from specific historical and cultural circumstances, including (i) a strong desire to establish a vibrant market economy, (ii) extensive reliance on credit, (iii) a legislative intent to balance the interests of debtors and creditors, and (iv) 'the uncommon and prominent role played by lawyers in insolvency proceedings'.[73]

1.4 THE ENTERPRISE WITHIN THE BRAZILIAN JUDICIAL REORGANIZATION SYSTEM

By interpreting Articles 53 and 966 of the Civil Code in conjunction with §13 of Article 27 of the Pelé Law (Law No. 9,615/1998), the Court of Justice of the State of Santa Catarina came to the conclusion that Figueirense's status as a civil association did not preclude it from using the procedures outlined in Law No. 11,101/2005 (the Brazilian Judicial Reorganization and Bankruptcy Law). The court determined that the club's well-established activities, which

[69] 'Insolvency systems profoundly reflect the legal, historical, political, and cultural context of the countries that have developed them. Thus, even countries that share a common legal tradition, such as the United States, England, Canada, and Australia, display marked differences in how they approach both business and personal bankruptcies.16 Countries with different legal traditions, such as those within Continental Europe and Japan, currently have even more divergent bankruptcy systems, though many are moving toward the U.S. models. Given the vast cultural differences around the world, and the history of each country's economy and attitudes about money and debt, there is no one-kind-ts-all bankruptcy system for enterprises or individuals. New insolvency systems must instead reflect how individual nations have experienced the growth of market economies, and how, philosophically, countries have viewed debt. Bankruptcy systems are social tools. As such, they are value-laden and must be drafted with care to reflect the particular values of a culture. Yet the extensive availability of credit requires a face-saving way out of financial failure. Providing such a way out is a challenge many nations will face as credit is used more extensively in the new modern economy. This Article attempts to aid this transition in some small way, by helping inform the decisions made within developing systems'. NATHALIE D. MARTIN**,** 'The role of history and culture in developing bankruptcy and insolvency systems: the perils of legal transplantation' (2005) 28 *Boston College International and Comparative Law Review* 4–5

[70] cf SHEILA CHRISTINA NEDER CEREZETTI, *A Recuperação Judicial de Sociedade por Ações: A preservação da empresa na lei de recuperação e falência* (São Paulo, Malheiros, 2012) 93

[71] cf CHARLES WARREN, *Bankruptcy in United States History*, Cambridge, Harvard University Press, 1935. *The Journal of Business of the University of Chicago*, v. 10, n. 3, p. 293–294, jul. 1937.

[72] cf SHEILA CHRISTINA NEDER CEREZETTI, *A Recuperação Judicial de Sociedade por Ações: A preservação da empresa na lei de recuperação e falência* (São Paulo, Malheiros, 2012) 91

[73] cf SHEILA CHRISTINA NEDER CEREZETTI, *A Recuperação Judicial de Sociedade por Ações: A preservação da empresa na lei de recuperação e falência* (São Paulo, Malheiros, 2012) 92–93

have been going on since June 12, 1921, both at the state and national levels, could be considered a typical aspect of enterprise, or organized economic activity.[74]

Because the language of Article 1 of Law No. 11,101/2005 restricts the scope of judicial reorganization to 'entrepreneurs and business corporations' without mentioning sports groups, FIGUEIRENSE'S legal victory became a symbol in the national legal discourse.[75]

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[74] "A consideração do termo "empresário" enseja o exercício profissional de atividade econômica organizada para a produção ou circulação de bens ou serviços (art. 966 do CC). Por sua vez, as associações qualificam-se pela união de pessoas "que se organizem para fins não econômicos" (art. 53 do CC). O cotejo dessas normas conduz à conclusão de que "as associações podem desenvolver atividade econômica, desde que não haja finalidade lucrativa", conforme entendimento consolidado pelo Conselho da Justiça Federal na VI Jornada de Direito Civil (Enunciado 534). O intérprete não pode se distanciar dos fatos, na forma como são apresentados ou mesmo mediante aplicação das regras de experiência comum subministradas pela observação do que ordinariamente acontece (art. 375 do CPC). O mundo do futebol não pode ser considerado como mera atividade social ou esportiva, essencialmente por tudo que representa em uma comunidade e toda a riqueza envolvida (passes dos jogadores, patrocínios, direitos de imagem e de transmissão, entretenimento e exploração da marca). Bem difundida no Brasil pela professora Cláudia Lima Marques, ganha relevo nesta etapa cognitiva a teoria do diálogo das fontes, concebida na Alemanha pelo professor da Universidade de Heidelberg Erik Jayme. Com escopo de aperfeiçoar a interpretação jurídica de aparentes antinomias à luz dos postulados da hierarquia, especialidade e cronologia, surgem os diálogos sistemáticos de coerência, complementaridade/subsidiariedade ou de influência recíproca sistemática, os quais autorizam o trânsito entre leis, institutos, conceitos ou princípios para que se permita a melhor exegese ao caso concreto. Nessa ordem de ideias, a Lei n. 9.615/1998 (Lei Pelé), ao instituir normas gerais sobre desporto, estipula que as entidades de prática desportiva participantes de competições profissionais e as entidades de administração de desporto ou ligas em que se organizarem, independentemente da forma jurídica sob a qual estejam constituídas, equiparam-se às das sociedades empresárias (§ 13 do art. 27) (...) Assim, considerando que o teor da sentença recorrida não enfrentou a relevância e a urgência destinada à obtenção, ou não, do *stay period*, fica afastada, nesta análise cognitiva, tão somente a ilegitimidade ativa dos apelantes e seus efeitos daí decorrentes (art. 51, V, da Lei n. 11.101/2005), prejudicadas as demais teses.". Tribunal de Justiça de Santa Catarina, Apelação Cível 5024222-97.2021.8.24.0023, Relator Desembargador Torres Marques, Julgado em 18 de março de 2021. Translation: "The notion of the term *entrepreneur* (empresário) implies the professional exercise of an organized economic activity aimed at the production or circulation of goods or services, as set forth in Article 966 of the Brazilian Civil Code. Associations, in turn, are characterized by the union of individuals "organized for non-economic purposes," pursuant to Article 53 of the same Code. A comparative reading of these provisions leads to the conclusion that 'associations may engage in economic activities, provided there is no profit-making purpose,' as established by the Federal Justice Council in the VI Civil Law Conference (Enunciado 534). Legal interpretation must remain grounded in the facts as presented, as well as in the application of common experiential knowledge derived from what ordinarily occurs (Article 375 of the Brazilian Code of Civil Procedure). Football, therefore, cannot be regarded as merely a social or sporting activity, especially in light of its societal significance and the wealth it involves—player transfers, sponsorships, image and broadcasting rights, entertainment, and brand exploitation. At this cognitive stage, the *dialogue of legal sources* theory gains particular relevance—a concept widely disseminated in Brazil by Professor Cláudia Lima Marques and originally developed in Germany by Professor Erik Jayme of Heidelberg University. Aimed at refining the interpretation of apparent legal antinomies based on the principles of hierarchy, specialty, and chronology, this theory promotes systematic dialogues of coherence, complementarity/subsidiarity, or mutual systemic influence, thereby allowing a constructive interplay among laws, legal institutions, concepts, and principles to achieve a more adequate legal interpretation of the concrete case. In this vein, Law No. 9,615/1998 (the *Pelé Law*), by establishing general norms on sports, provides that sports entities participating in professional competitions, as well as governing bodies or leagues in which they are organized—regardless of their legal form—are to be treated as business corporations (§13 of Article 27). (...) Therefore, given that the ruling under appeal failed to address the relevance and urgency of granting—or not granting—the *stay period*, this cognitive analysis dismisses solely the claim of lack of standing (*ilegitimidade ativa*) of the appellants and its resulting legal effects (Article 51, V, of Law No. 11,101/2005), rendering the remaining arguments moot'.

[75] Regarding the criticism of the TJSC ruling, cf GLADSTON MAMEDE, *O risco dos juízes criativos* (São Paulo, GEN Jurídico, 2021)

The court ruling generated a great deal of discussion in Parliament, which ultimately affected the adoption of Senator Carlos Portinho's Opinion No. 129/2021-PLEN/SF. As a result of this ruling, associative clubs were included in the final version of Bill No. 5516/2019's judicial restructuring framework, which led to the passing of Law No. 14,193/2021 (Football Corporation Law). The Diário do Senado Federal No. 90 of 2021 contains documentation of this development:

> It is important to remember that the legislation also gives the debtor a choice between judicial or out-of-court reorganization. Different terms pertaining to the timing for debt settlement or the payment of creditors may be part of this option. This invention is not new. By obtaining judicial reorganization as a club—as a civil association—based on its economic activity, Figueirense established a precedent today. In any event, the payment plan will direct the proposal for debt settlement and assess the viability of its fulfillment, whether through reorganization or a creditors' procedure.[76]

The amendment to the bill ultimately led to the enactment of Article 25 of Law No. 14,193/2021 (*Football Corporation Law*), which authorized clubs as 'legitimate parties to request judicial or out-of-court reorganization, subject to the provisions of Law No. 11,101 of February 9, 2005'.

However, despite the well-intentioned nature of the legislative proposal, the modification of the reorganization framework—without deeper reflection on procedural adaptation or consideration of the particularities and need for professionalization of sports associations—may produce adverse effects within the national legal system. These risks arise not only from a market perspective but also from the absence of appropriate mechanisms in

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[76] <https://legis.senado.leg.br/diarios/ver/106830?sequencia=51&sequenciaFinal=60> Sobre o tópico: 'Bankruptcy judges enjoy neither of the twin structural protections provided by Article III of the Constitution: life tenure and compensation that cannot be diminished. Yet, they exercise broad adjudicatory powers. This Article questions whether the conventional justifications for non-Article III tribunals should apply to the bankruptcy courts and offers alternative rationales for the current system of bankruptcy courts that are absent from the literature. The first conventional justification for non-Article III tribunals - a balancing test crafted by the Supreme Court - holds that they may handle specialized matters whose substance is narrow and technical, with limited prospects for generating the political heat from which Article III is supposed to insulate the federal judiciary. But bankruptcy adjudication is not narrow and technical. Bankruptcy courts routinely decide matters covering a range of subjects as broad as the civil docket of the Article III district courts, often with the potential to spark considerable political interest. Bankruptcy cases may involve a specialized process, but their substance is not specialized. The second conventional justification assumes that appellate review by Article III courts will be sufficient to check the power of a non-Article III tribunal. Bankruptcy cases, however, generate relatively few appeals, and those cases that do make it out of the bankruptcy courts to Article HI courts face a variety of constraints as vehicles to control bankruptcy judges. Bankruptcy judges remain largely autonomous from the Article HI courts that supposedly superintend them. In spite of the inadequacy of these standard justifications, this Article makes a tentative case for non-Article III adjudication in bankruptcy. First, the autonomy of bankruptcy judges comes in part from the appointment process to the bankruptcy bench and their lack of promotion to the Article III courts. That autonomy gives them, paradoxically, a layer of insulation from outside political pressure that is the core value of Article III Second, the process for appointing bankruptcy judges has created a bench that remains oriented toward an audience - the bankruptcy bar - that holds in highest esteem professionalism'. TROY A. MCKENZIE, 'Judicial independence, autonomy, and the bankruptcy courts' (2010) 62(3) *Stanford Law Review* 747–807

Law No. 11,101/2005 capable of effectively processing reorganization requests from such entities.

To ensure a sound interpretation of this new legal provision, it is essential to analyze the uniqueness of Brazil's football market and its ongoing process of professionalization.

2. THE REALITY OF BRAZILIAN FOOTBALL: THE CLASH BETWEEN *CARTOLISMO* AND PROFESSIONAL MANAGEMENT

2.1 THE ORIGINS AND PROFESSIONALIZATION OF BRAZILIAN FOOTBALL

CHARLES WILLIAM MILLER, who was born in São Paulo in 1874, returned to Brazil in 1894 after visiting Southampton, England. He brought with him a pair of cleats, a hand pump, two balls, a book of football rules, and jerseys from the ST. MARY'S AND CORINTHIAN FOOTBALL CLUBS, where he had played (the latter of which served as the inspiration for the founding of CORINTHIANS PAULISTA).[77] CHARLES MILLER is regarded as the 'father' of Brazilian football,[78] but other sources have linked the sport's origins to earlier instances, including sailors in the cities of Porto Alegre, Recife, and Rio de Janeiro (1874)[79] and students in São Paulo (1872).

[77] <https://museudofutebol.org.br/crfb/personalidades/480271/>

[78] cf DANIEL DE ARAUJO DOS SANTOS, 'Futebol e política: a criação do Campeonato Nacional de Clubes de Futebol' (Dissertação de mestrado, São Paulo, Universidade de São Paulo, 2012) 15

[79] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 205; MARCELO FERREIRA, *Um golaço de gestão: administrando clubes de futebol* (Curitiba, Apris, 2021) 21 On the historical development in England: 'La reglamentación del fútbol –su legalización- tuvo efectos sorprendentes y lejos de acabar con él, como podía haber sucedido, (ya que es y así nació, un juego natural y espontáneo por defi nición) o quedar reducido a un pasatiempo para una élite como fue y quiso ser al principio, propició la fundación de asociaciones por todos los rincones de Gran Bretaña e Irlanda. El primer partido del que se tiene constancia, luego de la creación del reglamento, se disputó entre un equipo de la capital inglesa contra otro de Sheffi eld. El éxito fue tal, que los partidos entre las regiones comenzaron a disputarse con extraordinaria regularidad. A fi nales de la década ya existía una treintena de clubes. En el año 1871, nace la primera copa de Inglaterra (Challenge Cup), convirtiéndose en el torneo más antiguo del mundo. Si no fuese por la existencia del imperio Británico habría sido imposible que el fútbol se extendiera con la celeridad y la amplitud con que lo hizo. Fueron los marinos, viajeros y trabajadores de empresas inglesas en el extranjero quienes se encargaron de propagar la buena nueva por todo el continente europeo y más allá. La principal virtud que tuvieron fue que además de llevar consigo una pelota y las reglas, se organizaban en clubes y equipos allí donde se encontraban, siendo ésta la razón de porque los equipos más antiguos llevan nombres en inglés. Primero llegó a Holanda y a Dinamarca, pero antes de fi nalizar el siglo XIX, se jugaba en casi toda Europa, incluidos los países Mediterráneos y España. Al ingresar al siglo XX, en las Islas Británicas el balompié –como lo llamaban- ya estaba bien arraigado. Se empezó a propagar por el continente y por América del Sur, y a los lejanos confi nes de Oceanía, y no tardaría en convertirse en el más universal de los placeres de la vida, como también en una forma de ganarse la vida. El éxito del juego y la organización de competiciones, llevó a resaltar la fi gura del profesional, quien pretendía cobrar por hacer algo mejor que los demás –impulsar con los pies y la cabeza una bola elástica, con el afán, a veces desmesurado, de introducirla en el lugar solícitamente guardado por otra cuadrilla de 11 atletas y viceversa. En el año 1880 ya había profesionales en Gran Bretaña, y la Football Assotiation en el año 1885, muy a su pesar, se vio obligada a legalizar

Football was not a popular sport in Brazil in its early years[80]; instead, it was a pastime of the wealthy and English- descended.[81] Numerous other clubs were founded using the associative model after the founding of the nation's first football clubs, SPORT CLUB RIO GRANDE (1900) and ASSOCIAÇÃO ATLÉTICA PONTE PRETA (1900).[82] Since Brazil's first Civil Code would not be enacted until 1916, the lack of formal legislation on the subject—rather than the founders' preference—was the reason for this type of structure.[83]

The idea of professionalism had not yet gained traction in Brazilian sports until 1933. The professionalization movement didn't really take off until 26 August 1933 when the Federação Brasileira de Football (FBF) was established. Despite the existence of the Confederação Brasileira de Desportos (CBD), which had developed from the Federação Brasileira de Sports (1916), the FBF promoted the establishment of a professional regime as a potential remedy for the player exodus[84] and the prevalent amateurism in Brazil.[85] The

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el profesionalismo. En el año 1901, la transferencia del jugador Alfred Common, de 20 años de edad, ya delataba cifras millonarias para la época. En el año 1914 se retira. A esa altura el profesionalismo ya se había extendido por toda Gran Bretaña4. En el año 1886 se fundó por las cuatro federaciones británicas –Inglaterra, Escocia, Gales e Irlanda- la International Board, con el fi n de unifi car las reglas del fútbol que se jugaba en toda Gran Bretaña, dado que las normas surgidas de la Freemason´s en 1863, tardaron algún tiempo en ser aceptadas por todos, lo que ocurrió recién en 1871 con la constitución de la F.A. A efectos de poder jugar todos a lo mismo, fue que las cuatro federaciones decidieron crear la International Board, como único organismo competente para establecer las reglas del juego y aprobar sus modifi caciones, siendo solo ellos sus miembros. Más tarde la FIFA, desde su creación pretendió inmiscuirse, lo que no obtuvo hasta el año 1913'; ÁLVARO MARTIN DA SILVA FALCÓN, *Autonomía del derecho deportivo* in *Direito desportivo: temas selecionados* (Salvador, Faculdade Baiana de Direito 2010) 14–18

[80] In Brazil, football has historically functioned as a powerful instrument of social mobility. Beyond its cultural significance, the sport provides opportunities for individuals from disadvantaged backgrounds to achieve economic stability and public recognition. For many, football represents one of the few viable avenues for upward social advancement within a highly unequal society. Cf. MATEUS DE SOUZA MONTEIRO *et a*l, 'Craques da Vida: O Futebol Como Ferramenta de Transformação Social' (June 2021) https://semanaacademica.org.br/system/files/artigos/26_craques_da_vida_-_o_futebol_como_ferramenta_de_transformacao_social_-_com_correcoes_0_0.pdf.

[81] MAURÍCIO DRUMOND**,** *O esporte como política de Estado: Vargas* in Mary Del *PRIORE and Victor Andrade de MELO (Orgs) História do esporte no Brasil* (São Paulo, Unesp, 2009); cf RÔMULO REIS et al, 'Primeiros passos organizacionais no futebol brasileiro (1894–1933): uma análise no campo da gestão esportiva' (2013) 5(9) *Revista Brasileira de História & Ciências Sociais* 281–298

[82] <https://pontepreta.com.br/>

[83] cf ALBERTO PUGA, PEDRO SARMIENTO, AND JOSÉ BRAGA, 'Clube-empresa: a transição de um novo modelo de organização desportiva' (2000) *Revista Brasileira de Direito Desportivo*

[84] cf LUIZ MARCELO VIDERO VIEIRA SANTOS, 'A evolução da gestão no futebol brasileiro' (Dissertação de mestrado, São Paulo, Fundação Getúlio Vargas, 2002) 71

[85] cf DANIEL DE ARAUJO DOS SANTOS, *Futebol e política: a criação do Campeonato Nacional de Clubes de Futebol* (Dissertação de mestrado), São Paulo, Universidade de São Paulo, 2012. 25. O pagamento de ingressos para assistir os jogos nos estádio também foi a principal receita dos clubes no início do século XX. Cf. MARCELO FERREIRA, *Um golaço de gestão: administrando clubes de futebol*, Curitiba, Apris, 2021, pp.29-30. In the context of Spanish football, Juan Antonio Simón Sanjurjo sets forth: 'Los valores tradicionales de la aristocracia del deporte se olvidarán sustituyéndose por las nuevas obligaciones que traerá consigo la imparable profesionalización del fútbol; los aficionados comienzan a reclamar un espectáculo a la altura del precio que pagan por su entrada, y los dirigentes exigirán a los jugadores un rendimiento acorde con el sueldo que reciben. Al mismo tiempo, el proceso de "proletarización" del perfil social del futbolista sacará a la luz el verdadero conflicto de mentalidades que generaba entre los sectores más elitistas y tradicionales la progresiva pérdida de la antigua "exclusividad" que habían

Confederação Brasileira de Futebol (CBF), which is still in operation today, was the new name given to the CBD in 1979. The FBF was officially associated with the CBD once it approved the professionalization of Brazilian football.[86]

RÔMULO REIS et al and others claim that five fundamental trends influenced the early development of football management in Brazil: i) the establishment of clubs for official matches; ii) the mass adoption and popularization of football among the working class; iii) the formation of state and national sports organizations; iv) growing pressure to become professional;[87] and v) the emergence of the 'stadium era'.[88]

Decree-Law No. 3,199 of 1941, which forbade the establishment and operation of any organization structured for profit or capital investment in sports, was the first official intervention in Brazilian football. It classified sports organizations as fulfilling a patriotic duty. Law No. 6,354 of 1976, which established the employment relationship between clubs and athletes by requiring all clubs to register players using a formal labor record (work card) system, formally controlled the athletic profession much later.

Athletes and club administrators compared Brazil's associative model with England's corporate model between 1933 and 1976, especially regarding club management. In 1965, former FLAMENGO director GUNNAR GORANSSON 'was already advocating for the transformation of football clubs into corporate entities as the only way to rescue them from an impending financial crisis—a position that, at the time, was dismissed as a joke'.[89]

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disfrutado hasta ese momento. La socialización del fútbol y su profesionalización chocaba con los valores fundamentales que habían dado forma al deporte amateur, lo que generará durante los años veinte una intensa polémica entre los defensores de la pureza del *sport* y los partidarios de la transformación de esta actividad en el primer deporte-espectáculo'. JUAN A. SANJURJO**,** 'La mercantilización del fútbol español en los años veinte: de la implantación del profesionalismo al nacimiento del campeonato nacional de liga' (2011) 18 *Esporte e Sociedade* 1–30

[86] cf LUIZ MARCELO VIDERO VIEIRA SANTOS, *A evolução da gestão no futebol brasileiro* (Dissertação de mestrado, São Paulo, Fundação Getúlio Vargas, 2002) 38. Sobre a história do futebol e copas, cf DIMAS JUNIOR, *Futebol & copas: uma aula de história*, 2ª ed, Curitiba, CRV, 2021. A report on the backstage dynamics of Brazilian football, by RUY TELLES, cf.: RUY TELLES, *Os bastidores do futebol brasileiro*, Brasília, Thesaurus, 2021.

[87] Regarding the historical development of labor relations in the Premier League, NBA, and Rugby Union, see LEANNE O'LEARY, *Employment and Labour Relations Law in the Premier League, NBA and International Rugby Union* (The Hague, Asser Press, Asser International Sports Law Series; Heidelberg, Springer 2017)

[88] Rômulo REIS et al 'Primeiros passos organizacionais no futebol brasileiro (1894–1933): uma análise no campo da gestão esportiva' (2013) 5(9) *Revista Brasileira de História & Ciências Sociais* 281–298

[89] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa.* (Belo Horizonte: Sporto 2020) 207; MICHEL LAURENCE and NARCISO JAMES, *Como devem ser nossos times*. Placar Magazine, n.24. São Paulo: 28 ago. 1970, 38.

2.2 THE *CARTOLISMO* PHENOMENON IN BRAZILIAN FOOTBALL

According to LUCIANO MOTTA, who provides an example of this comparative perspective, Goransson's comments highlight a way of thinking that some club directors had that would later be referred to as *cartolismo*.

Legislative consultant EMILE BOUDENS, writing in support of the creation of a Parliamentary Inquiry Commission to investigate the legality of the sponsorship agreement between the BRAZILIAN FOOTBALL CONFEDERATION (CFB) and NIKE, identified the phenomenon of *cartolismo* as a significant barrier to the professional management of Brazilian football clubs in a study prepared by the Brazilian Chamber of Deputies:

> [S]port as spectacle, or high-performance professional sport, needs to develop business-oriented activities to be financially sustainable. Even though most sports executives may disagree, professional sport has grown too complicated and risky to rely only on instinct, goodwill, passion, "love for the club," or the generosity of traditional administrators in an era characterized by globalization, fierce competition, and total quality management. This situation has led to initiatives to rid sports organizations of paternalism, which has long been seen as the characteristic of club management under conventional leadership, or cartolas.
> Nowadays, many people view cartolismo as a regressive force because it has come to be associated with managerial amateurism, the brutal quest for political power, unsafe and uncomfortable stadium environments, club account deficits, tax evasion, the accumulation of debts with the Social Security Administration and the Federal Revenue Service, the lack of transparency in player transfer agreements and broadcasting, the transfer of decision-making authority from general assemblies to deliberative councils, and ill-planned competition calendars. Despite their possible interest in investing in or attracting investment in the sports sector and, consequently, in making football clubs financially viable, it is thought to be one of the primary reasons why investment banks, sports marketing companies, and player intermediary agencies are reluctant to enter into partnership agreements. [90]

In Brazil, a political force known as *cartolismo* came to control the general assemblies, executive boards, and deliberative councils of sports associations. This force operated through a management style that was geared toward advancing interests unrelated to the bylaws of the associations [91] and frequently did not follow good governance practices.[92]Additionally, there is the prevalent reality of a management style that seeks competitive success at the expense of fiscal restraint and economic rationale, an approach that invariably leads to financial disaster.[93]

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[90]<https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-temporarias/parlamentar-de-inquerito/51-legislatura/cpinike/notas/cpinike_181000.pdf>

[91] cf LUIZ MARCELO VIDERO VIEIRA SANTOS, *A evolução da gestão no futebol brasileiro* (Dissertação de mestrado, São Paulo, Fundação Getúlio Vargas, 2002) 20

[92] cf LUIZ MARCELO VIDERO VIEIRA SANTOS, A evolução da gestão no futebol brasileiro (Dissertação de mestrado, São Paulo, Fundação Getúlio Vargas, 2002) p.62.

[93] cf LUIZ MARCELO VIDERO VIEIRA SANTOS, A evolução da gestão no futebol brasileiro (Dissertação de mestrado, São Paulo, Fundação Getúlio Vargas, 2002) p.21.

As JOSÉ CARLOS BRUNORO[94] pointed out, the main requirement of the Brazilian football market is not necessarily the implementation of a strictly corporate management model,[95] but rather the adoption of a professional stance by sports association managers. The primary source of the financial problem in Brazilian football,[96] a management style characterized by expenses that continuously surpass earnings, may be avoided with such a strategy.

MARCELO FERREIRA'S summary of football management models across European nations is noteworthy. Most clubs in England choose the corporate model because corporations and limited liability companies (SAs) enjoy limited liability protection while associations are held jointly accountable for their debts. Since 1966, professional football in Italy has had to be a corporation, either as a joint stock company or as a limited liability company. Since 1990, associations in Spain that experience financial deficits for three consecutive fiscal years are required to become business entities. Germany gave associations permission to become corporations in 1998 if they kept majority ownership, or more than 50% of the shares or equity. Finally, in France, the legislation permits association executives to be paid, and the conversion to corporation form is allowed but not required.[97]

RODRIGO R. MONTEIRO DE CASTRO examines the financial decline of football's civil associations and attributes it to factors such as '(i) financial weakening; (ii) lack of access to funding and financing, including for the development, education, and maintenance of players; and (iii) dependence on the CBF'.[44] He also finds that these associations are vulnerable to intricate internal power structures and lack the institutional strength to overcome crises. Furthermore, he highlights that 'private actors would not venture into an environment that, up until now, has been dominated by *cartolismo*, club politics, and a lack of transparency in the absence of a clear and structurally oriented public policy.'obligatory.[98].

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[94] cf RAFAEL VALENTE AND MAURÍCIO C. SERAFIM, 'Gestão esportiva: novos rumos para o futebol brasileiro' (2006) 46 *RAE-Documento* 131–136; J. CARLOS BRUNORO; ANTONIO AFIF, *Futebol 100% profissional* (São Paulo, Gente, 1997)

[95] cf MARCELO FERREIRA, *Um golaço de gestão: administrando clubes de futebol*, Curitiba, Apris, 2021, p. 112.

[96] cf JOSÉ EDUARDO RIBEIRO GOMES, *A Sociedade Anônima do Futebol: seria essa a solução para a melhoria da condição financeira dos clubes de futebol brasileiros?*, Uberlândia, Universidade Federal de Uberlândia, 2023.3, p.19.. Cf., JOSÉ F. C MANSOUR.; CARLOS E. AMBIEL. *A SAF, os "anjos" do apocalipse e a decisão judicial do Cruzeiro*. Migalhas. [S. l.], 6 abril de 2022 2022. Available at:<https://www.migalhas.com.br/coluna/meio-de-campo/363264/a-saf-os-anjos-do-apocalipsee-a-decisao-judicial-do-cruzeiro>. Cf. ANTONIO CARLOS DE AZAMBUJA, Clube-empresa: preconceitos, conceitos e preceitos, Porto Alegre, Sergio Antonio Fabris Editor, 2000, p.31.

[97] cf MARCELO FERREIRA, *Um golaço de gestão: administrando clubes de futebol* (Curitiba, Apris, 2021), 112

[98] On professionalism in French football: " 'En cette nuit du 20 au 21 novembre 1932, il est aux environs de 2 h 30 du matin lorsqu'un incendie d'une violence inouïe se déclare au stade de la Cavée Verte du Havre. En quelques heures, et malgré les efforts soutenus des pompiers, la tribune centrale de l'enceinte part en fumée. Pour le président du Havre Athletic Club (HAC), Albert Shadegg, le coup est dur à encaisser. Ce stade, qui vient en partie d'être réduit en cendres, était l'un des symboles de la longue histoire du club havrais. Bâti à l'initiative de Shadegg

Since they govern the club's interaction with society, which frequently sees football as a means of upward mobility,[99] cartorial politics—embodied by the directors who have political authority over the association[100]—have a direct effect on the social component. Given the ongoing lack of transparency and the increasing debt of sports associations,[101] they also have an impact on the economic aspect.

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en pleine Première Guerre mondiale, il témoignait de l'abnégation du président havrais à maintenir en vie le club en des temps si peu propices à la pratique du football. Grâce à cela, le « doyen » des clubs français avait survécu à la Grande Guerre et s'était imposé au lendemain de celle-ci comme l'une des forces majeures du football français. Finaliste de la Coupe de France 1920, le HAC avait fourni dans les années 1920 plusieurs joueurs à la sélection nationale, dont Robert Accard et Albert Rénier. En compagnie de son rival de toujours, le Football Club Rouen (FCR), il avait également brillé dans les compétitions régionales. Entre 1920 et 1933, HAC et FCR avaient ainsi dominé sans partage le championnat de Normandie, ne laissant filer le titre régional qu'au Stade Havrais en 1928. Rouen-Le Havre, Le Havre-Rouen : ces deux rencontres constituaient alors le grand rendez-vous de la saison, celui à ne manquer sous aucun prétexte. Et c'est dans cette rivalité régionale que se trouve peut-être l'origine du drame du 21 novembre 1932. En effet, quelques heures avant l'incendie, les Rouennais, déjà assurés d'être champions de Normandie, étaient venus corriger les Havrais sur leur propre terrain (1-6). Alors, quand l'enquête révèle que l'incendie de la Cavée Verte n'avait rien d'accidentel, puisque trois foyers distincts ont été allumés, une question est rapidement soulevée dans la presse : le pyromane serait-il un "supporter par trop fanatique et un peu déséquilibré" qui aurait cherché "à se venger de la déconvenue qu'il avait connue pendant le matin" ? Jamais publiées dans la presse, les conclusions de l'enquête resteront entourées de mystère. En émettant l'hypothèse qu'un supporter déçu ait voulu détruire le stade de la Cavée Verte après une défaite, les journaux témoignent de l'émergence de ce nouvel acteur jouant un rôle de plus en plus important dans le football français. Autrefois réservé aux joueurs sur la touche et aux dirigeants de clubs, le terme « supporter » avait évolué pour désigner des « individus qui ne sont ni pratiquants ni membres de l'association sportive » mais qui viennent au stade pour encourager leur équipe. Souvent enthousiastes, bruyants et parfois violents, ces nouveaux venus prennent une place de plus en plus importante dans la vie des clubs à partir de l'instauration du professionnalisme en 1932. Au Havre, ce « tournant » a mis en péril le club. En grandes difficultés financières, celui-ci n'est pas passé loin de devoir abandonner le professionnalisme, ou pire encore, de déposer le bilan. L'objectif de cet article sera donc d'étudier le rôle des supporters havrais dans cette crise traversée par le club. Dans les lignes qui suivent, nous tenterons de déterminer comment, devenus tout autant des soutiens indispensables qu'un contre-pouvoir émergent, ils se sont affirmés comme des acteurs majeurs de la sauvegarde du club doyen JULIEN FREITAS, *«* Les supporters du Havre et le "tournant" du professionnalisme (1933–1939): un soutien vital pour le club "doyen"? *», Football(s). Histoire, culture, économie, société*, v. 4, 2024.

[99] cf JOSÉ CARLOS MARQUES et al., 'Os clubes-empresa da segunda divisão do campeonato paulista no futebol 2008 e as relações com seus grupos de interesse', (2009) 1 *Revista Conhecimento Online* 105–119., pp. 109-.110. Para mais, cf.: J. CARLOS BRUNORO; ANTONIO AFIF, *Futebol 100% profissional*, São Paulo, Gente, 1997; E S. L. GUEDES, *O Brasil no campo de futebol: estudos antropológicos sobre os significados do futebol brasileiro*, Niterói, Eduff, 1998.

[100] cf RODRIGO R. MONTEIRO DE CASTRO, *Para o torcedor brasileiro sonhar – e comemorar* <https://www.migalhas.com.br/coluna/meio-de-campo/335847/para-o-torcedor-brasileiro-sonhar---e-comemora>

[101] cf RODRIGO R. MONTEIRO DE CASTRO**,** *Sunderland, o futebol brasileiro, a SAF e o problema do cartolismo*. < https://www.migalhas.com.br/coluna/meio-de-campo/365189/sunderland-o-futebol-brasileiro-a-saf-e-o-problema-do-cartolismo>. In the Italian context, NICLA CORVACCHIOLA and GIUSEPPE FEBBO provide an overview of the legal framework: "Non sorprende, allora, che accanto alla dimensione meramente ludica e sociale del fenomeno sportivo si sai sempre più affermata, gradualmente, quella economica, tanto che gli analisti di settore, alla luce dei dati relativi al fatturato, lo hanno collocato, a buon diritto, tra le maggiori realtà economico-finaziari planetarie (si stima che solo il setorre professionistico europeo generi um fatturato di circa 15 milardi di euro). Siamo in presenza, dunque, di uma vera e propria componente macroeconomica di sistema". NICLA CORVACCHIOLA; GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale*, [s.l.], Cesi Multimedia, 2012, 2. Cf. LUCIANO DE CAMPOS PRADO MOTTA**,** *O mito do clube empresa*, Belo Horizonte, Sporto, 2020, 80; and FERNANDA MAGNI BERTHIER**,** *SAF Botafogo: o que os mecanismos de combate à crise financeira podem ensinar*. Available at: https://www.conjur.com.br/2024-jan-10/saf-botafogo-o-que-os-mecanismos-de-combate-a-crise-financeira-podem-ensinar/. Concerning the

The financial instability of sports groups was already apparent as early as the 1970s, leading to player strikes, credit risk, and legal claims, among other repercussions. According to LUCIANO MOTTA, the three main football teams in the Brazilian federative state of Minas Gerais owed a total of €2.85 billion throughout this time period. THE VASCO DA GAMA FOOTBALL TEAM[102] only had a budget surplus in four fiscal years between 1947 and 1973, while the CORINTHIANS[103] declared a total debt of over €1.9 billion[104] in 1974.

During this period, the Legislative Branch introduced Bill No. 966/1972, proposed by Federal Deputy MAURÍCIO TOLEDO, which sought to align Brazilian football with a business-

administration of sports clubs, cf. PAULO SÉRGIO MARTINS; MARCO AURÉLIO PAGANELLA, *Gestão dos clubes esportivos*, São Paulo, Editora Ícone, 2016.

[102] <https://crvascodagama.com/>

[103] <https://www.corinthians.com.br/>

[104] Cf., LUCIANO DE CAMPOS PRADO MOTTA. *O mito do clube empresa.*Belo Horizonte: Sporto, 2020, p.207. Cf. ANTONIO CARLOS DE AZAMBUJA, Clube-empresa: preconceitos, conceitos e preceitos, Porto Alegre, Sergio Antonio Fabris Editor, 2000, pp.22-23; MARCELO FERREIRA, *Um golaço de gestão: administrando clubes de futebol*, Curitiba, Apris, 2021, p.114. On the studies concerning Porto, a football club from Portugal: "Tal como concluiu (Gerrard, 2005), no seu estudo realizado com equipas dos principais campeonatos ingleses, o desempenho desportivo de uma equipa está dependente da qualidade dos seus atletas, por sua vez quanto melhor for esse desempenho, maiores serão, igualmente, os rendimentos desse mesmo clube. No entanto, este autor encontrou evidência para a existência de um trade-off entre o desempenho desportivo e o desempenho financeiro, ou seja, quanto maior for um, haverá tendência para que o outro seja mais reduzido, provavelmente, devido à melhor performance financeira advir do menor investimento no plantel". JOSÉ MIGUEL MARQUES DOS SANTOS, *O Team Manager na gestão operacional de uma equipa de futebol da Futebol Clube do Porto – Futebol, SAD* (Dissertação de Mestrado), Porto, Universidade do Porto, 2019, p. 17. "De uma maneira mais geral, Lussier & Kimball (2013) dividem as funções de um gestor do desporto em quatro grandes áreas, tal como é feito por outros autores. Uma delas é o planeamento, que é por onde, geralmente, tudo começa, e consiste, basicamente, em estabelecer onde se está, onde se quer chegar e o que se vai fazer para lá chegar. Outra é a organização, que é descrita pelos autores como a alocação dos recursos disponíveis a cada atividade e a sua coordenação. No fundo, acaba por ser a operacionalização do planeamento. A terceira área que vou mencionar é a liderança, que é uma sub-área da gestão bastante estudada e analisada, que é exposta como um processo de motivação e influência dos colaboradores com a finalidade de que todos remem para o mesmo lado com todas as suas forças e habilidades, não porque são obrigados, mas porque sentem que é o que está certo. Por fim, outra área não menos relevante, é o controlo. Não chega analisar-se no final do plano se atingimos o objetivo ou não, ao longo de todo o processo é imperioso estabelecer algumas metas volantes ou outros mecanismos de controlo para que se perceba se se está a ir no caminho certo, ou se é necessário fazer algum ajuste. Estas quatro áreas não são desempenhadas sempre de forma independente, às vezes são desenvolvidas simultaneamente, o que faz sentido até porque dependem umas das outras, dependendo o tempo que é necessário gastar em cada uma do tipo e tamanho da organização em que se está, assim como do nível hierárquico do próprio gestor. Estas áreas de ação também são desempenhadas por gestores de organizações não desportivas, no entanto, existem particularidades associadas ao desporto que os gestores do desporto, obrigatoriamente, têm que ter em consideração. No fundo o gestor do desporto tem de perceber que o negócio desportivo tem um quê de irracionalidade, mas que em muitas ocasiões e decisões tem de ser contraposta com técnicas de gestão racionais, profissionais e similares às usadas nas outras instituições. Isto é, tanto quanto possível, essa sobreposição dos sentimentos à razão tem de ser deixada para os clientes do desporto, isto é, os adeptos. Ao olharmos para as medidas de sucesso e para os objetivos finais de organizações desportivas e não desportivas, conseguimos encontrar mais um ponto em que diferem. Se nas desportivas, apesar do cada vez maior interesse na componente financeira, a medida do sucesso é, na esmagadora maioria dos casos, o desempenho desportivo, nas restantes o ano ser positivo ou não, mede-se, quase exclusivamente, pela performance a nível financeiro, ou seja o que conta são os lucros. Lucros esses que serão maiores quanto menor fôr a concorrência. No desporto, por outro lado, os vários competidores são interdependentes, isto é, qualquer clube quer vencer os rivais, mas não quer que eles acabem, pois isso traduzir-se-ia no seu próprio fim, visto que a alma do negócio é a competição". JOSÉ MIGUEL MARQUES DOS SANTOS, *O Team Manager na gestão operacional de uma equipa de futebol da Futebol Clube do Porto – Futebol, SAD* (Dissertação de Mestrado), Porto, Universidade do Porto, 2019, pp.12-13.

oriented organizational model by amending Decree-Law No. 3,199/1941 (which prohibited the organization of football with profit-making purposes). In the justification for the bill, Deputy MAURÍCIO TOLEDO described the situation facing Brazilian football at the time:

> Brazilian football does not have a business-minded mindset. Our clubs are run by executives chosen based on geographical allegiances, emotional appeals, and insufficient policies. Recent news reports have revealed the chaos inside clubs with a lengthy history and obvious relevance, where political ploys are planned to remove and change directors. Every strategy is considered and every means are used, with the exception of the one that puts the organization's best interests first.
> In addition, Brazilian clubs are collapsing. The majority of them, particularly the most well-known, are caught in a never-ending financial crisis cycle. They don't have enough money to compensate their athletes. Why? due to their absence of a corporate framework.
> Newspapers recently reported that a sizable group of São Paulo-based businesspeople, realizing that our football team would go bankrupt without an institutional business model, suggested to the appropriate authorities that football corporations be established, complete with shares, public capital offerings, and other business mechanisms.(...)
> This is the current bill's justification. By removing the current legal provision, I hope to give Brazilian football teams a genuine chance to restructure as corporate entities and permanently escape the precarious situation in which they currently function—reliant on financial institutions or government subsidies.[105]

During the legislative process of Bill No. 966/1972, the Finance Committee issued an opinion against its approval, arguing that the proposal was unsuitable for Brazilian sports. The Committee cited an opinion from the *Confederação Brasileira de Desportos* (CBD),[106] which stated the following:

> And maybe it's because of the fight for survival, the sense of club identity, the colors and symbols, the modest but committed directors, and the governing bodies that give up their own resources that Brazilian football has won the world championship three times and taken home the coveted Jules Rimet Trophy, which so many countries have long coveted, by defeating a team that was the epitome of Montecatini, Alfa Romeo, Fiat, and Linea C's economic might.

The bill was approved by the Chamber of Deputies on 7 August 1974 and then sent to the Federal Senate, despite the Finance Committee adopting the CBD's stance and recommending its rejection. Bill No. 966/1972 was finally defeated on 19 March 1975 in the Senate, where it was designated as Chamber Bill No. 87 of 1974.

About nineteen years after Bill No. 966/1972 failed to pass, the Executive Branch proposed Bill No. 965/1991 in an attempt to create broad rules governing sports in Brazil. After being passed into law, the bill was dubbed the Zico[107] Law (Law No. 8,672/1993). According

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[105]<https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1191116&filename=Dossie-PL%20966/1972>

[106] Cf. LUIZ MARCELO VIDERO VIEIRA SANTOS, *A evolução da gestão no futebol brasileiro* (Dissertação de mestrado, São Paulo, Fundação Getúlio Vargas, 2002) 21, 46

[107] Concerning the footballer Zico, see <https://www.ebiografia.com/zico/>

to Article 11 of the statute, 'Sports practice entities and national governing bodies of professional sports disciplines are permitted to manage their activities through for-profit companies'.

2.3 FROM *CARTOLISMO* TO CORPORATE GOVERNANCE: LEGISLATIVE ATTEMPTS TO REFORM BRAZILIAN FOOTBALL

The Zico *Law* did not merely address the regulation of sports practice entities but also intervened in the internal affairs of sports associations. Notable provisions include the following: (i) the prohibition on participation in competitions in cases of delayed salary payments to athletes (Article 22, §1); (ii) the establishment of minimum and maximum terms for athletes' employment contracts (Article 23); (iii) criteria and conditions for the payment of transfer fees;[108] (iv) a ban on amateur athletes over the age of 21 participating in professional sports competitions (Article 27); and (v) the prohibition of administrators or members of the fiscal councils of sports practice entities from serving in the governing bodies of sports administration (Article 60).[109]

In Brazil's[110] current endeavor to implement the club-company model (*clube-empresa*), Article 11 of the Zico Law served as a legislative leader. It allowed for-profit companies to manage sports activities in one of three ways: (i) turning the club into a commercial company with a sporting purpose; (ii) incorporating a commercial company with a sporting purpose, in which case the club would retain a majority of voting capital; or (iii) hiring a commercial company to manage the club's sporting activities. However, there is a restriction that forbids sports entities from using their property, sporting assets, or social facilities to provide guarantees or contribute capital unless authorized by an absolute majority of the general assembly of members.[111]

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[108] The 'passe' was a legal instrument, no longer in force in Brazil, through which an athlete was authorized to transfer from one club to another, either without cost or upon payment of the so-called 'passe' fee. cf EDSON HIRATA AND FERNANDO AUGUSTO STAREPRAVO, 'Lei Zico: os bastidores de um gol anulado' (2020) 9(7) *Research, Society and Development* 1–17 <http://dx.doi.org/10.33448/rsd-v9i7.3534>

[109] cf ANTONIO CARLOS DE AZAMBUJA, 'Clube-empresa: preconceitos, conceitos e preceitos', Porto Alegre, Sergio Antonio Fabris Editor, 2000, p.248.

[110] cf ANTONIO CARLOS DE AZAMBUJA, 'Clube-empresa: preconceitos, conceitos e preceitos, Porto Alegre, Sergio Antonio Fabris Editor, 2000, 248; LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 209

[111] It is important to note that, during the 1990s, the 1916 Civil Code was still in force in Brazil and, therefore, did not regulate certain corporate forms later addressed by the 2002 Civil Code (currently in effect). Accordingly, the commercial company referred to in the Zico Law was that provided for in the Commercial Code of 1850 (Articles

The RIO DE JANEIRO FUTEBOL CLUBE LTDA. was established during this time under the legal structure of a limited liability company (*sociedade por quotas de responsabilidade limitada*), which was regulated by Decree No. 3,078 of 1916. With Zico owning 95% of the capital shares,[112] it was eventually renamed CENTRO DE FUTEBOL ZICO DO RIO SOCIEDADE ESPORTIVA LTDA, becoming Brazil's first club-company.[113]

According to ANTONIO CARLOS DE AZAMBUJA, club directors engaged in vigorous lobbying of members of Congress during the legislative process of the bill that was later enacted as the Zico Law. This lobbying was 'strangely supported, either covertly or overtly, by the leaders of the confederations' and ultimately prevented the law from requiring football clubs to be run as for-profit corporations.[114] Rather than making this change mandatory, the final version of Zico Law made it optional.[115] AZAMBUJA draws attention to the provision's inefficiency and suggests remedy avenues that are legally sound but practically unlikely, if not completely impossible.[116]

Congress enacted Law No. 9,615/1998, also referred to as the Lei Pelé nationwide, to repeal the Lei Zico. The issue of turning associations into for-profit businesses was not only changed in this new legal framework, but it also became the part of the law that has been updated the most since it was passed, as LUCIANO MOTTA notes.[117]

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300 to 334) and in Decree No. 3,708/1919, which established that, in addition to the companies referred to in Articles 295, 311, 315, and 317 of the Commercial Code, limited liability quota companies (*sociedades por quotas de responsabilidade limitada)* may also be formed.

[112] cf *Clube-empresa dá prejuízo a Zico* <https://www1.folha.uol.com.br/fsp/esporte/fk300925.htm>

[113] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 209.

[114] According to NICLA CORVACCHIOLA and GIUSEPPE FEBBO, a similar debate took place in Italy: 'Pertanto, le associazioni sportive deliberarono il proprio scioglimento in via autonoma, constituendosi in forma de società di capitali com l'apporto dei membri già facenti parte degli organismi dissoltisi. Ll secondo provvedimento, invece, fu assunto in data 16 dicembre 1966 e si concretizò nella predisposizione di un modello standard di statuto societario che tutte le società calcistiche, obbligatoriamente, avrebbero dovuto adottare, com l'spressa previsione del divieto di perseguire in lucro, o meglio, di ridistribuire utili di bilancio eventualmente realizzati ai socci; in tale ipotesi, tali utili avrebbbero dovuto essere destinati a favorire la migliore attuazione delle finalità sportive e a sostenerle in maniera più incisiva'. NICLA CORVACCHIOLA AND GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale* ([s.l.], Cesi Multimedia 2012) 10–11

[115] ANTONIO CARLOS DE AZAMBUJA, *Clube-empresa: preconceitos, conceitos e preceitos* (Porto Alegre, Sergio Antonio Fabris Editor 2000) 249

[116] cf ANTONIO CARLOS DE AZAMBUJA, Clube-empresa: preconceitos, conceitos e preceitos (Porto Alegre, Sergio Antonio Fabris Editor 2000) 255. In the Italian context, NICLA CORVACCHIOLA and GIUSEPPE FEBBO offer the following perspective: 'Pertanto, i primi sodalizi furono concepti quali strutture associative modellate sullo schema giuridico tipico delle associazioni non riconosciute (artt. 36,37 e 38 c.c.), operanti senza il perseugimento di finalitá lucrative, prive di personalità giuridica e finanziate meidante l'apporto di beni e contributi da parte degli associati che, confluendo in um fondo comune, constituivano idonea forma di garanzia verso i terzi, pur permanendo la responsabilità degli associati medesmi (...) Tuttavia, la progressiva diffusione del calcio e l'aumento di interesse intorno al fenomeno resero le associazioni sportive consapevoli del fatto che il mero ed esclusivo contributo finanzario degli associati non sarebbe stato più sufficiente a sostenere spese sempre crescenti'. NICLA CORVACCHIOLA AND GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale* ([s.l.], Cesi Multimedia 2012) 5

[117] cf LUCIANO DE CAMPOS PRADO MOTTA. *O mito do clube empresa (*Belo Horizonte: Sporto 2020) 209

The Lei Pelé was the result of the combination of two bills that were being considered in the Chamber of Deputies: Bill No. 1,159/1995, which governed professional athletes' labour relations, and Bill No. 3,633/1997, which was introduced by Federal Deputy EURICO MIRANDA, who for many years was the head of the football team VASCO DA GAMA.

According to the original language of the Lei Pelé, professional athletic competition-related activities were only permitted for the following entities: i) for-profit corporations; ii) commercial companies approved by relevant laws; and iii) sports organizations that established a commercial company to oversee the activities covered by the law.

The law further stated that any organization that violated its terms would have its operations halted for the duration of the violation. In other words, according to Article 94, establishing a corporate structure was required[118] and had to be done within two years; however, Law No. 9,940/1999 later extended this deadline to three years.

The obligatory necessity was short-lived. Law No. 9,981/2000, which amended Article 27 of the Lei Pelé in 2000, stated that professional sports organizations could, but were not required to, either i) become for-profit civil societies, ii) become commercial companies, or iii) create or hire a commercial company to oversee their professional operations. Furthermore, the penalty mentioned in the only paragraph was removed.[119]

The explanation for the urgency mandated by the Federal Constitution was given in the annex (statement of reasons) of the Provisional Measure[120] No. 2,011-9/2000, which gave rise to this amendment. RAFAEL GRECA DE MACEDO, Minister of Sport and Tourism, stated the following in the paper published in the *Diário do Congresso Nacional* No. 30 of 2000:

> Furthermore, the measure is urgent because it aims to stop the documented practice of cartelization, especially in professional football, by businesses that associate themselves with clubs in different ways and establish new corporate entities while also controlling—through legal means—many clubs that compete in the same competition. The public is well aware that this circumstance could result in match-fixing, and the national media has covered it.[121]

Even if other factors might have been at play in reality, it is clear that at the time, the main concern was competitive in nature—especially considering the possibility that commercial companies could interfere with football club management and possibly rig games.

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[118] cf ANTONIO CARLOS DE AZAMBUJA, *Clube-empresa: preconceitos, conceitos e preceitos* (Porto Alegre, Sergio Antonio Fabris Editor 2000) 277–278

[119] cf ANTONIO CARLOS DE AZAMBUJA, *Clube-empresa: preconceitos, conceitos e preceitos* (Porto Alegre, Sergio Antonio Fabris Editor 2000) 295

[120] A Provisional Measure is an act with the force of law issued by the President of the Federative Republic of Brazil in cases of urgency and relevance, as provided for in Article 62 of the Federal Constitution. It enters into force immediately but must be approved by the National Congress within 120 days to become permanent law.

[121] <https://legis.senado.leg.br/diarios/ver/14262?sequencia=475>

As LUCIANO MOTTA[122] points out, several teams went on to become for-profit in this situation. The first sports joint-stock company in Brazil was established by ESPORTE CLUBE BAHIA[123] and OPPORTUNITY Bank. Bank owns 51 percent, ESPORTE CLUBE BAHIA owns the remaining shares. Vasco da Gama later founded VASCO LICENCIAMENTOS SA with the BANK OF AMERICA.

Other teams, like SÃO PAULO[124] FC, PARANÁ CLUBE,[125] BOTAFOGO, and CORITIBA FOOT BALL CLUB[126] projected intentions to become joint-stock firms; some even hoped to go public. However, due to either insufficient accounting procedures[127] or non-compliance with the standards established by the BRAZILIAN SECURITIES COMMISSION (CVM),[128] no Brazilian club has been successful in becoming a publicly traded joint-stock corporation to date.

Law No. 14,597/2023 (General Sports Law), which was passed after the Lei Pelé, significantly changed how sports were regulated in Brazil. The new law encompasses financial incentives, sports entity autonomy, accountability in sports management, and funding.

One of the most significant changes is made to sports governance: Article 66 states that the personal assets of directors of sports organizations are now susceptible to piercing of the corporate veil under Article 50 of the Civil Code (2002), regardless of the legal form chosen. These directors are held equally and completely accountable for illegal activities as well as for unapproved, careless, or irregular management choices that go against the articles of incorporation or bylaws.[129]

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[122] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 210
[123] <https://www.esporteclubebahia.com.br/>
[124] <https://www.saopaulofc.net/>
[125] <https://paranaclube.com.br/>
[126] <https://www.coritiba.com.br/>
[127] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 212
[128] The Brazilian Securities and Exchange Commission (CVM) was established on December 7, 1976, by Law No. 6,385/76, with the purpose of supervising, regulating, overseeing, and promoting the development of the securities market in Brazil. https://www.gov.br/cvm/pt-br/acesso-a-informacao-cvm/institucional/sobre-a-cvm cf Gabriel ARISA, *SAFs e o acesso ao mercado de capitais* <https://www.conjur.com.br/2023-set-21/gabriel-arisa-safs-acesso-mercado-capitais/> Conferir Parecer da CVM sobre as Sociedades Anônimas de Futebol (SAF) e o mercado de capitais. <https://www.gov.br/cvm/pt-br/assuntos/noticias/2023/cvm-divulga-parecer-de-orientacao-sobre-as-sociedades-anonimas-de-futebol-saf-e-o-mercado-de-capitais>
[129] Article 67 provides a non-exhaustive list of what may constitute acts of irregular or reckless management: (I) using the organization's assets or funds for personal benefit or for the benefit of third parties; (II) obtaining, for oneself or for others, undue advantages that result in or may result in harm to the sports organization; (III) entering into a contract with a company in which the executive, their spouse or partner, or relatives by blood or affinity, in a direct or collateral line up to the third degree, are partners or managers, except in the case of sponsorship or donation agreements that benefit the sports organization; (IV) receiving any payment, donation, or other form of transfer of resources from third parties who, within a period of up to one (1) year before or after the transfer, have entered into a contract with the sports organization; (V) anticipating or committing revenues in a manner inconsistent with the provisions of the law; (VI) failing to transparently disclose management information to the members; and (VII) failing to account for public funds received.

The General Sports Law lays out the following fundamental guidelines for the administration and marketing of sports on a normative level, even though they might not have direct legal implications (Article 2, sole paragraph): i) openness in finances and administration; ii) honesty and ethics in sports administration; and iii) club directors' social duty.

Financial mechanisms support these ideals. Sports organizations that want to obtain federal public subsidies, whether directly or indirectly, or lottery and prize contest revenues must fulfill several standards. These include i) keeping good standing with tax and labor authorities, backed by the appropriate clearance certificates or, in the case of refinancing, a certificate with the same legal effect; ii) allocating all financial results exclusively to the organization's maintenance and social objectives; iii) demonstrating financial viability and autonomy in their most recent financial statements, along with a formal declaration by their chief executive officer; and iv) maintaining transparency in management practices, including economic and financial data, contracts, sponsorships, image rights, intellectual property, and all other management aspects.

The General Sports Law was not designed to help organizations with for-profit objectives, as seen by the requirement that all financial gains be reinvested in the organization. State that a primary goal of for-profit businesses is maximizing profit (generating value for stakeholders). Non-profit sports associations, which were already obligated to reinvest all surplus revenue into their core operations, are obviously the target of these benefits.

The General Sports legislation addressed additional issues unique to sports legislation and the promotion of athletic activity, but it did not address the topic of corporate football clubs (club-companies).

Therefore, the framework created by the Lei Pelé does not alter the 'duality' between promoting (or even mandating) sporting enterprises to become business corporations. Professional sports organizations are only allowed—not required—to become business corporations under Article 27, § 9 of that statute, selecting from the forms governed by the 2002 Civil Code (Articles 1,039 to 1,092). The *Sociedade Anônima do Futebol* (SAF), established by Law No. 14,193/2021, is the only noteworthy development.

To return to the beginning, the admission of FIGUEIRENSE FUTEBOL CLUBE[130] as a valid petitioner for judicial reorganization under Law No. 11,101/2005 is based on the argument that

[130] To date, other sports associations have already filed petitions based on the legal grounds set forth in Article 25 of Law No. 14,193/2021, such as CLUBE NÁUTICO CAPIBARIBE, SPORT CLUB DO RECIFE, and ASSOCIAÇÃO PORTUGUESA DE DESPORTOS.

there is insufficient normative[131] support for the Lei Pelé's establishment of general sports norms through Article 27, §13, which equates professional sports entities and governing bodies—regardless of their legal form—with business corporations.

First, due to ongoing discussions about whether it was necessary to require sports organizations to establish or become commercial corporations, the Law Pelé has experienced multiple legislative revisions. The law never established a comparison between business corporations or entrepreneurs and civic sports associations. On the other hand, the entire legislative argument revolved around the binary question of whether sports practice should be governed by an associative or corporate lens. That was the fundamental inquiry that drove all changes to the law.[132]

Furthermore, THE COURT OF JUSTICE OF THE STATE OF SANTA CATARINA's judgment is not supported by the legal requirements of the Lei Pelé that it cited. Even in the absence of profit distribution, a sports group's professional, organized pursuit of economic activity does not alter its status as a civil association under the law.[133] Furthermore, this does not support the

[131] cf CAIO MÁRIO DA SILVA PEREIRA**,** *Curso de direito civil. Parte geral* (vol 1, Rio de Janeiro, Forense, 1999) 215

[132] The ongoing debate surrounding the legal structure of Brazilian football clubs is intrinsically linked to their high levels of indebtedness. According to a 2023 report by Sports Value, the total debt of the TOP 20 clubs reached its lowest point in years—R$ 8.9 billion—compared to over R$ 10 billion in 2022. The exclusion of Cruzeiro SAF from the study contributed significantly to this reduction. Atlético-MG leads the ranking with R$ 1.36 billion in debt, followed by Palmeiras with R$ 943 million (or R$ 537 million when excluding stadium-related liabilities), Internacional with R$ 899 million (R$ 686 million excluding the stadium), and Corinthians with R$ 886 million (or R$ 1.6 billion when factoring in Arena-related debts). Tax liabilities alone total R$ 2.7 billion, accounting for 32% of all club debts. The exclusion of Cruzeiro and the lack of financial disclosures from Atlético-MG influenced the overall figures. Financial expenses related to loans and adjustments to tax debts in 2023 had a combined impact of over R$ 1.2 billion on club finances. Given the exceptionally high interest rates in Brazil, clubs are urged to deleverage their operations and reduce debt, thereby enabling more productive and efficient use of resources. <https://exame.com/esporte/com-divida-bilionaria-vasco-pede-recuperacao-judicial-para-saf-e-clube/>

[133] On the other hand, it is understood that the activities carried out by professional sports entities fall within the scope of Article 966 of the 2002 Brazilian Civil Code. These entities clearly organize production factors in a predominant manner and are not strictly dependent on the intellectual or personal attributes of athletes, as demonstrated by the regular transfer of players and coaches among different clubs. Their services are not intangible; rather, when performance is inadequate, athletes or coaches are promptly replaced. An examination of the revenue structure of Brazil's major football clubs reinforces the conclusion that, although legally constituted as associations, these entities do not perform activities traditionally associated with associative purposes (such as charitable, cultural, religious, political, or ideological functions). On the contrary, they engage in professional, economically oriented activities aimed at generating income through mechanisms typically employed in the business sector. Thus, expanding the interpretation and constraints surrounding the concept of 'economic activity' beyond the mere distribution of profits among partners, one must consider the professional organization of resources and the pursuit of income—most notably through extraordinary revenue derived from the commercial exploitation of assets. Accordingly, it may be asserted once again that sports associations are, for all legal purposes, to be treated as business corporations (*sociedades empresárias*). cf FELIPE FALCONE PERRUCI, *Clube-empresa: modelo brasileiro para transformação dos clubes de futebol em sociedades empresárias* (Belo Horizonte, Editora D'Plácido 2022) 174–175.

judicial restructuring law's broad implementation in the absence of a legislatively[134],adopted procedural modification.[135] These associations are nonetheless bound by the legal frameworks

[134] On this matter, GAETANO PRESTI concludes that it is possible to consider a non-profit association as constituting a business enterprise and even subject to insolvency proceedings (*preventive concordato*), despite the fact that Italian law—like Brazilian law—formally limits such proceedings to business corporations and entrepreneurs: 'Per un verso, chiarisce che, benché normalmente le imprese siano in fatto caratterizzate dallo scopo di realizzare um avanzo di gestione (c.d. lucro oggettivo) e diripartirlo in favore dei titolari dell' attività (c.d. lucro soggettivo), nessuno di questi due presupposti è necessario per la nozione giuridica di impresa. Ne consegue che possono essere imprenditori le associazioni (enti per i quali la legge comunque impedisce la distribuzione dell' utile fra gli associati), le cooperative c.d. <<<pure>>>, ove ai soci cooperatori sono raticate tariffe tali da non generare un utile di gestione per l'ente, le imprese pubbliche, come quelle di erogazione di pubblici servizi (acqua, gas, ecc.), ove i crrispettivi a carico del pubblico siano calcolati in modo da non eccedere quanto sufficiente per coprire i costi (...) Non vi quindi ragioni di principio per escludere dal terreno dell'imrpresa l'attività non-profit regolata nel d.lgs. 460/1997 sulle organizzazioni non lucrative di utilità sociale (ONLUS). Ll generale divieto di distribuire utili e il non perseguimento di uno scopo di guadagno, tanto a livello personale che di ente, non impedisce che le ONLUS, sai pur in via strumentale al raggiungimento dei loro scopi ideali, possano svolgere um' attività corrispondente a quella delineata nell' art. 2082, com modalità tendenti all' equilibrio gestionale: qunado ciò accade – il che si verifica oggi di frequente – l' ente non-profit diviene imprenditore. Ll d.lgs. 155/2006 che instituisce e regola le imprese sociali conferma quanto appena esposto. Le imprese sociali, infatti, sono organizzazioni private senza scopo di lucro che esercitano in via stabile e principale um' attività economica di produzione o di scambio di beni o di servizi di utilià sociale, diretta a realizzare finalità di interesse generale. Esse non possono distribuire utili tra i partecipanti, ma devono reinvestirli nello svolgimneto dell' attività instituzionale o a incremento del patrimonio; ciò non toglie che siano qualificate imprese e siano, p.e., soggette all'obbligo di inscrizione nel registro delle imprese e alle procedure concorsuali. Ll criterio esposto, naturalmente, non há nulla a che vedere com il singolo atta comiuto né com la verifica ex post dell' effetiva copertura dei costi com i ricavi: in caso constratio si arriverebbe all'assurdo di non qualificare come impresa l'attività condotta per trarne um guadagno, ma portata al dissesto dall'imperizia dell'imprenditore. Ciô che conta è la valutazione preventiva e astratta delle modalità com lse quali uma determinata attività è oggettivamente programmata'. cf GAETANO MARIA GIOVANNI PRESTI et al*, Corso di diritto commerciale* Bologna, Zanichelli Editore SpA, 201,pp.18-19. Regarding the legal standing of business entities to request judicial reorganization proceedings (*concordato preventivo*): "l' iniziativa spetta all'imprenditore (per la precisione, solo agli imprenditori commerciali soggeti a falimento: v. infra, XV. 1.1.) che si trovi in stato di crisi". Cf. GAETANO MARIA GIOVANNI PRESTI *et al., Corso di diritto commerciale*, Bologna, Zanichelli Editore SpA, 201,p.247. In Italy, the liquidation of non-profit associations is provided for in the Civil Code. Cf. *Il riconoscimento delle persone giuridiche. Raccolta essenziale di giurisprudenza e piccolo vademecum*. Available at:
https://www.regione.sicilia.it/sites/default/files/2022-02/Il%20riconoscimento%20delle%20persone%20giuridiche.%20Raccolta%20essenziale%20di%20giurisprudenza%20e%20piccolo%20vademecum.pdf; Decreto Legislativo n. 36/202l (*riforma delle sport*): "Art.7 - Le sedi delle associazioni e delle societa' sportive dilettantistiche in cui si svolgono le relative attivita' statutarie, purche' non di tipo produttivo, sono compatibili con tutte le destinazioni d'uso omogenee previste dal decreto del Ministro per i lavori pubblici 2 aprile 1968, n. 1444, indipendentemente dalla destinazione urbanistica". "L'art. 90 della legge 27 dicembre 2002, n. 289 stabilisce disposizioni in materia di attività sportiva dilettantistica che disciplinano, sotto il profilo giuridico, le associazioni e le società sportive dilettantistiche ed agevolano lo sviluppo del settore, anche attraverso interventi che mirano ad ampliare l'ambito soggettivo ed oggettivo dei benefici fiscali in favore dello sport dilettantistico. La disciplina giuridica delle associazioni sportive e delle società sportive dilettantistiche è contenuta, in particolare, nei commi 17 e 18 del citato articolo. Tali disposizioni assumono particolare importanza poiché individuano le tipologie soggettive tipiche del settore dello sport dilettantistico.Viene poi introdotta una nuova tipologia di società di capitali, che si caratterizza per le finalità non lucrative. (...) Le associazioni sportive dilettantistiche godono di un trattamento tributario agevolato in relazione all'attività svolta, dietro pagamento di corrispettivo, nei confronti di propri iscritti, associati o partecipanti, di altre associazioni che svolgono la stessa attività, nonché dei rispettivi associati o partecipanti e, infine, nei confronti di tesserati delle rispettive organizzazioni nazionali. Si riporta a tal proposito quanto espressamente previsto dall'art. 148 del TUIR". In: GIOVAMBATTISTA PALUMBO; FRANCESCO SISANI, *Associazioni e società sportive dilettantistiche*, Milano, Cesi Professionale, 2010, p.1.

[135] The procedure represents the dynamic aspect of the judicial process; it is the manner in which the various procedural acts are interconnected within the constitutive sequence of the proceedings. See <https://enciclopediajuridica.pucsp.br/verbete/199/edicao-1/procedimento>

that apply to them, such as the 1973 Code of Civil Procedure's civil insolvency regime or the Civil Code's Article 61 et seq. liquidation process.

Second, Article 27, §13, of the Lei Pelé makes it clear that sports associations and business corporations are only legally equivalent insofar as they can supervise and control the administration of public funds, governance regulations, and election procedures within sports organizations.

A legislative act is required for any significant change of this size,[136] not a single court ruling that restructures the national insolvency regime by extending business recovery tools to companies that are fundamentally different in legal form and purpose. The Brazilian Bankruptcy and Reorganization Law (Law No. 11,101/2005) and other legal frameworks intended for business corporations and entrepreneurs are not taken into consideration in this interpretation, nor are the unique dynamics of civil associations.[137]

With the addition of Article 25 to Law No. 14,193/2021 (the SAF Law), the appropriate legislative act was created. Several legal disputes about the suitability of non-commercial sports organizations for the reorganization framework could result from this measure's failure to offer the procedural adaptation required for judicial reorganization under Law No. 11,101/2005.[138]

Analyzing how football clubs are regarded under comparative legislation and how the sport evolved professionally in Europe[139] and the US is a prerequisite for properly addressing this issue.

3. THE CORPORATE FOOTBALL CLUB IN COMPARATIVE LAW [140]

This chapter undertakes a comparative analysis of how football has progressively been treated as a business activity in different jurisdictions and the legal mechanisms developed over

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[136] cf JEREMY WALDRON et al, *The dignity of legislation* (Cambridge University Press 1999). The debate over the limits of judicial authority in matters of insolvency reached the United States Supreme Court, which held that judicial decisions, even when grounded in equitable powers, must remain within the boundaries established by U.S. bankruptcy legislation: *Norwest Bank Worthington v. Ahlers, 485 U. S. 197, 206 (1988); Raleigh v. Illinois Dept. of Revenue, 530 U. S. 15, 24-25 (2000); United States v. Noland, 517 U. S. 535, 543 (1996); SEC v. United States Realty & Improvement Co., 310 U. S. 434, 455 (1940)*.

[137] cf FELIPE FALCONE PERRUCI, *Clube-empresa: modelo brasileiro para transformação dos clubes de futebol em sociedades empresárias* (Belo Horizonte, Editora D'Plácido 2022) 40–41

[138] cf RACHEL SZTAJN, 'O que se perdeu na tradução' (2010) 49 *Revista de Direito Mercantil, Industrial, Econômico e Financeiro* 7

[139] In France, cf FRANÇOIS PRIGENT, 'Passes, ports, en mouvements. Football et ports en Bretagne au XXe siècle' (2024) 4 *Football(s). Histoire, culture, économie, société* 103–118

[140] The interaction between FIFA regulations and football club insolvency proceedings, cf.: "1.2. Insolvency Although the FIFA regulations – namely the FDC and the RSTP – use the term of insolvency and attach legal consequences to it, they do not define the term. This is problematic because insolvency is a term for which no

time to regulate such transformation. The objective is to examine the extent to which national legal systems have adapted corporate, insolvency, and sports-specific frameworks to address the particular challenges of professional football. The analysis is structured on a country-by-country basis, presenting the individual practices, legislative responses, and judicial approaches of each jurisdiction. This segmented approach not only allows for a systematic evaluation of national experiences but also highlights convergences and divergences that inform the broader comparative understanding of football clubs as business enterprises. The chapter begins with the German experience and proceeds sequentially through the other selected jurisdictions.

3.1. ITALY

Due to their cheap operating costs and ease of management, clubs in Italy, where football first appeared around the same time as in Brazil, were first organized as associations (*associazioni non riconosciute*). As LUCIANO MOTTA[141] points out, this structure persisted until the 1960s.[142] Many of the older teams, which were still using associative models, were forced

global and uniform legal definition exists. In fact, the term of insolvency may be defined differently in each national law. For example, under Swiss law, there is insolvency under company law as well as under bankruptcy law. Both concepts define insolvency differently and provide for different legal consequences. Moreover, insolvency is not the same as bankruptcy or liquidation. Nevertheless, these terms are sometimes used as if they were synonyms. In view of this lack of a uniform definition of insolvency, but since its legal consequences are significant when enforcing a claim against a football club before FIFA, a definition of the term of insolvency such as used in the framework of the FIFA regulations is of primary importance (Chapter 2. below). When enforcing a claim against an insolvent football club, there are numerous procedural specificities to be considered. However, this only applies to claims that arose before the insolvency occurred. With the occurrence of insolvency, the debtor club receives a certain legal protection against the collection of its creditors' claims. For obligations entered into after the occurrence of insolvency, the insolvent club does not obtain this protection. A precise determination of the time when the insolvency occurred and when a claim to be enforced arose is therefore of fundamental significance (Chapter 3. below). Insolvency proceedings can, in simplified terms, be in one of the following four different phases: The proceedings can be 1) pending, they can be 2) terminated through the conclusion of a debt restructuring agreement with a qualified majority of the creditors, which results in the continued existence of the company, or they can be 3) terminated with the insolvent company entering into liquidation, the result of which will eventually be the 4) dissolution of the insolvent club. Depending on the phase in which an insolvency procedure is, the impact on financial claim proceedings against the insolvent club before FIFA or CAS do vary (Chapter 4. below)". VITUS DERUNGS, *Insolvency of football clubs and sporting succession: financial claim proceedings before FIFA and the Court of Arbitration for Sport*, Berne, Stämpfli Publishers, 2022, p.14. Sobre o direito desportivo na China, cf.: AMES A. R. NAFZIGER; WEI LI, China's Sports Law, *The American Journal of Comparative Law*, v. 46, n. 3, Summer 1998, p. 453–483.

[141] Cf. LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 135

[142] 'Tuttavia, la progressiva diffusion del calcio e l'aumento di interesse intorno al fenomeno resero le associazioni sportive consapevoli del fatto che li mero ed esclusivo contributo finanziario degli associati non sarebbe stato più sufficiente a sostenere spese sempre crescenti (...) Alla figura dell'atleta praticante-associato subentrò quella dello sportivo che rendeva la propria prestatizione a fronte del pagamento di um compenso. Iniziava a delinerasi la figura dello sportivo professionaista, definitivamente introdotta com la legge n. 91 del 23 marzo 1981 di cui si argomenterà meglio nel paragrafo dedicato. Gli impegni di spesa, dunque sempre più onerosi, indussero le associazioni calcisthce a rivolgersi al mercato nel tentativo di intercerttare l' interesse degli imprenditori e avvicinarli al progetto sportivo. L'iniziativa ebbe sucesso'. NICLA CORVACCHIOLA AND GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale* ([s.l.], Cesi Multimedia 2012) 5–6.

to reevaluate their legal status because it no longer matched the economic reality of the time, as market forces became more and more prevalent in Italian football.[143]

The first capital-based football enterprises were established as a result of this change. An ad hoc resolution (*communicato ufficiale f.i.g.c. no. 51* of 16 September 1966) was issued by the ITALIAN FOOTBALL FEDERATION (FIGC) requiring the dissolution of traditional associations that competed in professional leagues (Serie A and Serie B) and the concurrent incorporation of new commercial companies. Additionally, the FIGC mandated that these associations undergo a transformation for the 1966–1967[144] football season.

The federation's resolution was declared null by the Italian SUPREME COURT,[145] which held that the immediate dissolution of sports associations was illegal. Consequently, the

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[143] 'Lo sport deve allora essere posto in grado di adattarsi alla nuova dimensione del mercato nella quale esso deve evolversi senza perdere la propria identità. A tal fine si rende necessario svolgere una indagine sulle nuove prospettive che si aprono per le federazioni sportive nazionali che ne disegni i nuovi orizzonti normativi in considerazione della normativa economica applicabile alla nuova realtà e della giurisprudenza interna e comunitaria in materia. Il discorso si articola di conseguenza in una prima parte in cui si «fotografa» la situazione esistente individuandone le criticità, ed in una seconda parte in cui vengono delineate possibili linee evolutive degli assetti federali anche alla luce dell'esperienza comparata'. LUCA DI NELLA, *Sport e mercato: metodo modelli problemi* (Napoli, Edizioni Scientifiche Italiane 2010) 46

[144] 'I tratti economico-finanziari che avenano investito il settore divennero, tuttavia, sempre vetuste organizzazioni sportive, constituite in forma associativa, non erano più adeguate ai tempi, in considerazione dei mutamenti che sempre più dinamicamente pervadevano il mondo del calcio. Ebbero origine, dunque, le prime societá calcistiche di capitali, per cui sarà interessante, illustrate, in breve, in ce modo avvenne la transformazione delle organizzazioni sportive da associazioni a società di capitali. La F.I.G.C intervenne con due distinti provvedimenti : il primo, attuato mediante l'adozione di una delibera ad hoc in data 16 settembre 1966 (comunicato ufficiale F.I.G.C. n. 51 del 16 settembre 1966), in base alla quale fu stabilito lo scioglimento delle vecchie associazioni militanti nei campionati professionistici (Serie A e Serie B), com contestuale relativa nuova costituzione in veste di società commerciali munite di personilitá giuridica, individuata quale condizione imprescindibile ai fini dell'iscrizione al campionato di calcio relativo alla stagione sportiva 1966/1967'. NICLA CORVACCHIOLA AND GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale* ([s.l.], Cesi Multimedia 2012) 6

[145] « Invero con esso il consiglio federale della F.i.g.c., allo scopo di realizzare il risanamento finanziario delle associazioni aderenti alla lega nazionale e di procedere ad una radicale riforma della loro struttura associativa, ha disposto lo scioglimento, con effetto immediato, dei consigli direttivi delle anzidette società, e quindi anche dell'a.s. Roma, nonché la nomina, per ciascuna di esse, di un commissario con pienezza di poteri ordinari e straordinari al fine di procedere alla costituzione di una nuova società avente personalità giuridica, previa liquidazione di quella preesistente. Nella delibera anzidetta si fa espresso richiamo all'art. 12, lett. o, dello statuto, secondo cui è data facoltà al consiglio federale di «decidere in merito ad ogni problema o questione che interessi comunque l'attività tecnico-sportiva della federazione e di conseguenza lo sviluppo del gioco del calcio». Senonché detta norma, pur nella genericità della sua enunciazione, è manifestamente riferibile a quei poteri che trovano nell'art. 10 della legge del 1942 il loro preciso fondamento, per cui dev'essì senz'altro escludere che, al di fuori di quelle previsioni, la F.i.g.c. possa adottare, nei confronti delle associazioni sportive nazionali, una misura così grave qual è quella dello scioglimento. Una potestà che incida sull'autonomia dell'a.s. Roma e ne ponga nel nulla la stessa esistenza non si giustifica neppure se esercitata in funzione di un riordinamento finanziario degli organismi sportivi perché una cosa è condizionare la concessione di determinati benefici di carattere economico alla modificazione delle strutture giuridiche delle associazioni dipendenti e altra cosa è imporre coattivamente tale mutamento in vista di determinate concessioni finanziarie. Lo scioglimento di un ente è una sanzione di natura del tutto eccezionale che deve trovare necessariamente nella legge la sua specifica determinazione. Ne consegue che l'estinzione di un potere nell'a.s. Roma non è ammessa. Figura la lesione di un diritto soggettivo perfetto, la cui tutela giurisdizionale è azionabile davanti al giudice ordinario. *(Omissis).* Per questi motivi, dichiara la giurisdizione del giudice ordinario, ecc".Cass., Sez. Un., sent. 14/mar./29jun. 1968. n

associations voluntarily dissolved and immediately formed capital firms, with the same members helping to create the new legal entities.[146]

Another provision adopted in Italy on 16 December 1966 was the drafting of a standard corporate bylaw, mandatory for all clubs, which disallowed pursuing profit-making purposes or distributing profits to members.

This criterion turned out to be problematic. According to NICLA CORVACCHIOLA *et al*., 'it was an anomaly for a capital company, as it clearly frustrated the expectation of return on the entrepreneurial risk borne by shareholders through investments'.[147] This restriction on profit distribution was significant.

The outcomes of these regulatory actions were unsatisfactory, despite being intended to professionalize football and address/mitigate club debts/deficits, the cumulative deficit of al. The cumulative deficit of all Serie A and Serie B clubs had skyrocketed to 90 billion lira[148] by

.2028.
<https://www.jstor.org/stable/10.2307/23187257?searchText=&searchUri=&ab_segments=&searchKey=&refreqid=fastly-default%3Afd5aacd72b95272e4e6943fb3a08ea95&initiator=recommender>

[146] 'Tuttavia, tale operazione non fu avallata dalla Suprema Corte che, infatti, sancì l'illegittimità dello scioglimento diretto delle associazioni sportive in assenza di uno specifico provvedimento di legge che lo decretasse.Pertanto, le associazioni sportive deliberarono il proprio scioglimento in via autonoma, costituendosi in forma di società di capitali con l'apporto dei membri già facenti parte degli organismi dissolti'. NICLA CORVACCHIOLA AND GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale* ([s.l.], Cesi Multimedia 2012) 6; cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 136

[147] 'Certo, quel divieto di ridistribuzione degli utili ai singoli azionisti costituiva un'anomalia per una società di capitali atteso che, in tal modo, risultava vanificata la remunerazione del rischio di impresa assunto dagli azionisti sulla base degli investimenti effettuati'. NICLA CORVACCHIOLA AND GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale* ([s.l.], Cesi Multimedia 2012) 6

[148] According to LUCIANO MOTTA, the overall deficit in 1980 was estimated at €198 million. LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa*, Belo Horizonte, Sporto, 2020, p.137. "L'azienda calcio si differencia dalle altre aziende per una serie di ragioni, quali: l'improgrammabilità del risultato sportivo; la produzione congiunta dello spettacolo sportivo; l'atipicità dei meccanismi concorrenziali all'interno del settore; l'interferenza e la confusiona tra norme di 'diritto sportivo' e di 'diritto civile'; la gamma di clienti assolutamente peculiari nella sua amipiezza ed articolazione. L' improgrammabilità del risultato sportivo si traduce nel fatto che il budget delle società di calcio, ad ogni livello, è fortemente basato sulla logica del 'balon dentro o balon fora', per citare uma famosa frase del leggendario Nereo rocco. Inoltre il costo piano industriale e spingere alcuni club verso il falimento. Uno snellimento del sistema calcistico italiano, che registra il numero di gran lunga più elevato di club professionistic, potrebbe constituire uma soluzione al problema oltre che um avvicinamento alle altre leghe europe". GIUSEPPE MAROTTA, "Calcio professionistico e sfruttamento economico degli asset dei club: il contesto nazionale ed europeo", in *Ordinamento sportivo e calcio professionistico: tra diritto ed economia*, orgs. R. LOMBARDI, S. RIZZELLO, F. G. SCOCA, M. R. Spasiano, Milano, Giuffrè, 2009, p. 41-42. "Nell'ambito delle società di calcio professionistiche un tema di assoluta complessità a livello di "interpretazione" dei dati contabili, appare quello dell'attribuzione alla gestione ordinaria oppure a quella straordinaria, degli utili o perdite derivanti dalla negoziazione dei diritti alle prestazioni sportive. Da un lato, infatti, tali elementi di reddito possono essere considerati, ragionevolmente, componenti non estranei ex se all'operatività dei club calcistici professionistici. Tuttavia, da un altro punto di vista, è anche vero che, ai fini dell'apprezzamento della dinamica reddituale di un club sportivo, i componenti di reddito derivanti dalle cessioni dei diritti alle prestazioni sportive devono essere assunti con la dovuta cautela, sia per il meccanismo di creative accounting, derivante dalle permute di calciatori a valori superiori di mercato, sia per la difficoltà di sviluppare modelli di previsione dei risultati reddituali futuri,

1980. Law No. 91/1981 (*legge sul professionismo sportivo*), passed by the Italian parliament in response to this dire financial situation, mandated that any club hiring professional athletes establish a corporate structure in the form of a *S.p.A* (joint-stock company) or *S.r.l*[149] (limited liability company).

MATTIA CAROBOLANTE points out that Law No. 91/1981 also created a federal supervision framework with the goal of bolstering the stability and solvency of the Italian football system. It stated that the sports federations and THE ITALIAN NATIONAL OLYMPIC COMMITTEE (CONI) would have a general responsibility to oversee the management and operations of sports companies, especially regarding any corporate resolutions involving the purchase or sale of real estate or any extraordinary administrative action.[150]

Notwithstanding the importance of this legislative change, investors were not able to obtain substantial returns on their investment in practice. Additionally, because it was necessary to implement a particular compensation mechanism called the *indennità di preparazione e promozione* (IPP), or preparation and promotion compensation, the removal of the so-called 'sporting bond' for athletes increased operating costs. Due to this shift, Italian football experienced two additional financial crises in the 1980s and 1990s.[151]

Two decrees, Decree-Law No. 272/1996 and Decree-Law No. 383/1996, were adopted in response to these crises, and both attempted to exempt the IPP from the provisions of Law No. 91/1981. Nevertheless, neither became legislation. After being converted into Law No. 586/1996, only Decree-Law No. 484/1996 was finally put into effect.

The preparation and promotion compensation (*indenização por preparação e promoção*, or IPP) was abolished by Law No. 586/1996. This was done so that sports federations could create a training and technical development award that would be given to the sports club or organization where the athlete had previously played amateur sports. Additionally, it gave this prize a new tax status that exempts it from taxes.

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allorquando questi ultimi riposino in misura sostanziale nella "compravendita dei diritti alle prestazioni sportive". MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona*, Veneza, Università Ca' Foscari Venezia, 2023, p. 31. Cf. MARCO MANCINI, *Attività sportive "ufficiali", intervento pubblico e sussidiarietà*, Veneza, Università Ca' Foscari Venezia, 2012. GUSTAVO MINERVINI, Il nuovo statuto-tipo delle società calcistiche, *Rivista delle Società*, 1967, p. 678–679.

[149] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 137; cf NICLA CORVACCHIOLA AND GIUSEPPE FEBBO, *La gestione delle società sportive nell'era del calcio business: la dimensione economica, giuridica e fiscale* ([s.l.], Cesi Multimedia 2012) 7

[150] cf MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona* (Veneza, Università Ca' Foscari Venezia 2023) 10

[151] cf MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona* (Veneza, Università Ca' Foscari Venezia 2023) 11

Additionally, a special regime was established to give clubs three fiscal years to lessen the adverse economic effects of the IPP's termination. Federal supervision of club management and unusual administrative actions were also eliminated.[152]

For the first time, the law also allowed profits to be distributed to shareholders, as long as 10% of those proceeds went toward youth training initiatives. Additionally, it mandated that clubs of the SRL type set up a monitoring board, or *consiglio fiscale*. ASSOCIAZIONE SPORTIVA ROMA S.P.A., JUVENTUS FOOTBALL CLUB SPA,[153] and SOCIETÀ SPORTIVA LAZIO SPA. were the only three clubs to list their shares on the stock exchange between 1998 and 2001, despite these notable developments.

With the enactment of Law No. 27/2003, the so-called '*salva calcio*' (football bailout) decree, the legislature took yet another significant step to support sports organizations. According to MATTIA CAROBOLANTE,[154] because of the significant amortization obligations placed on future financial accounts, Italian clubs had developed a pattern of inflating player transfer costs, which eventually threatened their financial stability.

As a result, Law No. 27/2003 permitted sports corporations to spread out the depreciation resulting from declines in the value of players' performance rights over a ten-year period rather than declaring them as losses within the fiscal year.[155] According to MATTIA CAROBOLANTE, there were two primary causes of the financial difficulties that Italian football teams have experienced over the years:

> Uno degli elementi principale, se non il principale, è senza dubbio l'aumento esponenziale della dimensione economica delle società di calcio professionistiche dagli anni '60 ai giorni nostri non sia stato accompagnato parallelamente da una crescita altrettanto significativa della cultura manageriale degli attori che operano nel settore, trovando molto spesso un management assolutamente impreparato ed improvvisato, di fronte ad un'attività che da valenza meramente sportiva assumeva connotati sempre più imprenditoriali.
> Un'ulteriore responsabilità importante è sicuramente attribuibile anche al nostro legislatore che ha riconosciuto la legittimità dell'orientamento al profitto nello sporto professionistico solamente trent'anni dopo la trasformazione delle società in S.p.A., ovvero nel 1996. Infatti, le società di calcio rappresentano a oggi le aziende profit oriented più giovani del panorama imprenditoriale italiano.
> L'intero sistema non ha potuto avere un suo sviluppo equilibrato e le società di calcio, per anni, sono state considerate alla stregua di un mero "costo pubblicitario" e mai come una possibile fonte di reddito facendo sì che i relativi presidenti non avessero l'esigenza di

[152] cf MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona* (Veneza, Università Ca' Foscari Venezia 2023) 14
[153] Cf. LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 140
[154] 'La prassi, infatti, era quella di gonfiare al momento della cessione il valore del cartellino di un calciatore, creando così artificialmente plusvalenze. Questa tecnica però, copriva in gran parte le perdite nel breve periodo, ma appesantiva la situazione economica nel lungo a causa delle pesanti quote di ammortamento che gravavano sui bilanci futuri'. MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona* (Veneza, Università Ca' Foscari Venezia 2023) 20
[155] cf MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona* (Veneza, Università Ca' Foscari Venezia 2023) 20

> costituire un'adeguata governance e un dettagliato business model, come si potrà vedere nei prossimi paragrafi.[156]

VERONA (1991), CESENA (1993 and 2013), BOLOGNA (1993), FIORENTINA (2002), which reported debts of €29.1 million, NAPOLI (2004), which reported debts of €88.9 million, TORINO (2005), and Pro VERCELLI (2010)—a team that had previously won the Italian championship seven times—were among the major Italian clubs that went bankrupt between 1993 and 2010.[157]

In the present context, Italian football clubs may be classified as (i) service providers;[158] (ii) production companies without market risk; (iii) non-profit entities; and (iv) for-profit enterprises,[159] despite the recent shift in the role of clubs toward a profit-oriented perspective[160] (since 1996) and the economic crisis that has affected Italian football. The For-profit enterprise model has emerged as the dominant classification.

LUCIANO MOTTA contends that, despite the regulation of corporate structures within Italian football, clubs have continued to receive state incentives without incurring any repercussions for their managerial behavior. He further argues that it would be reductive to

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[156] cf MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona* (Veneza, Università Ca' Foscari Venezia 2023) 24

[157] Cf. LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 143; PADDY AGNEW, *The fail of Fiorentina how one of Italy's top clubes went bust* (Londres, The Guardian 2003) <https://www.theguardian.com/football/2003/nov/27/newsstory.sport6?CMP=gu_com> Entre os anos de 2013 a 2018, o passivo do futebol italiano chegou no total ao patamar de € 4.265,6m. Sendo a Série A, no ano de 2018, com débito de € 406,5m e a Séria B com € 40,1m. Para mais, conferir relatório da PwC: <https://www.pwc.com/it/it/publications/reportcalcio/2019/doc/reportcalcio-2019-ita.pdf>

[158] cf PIETRO MENNEA (a cura di), *Normativa e tutela dello sport*, Torino, G. Giappichelli, 2007..

[159] "Le società calcistiche potrebbero essere intese come aziende di erogazione in quanto associazioni deputate alla gestione di patrimoni e alla produzione di redditi, che elargiscono un servizio agli utenti, e nelle loro origini, in un certo senso, lo sono anche state. In una tale configurazione, però, la sopravvivenza economica del club sportivo è vincolata a entrate di tipo mecenatistico e in una prospettiva di medio-lungo periodo il mecenatismo privato non può andare disgiunto dall'analisi del contesto di mercato e dalla necessità di una "gestione imprenditoriale trasparente anche per i grandi filantropi del calcio. La seconda nozione (*i.e.*, le società di calcio intese quali aziende di produzione non a rischio di mercato) non soltanto non è mai stata di attualità per quanto riguarda i club di calcio, ma appare del tutto incoerente col sistema sportivo professionistico. Il terzo modello (imprese senza fine di lucro) e il quarto modello (imprese con fine di lucro) costituiscono i modelli sperimentati, in concreto, dal nostro Legislatore che ha sancito soltanto nel 1996, con la Legge n. 586, la liceità del lucro soggettivo da parte dell'imprenditore sportivo. La natura lucrativa dei club di calcio, ormai acquisita e data come definitiva, deve essere meglio analizzata avendo a mente alcune specificità dell'attività sportiva che influenzano e declinano in modo differente il significato e la struttura dell'intero settore, infatti:− i club di calcio sono l'unica società lucrativa così vincolata a motivazioni extraeconomiche come il prestigio, il successo sportivo e l'identità locale; − le squadre di calcio di successo generano forti esternalità positive, per le quali non percepiscono, in genere, compensi di mercato; − i club sportivi devono mantenere una costante presenza e attenzione per i loro settori giovanili, con ciò contribuendo a un effetto sociale indiretto (la diffusione dello sport, appunto) da conseguire comunque, a prescindere dai risultati economici del club. Ciò detto è anche fuori di dubbio che il settore del calcio professionistico abbia assunto nel corso degli ultimi anni una crescente dimensione di tipo economico-finanziario, che non può non fare rilevare il profilo di vero e proprio comparto imprenditoriale". MATTIA CAROBOLANTE, *Il processo di revisione legale dei conti in caso di crisi in una società di calcio, il caso Chievo Verona* (Veneza, Università Ca' Foscari Venezia 2023) 25–26.

[160] cf RICCARDO DE NAPOLI, *La giustizia statale nello sport: verso un nuovo intervento pubblico nell'economia sportiva* (Veneza, Università Ca' Foscari Venezia 2021)

exclusively attribute the insolvency of Italian clubs to poor management decisions and that the corporate club model has ultimately failed to achieve its intended purpose.[161]

3.2. SPAIN

The sporting phenomenon reached Spain in the 19th century[162]. Initially, the legislature addressed the phenomenon through the Associations Act of 1887 and the Civil Code, which did not meet the specific needs of a sports association at the time.[163]

Sports were integrated into the national delegation of physical education and sports following the conclusion of the Spanish civil war. This transition from a model that was founded on self-organization and freedom to a public system that was primarily regulated and controlled by the state[164] was facilitated by the Physical Education Act of 1961. According to EDUARDO DE LA IGLESIA PRADO, the definitive separation of sports associations from general associative movements was solidified by the Associations Act of 1964, which explicitly stated that 'none of the provisions regarding the regime, functioning, and discipline of associations would apply to those of a sporting nature'.[165] This provision granted sports associations conceptual and legal

[161] GIUSEPPE MAROTTA classifies certain business models in Italian football: 'La gestione attuale delle società di calcio è riconducibile a quattro principali modelli di business:il club come passione: l'azionista riveste il ruolo di "mecenate" che investe nel club a fondo perduto, essenzialmente per passione e per un desiderio di affermazione sociale; il club come veicolo di immagine: l'azionista (spesso un gruppo industriale) investe nel club al fine di ottenere elevati e più complessivi ritorni di immagine da valorizzare altrove; il club come ambito per valorizzare nuovi talenti: l'azionista investe nel club per "scovare e lanciare" giovani talenti da valorizzare e cedere ai grandi club, cercando di conseguire un profitto; il club come azienda di entertainment: l'azionista ricerca l'equilibrio economico tra i ricavi (generati da tutte le attività sportive e commerciali, connesse al team ed al brand) ed i costi (sostenuti per ricercare, mantenere e sviluppare quei ricavi) (...)"Il modello di business di una società di calcio si può generalizzare e schematizzare con un circuito interno al club ed uno in cui i club si relazionano tra loro attraverso i movimenti del calciomercato.I canali commerciali interni al club si avvalgono di diversi prodotti/servizi quali: l'immagine del club, il cui unico cliente è lo sponsor; le gare, che danno origine a ricavi provenienti dal botteghino, dalla cessione dei diritti media e dagli introiti dei concorsi a pronostici; il merchandising ed altri servizi dedicati esclusivamente ai tifosi; lo stadio, che in un futuro non troppo lontano dovrebbe essere in grado di sfruttare il valore aggiunto della plurifunzionalità, già presente in alcuni Paesi esteri'. GIUSEPPE MAROTTA, 'Calcio professionistico e sfruttamento economico degli asset dei club: il contesto nazionale ed europeo' in R. LOMBARDI, S. RIZZELLO, F. G. SCOCA, and M. R. SPASIANO (orgs), *Ordinamento sportivo e calcio professionistico: tra diritto ed economia* (Milano, Giuffrè, 2009) 43–44

[162] cf ANTONIO RIVERO HERRAIZ**,** *Deporte y modernización: la actividad física como elemento de transformación social y cultural en España* (Madrid, Dirección General de Deportes de la Comunidad de Madrid 2003) <https://www.cafyd.com/REVISTA/ojs/index.php/bbddcafyd/article/view/108>

[163] cf EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 57–58

[164] cf EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 59

[165] cf EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 59

autonomy.[166] The following is a summary of the historical period of sports associativism in Spain:

> Las previsiones sobre el asociacionismo deportivo durante la etapa franquista se caracterizaron, en primer lugar, por la atribución de su dirección a la Falange Española, derivándose de ello la exclusión de la aplicación del régimen general asociativo a toda la organización deportiva, de tal forma que se dictaron normas respecto a cuestiones tales como la constitución, funcionamiento, financiación y agrupación de todas las organizaciones deportivas; en segundo lugar, la estructura deportiva se jerarquiza, estableciéndose mecanismos de control en cascada, que van desde la Delegación Nacional de Deporte, pasando por las federaciones hasta el último de los clubes, provocando que las normas rectoras de las asociaciones deportivas no fueran eficaces tras su aprobación por la correspondiente asociación deportiva y estuvieran sometidas a control y ratificación del poder público que, para ello, además usó un amplio margen de actuación política y, en tercer lugar, se publicita el ordenamiento deportivo, al tratarse de un ámbito intervenido por el poder público y políticamente dirigido, en el mismo al margen del resto del ordenamiento jurídico.[167]

The Sports Act No. 10/1990 addressed growing discontent in the sports industry in Spain, although it was not part of the larger legal framework. This law established a legislative framework to govern the interaction between the public and private sectors[168] by introducing the concepts of acknowledging, promoting, and encouraging organized sports through associative structures. The sports act also made it clear that sports clubs, sports businesses

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[166] 'En esta etapa se aprobó la primera norma reguladora específica del fenómeno deportivo, la Ley de Educación Física de 1961 y, aunque debe reseñarse por tal circunstancia, por el contrario, en cuanto a su contenido, mantuvo la situación de control público y político antes advertida, consolidándose por ello el modelo intervencionista existente de la Administración sobre las federaciones deportivas y de éstas sobre los clubes, realidad que no varió con la promulgación de la Ley de Asociaciones del año 1964, pues expresamente señalaba que «ninguna de las normas previstas sobre el régimen, funcionamiento y disciplina de las asociaciones es de aplicación a las de carácter deportivo», consagrándose con ello la separación definitiva del asociacionismo deportivo del general y, por tanto, su autonomía conceptual y jurídica'. EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 58–59. Concerning the structural limitations of the associative legal form: 'La segunda de las características advertidas, la complejidad de su regulación, no sólo trae causa y está vinculada a la existencia de diversos tipos de entes reconocidos en las normas rectoras del deporte como asociaciones deportivas, sino también por el particular y específico régimen jurídico de cada uno de ellos, cuyo variado contenido y origen dificultan notoriamente su adecuado conocimiento, pudiendo generar no sólo una dispersión normativa, sino, derivado de ello, igualmente una cierta inseguridad jurídica. Esta dificultad se origina por el hecho de poder estar integrada la regulación de las asociaciones deportivas por normas de variadas fuentes, pues en algunos casos, su régimen lo determinarán no sólo las previsiones *ad hoc* de las normas deportivas y sus propias reglas internas contenidas en los estatutos y reglamentos, sino también otras disposiciones generales, las cuales no sólo serán de contenido civil a pesar de su carácter privado, sino también administrativo, por la ya apuntada posibilidad de asunción por delegación de competencias públicas, a lo que ha de sumarse la incidencia de otra serie de disposiciones emanadas de las federaciones deportivas que se imponen, ya sean nacionales o internacionales, con el correspondiente riesgo de legalidad que ello supone, o bien de los órganos correspondientes comunitarios, siendo la suma de todas estas posibilidades normativas la que genera la indicada complejidad y dificultad del régimen jurídico de las asociaciones deportivas en nuestro ordenamiento'. EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 113

[167] cf EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 61

[168] cf EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 64

(*sociedades anónimas deportivas,* or SADs), regional organizations, state-level sports promotion organizations, professional leagues, and national sports federations were all included in the definition of sports associations.[169]

The establishment of SADs was officially permitted by this legislative framework, particularly by Article 14[170]of the Sports Act, which mandated appropriate registration with the Spanish Register of Sports Associations. The statute also required SADs to adhere to the requirements and accounting guidelines outlined in the Corporations Act. To prevent financial distress among Spanish football clubs, Article 27 of the same law stipulated that SADs would not be allowed to distribute dividends until a legal reserve had been established in an amount equal to at least half of the average expenses[171] incurred during the three preceding fiscal years.

It is crucial to remember that Spanish football teams were already going through a financial crisis, especially in the 1980s, long before the SAD model was formally developed. According to LUCIANO MOTTA'S[172] historical assessment, the 1982 FIFA world cup, which Spain hosted. Several teams at the time saw the competition as a chance to update and renovate their stadiums.

MOTTA claims that to refurbish their stadiums, the teams obtained loans from financial institutions totaling €124.5 million. This debt had grown to €309 million by 1984,[173] making it unmanageable. In response to this concerning situation, the clubs and the *consejo superior de deportes* (CSD) developed a repayment plan in 1985 whereby the government would increase the amount of money collected from betting operations in return for increased club management and transparency. But the agreement didn't work out. By 1989, the top three Spanish football leagues owed the state €222 million out of a total debt of over €349 million.[174]

All clubs that wanted to play in the 1991–1992 season had to switch from the associative model to the *sociedad anónima deportiva* (SAD) model to control the growing debt. Only the

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[169] cf EDUARDO DE LA IGLESIA PRADO, *Derecho privado y deporte* (Madrid, Fundación del Futbol Profesional 2014) 64; cf MERCEDES FUENTES LÓPEZ**,** *Asociaciones y sociedades deportivas* (Madrid, Marcial Pons 1992)

[170] Articulo 14 Los Clubes deportivos, en función de las circunstancias que señalan los artículos siguientes, se clasifican en: a) Clubes deportivos elementales. b) Clubes deportivos básicos, c) Sociedades Anónimas Deportivas.

[171] 'La utilización instrumental de esta modalidad societaria se encamina a establecer un nítido régimen de responsabilidad jurídica de las deudas y de la contabilidad empresarial, de forma que la transformación de los clubes profesionales en sociedades anónimas deportivas va a suponer, no sólo el establecimiento de un principio de responsabilidad patrimonial de estas entidades'. MERCEDES FUENTES LÓPEZ**,** *Asociaciones y sociedades deportivas* (Madrid, Marcial Pons 1992) 50

[172] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 172

[173] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 172

[174] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa*, (Belo Horizonte, Sporto 2020) 172–179

asociación de clubes de baloncesto (ACB)[175] and clubs in the first and second divisions were subject to this mandate. Due to good financial management and successful audits, clubs that chose to stay associations received preferential tax treatment over those that switched to the corporation structure (SAD): In 2006, associations paid about 2.5% in income taxes, whereas SADs paid about 35%. This difference was not regarded as an infringement on the equal treatment principle or an instance of disproportionate tax advantage.[176]

Spain is currently in a unique position: Despite the previous financial crises in Spanish football, two of the six most valuable teams in the world (based on income for the 2023–2024 season) use the associative model. [177]

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[175] Within the Spanish Basketball League, Luciano Motta highlights certain associations that, despite not converting into corporate entities, have remained financially solvent and even generated budget surpluses. cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 173

[176] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 173: 'O tratamento fiscal dos clubes desportivos diverge do regime fiscal aplicável às sociedades anónimas desportivas, que estão sujeitas ao regime geral de imposto sobre as sociedades. Os clubes desportivos são entidades sem fins lucrativos (Entidades sin ánimo de lucro) que, como tal, beneficiam de uma isenção parcial do imposto sobre as sociedades, em conformidade com o artigo 9.o, n.o 3, alínea a), da lei espanhola do imposto sobre as sociedades (Ley del Impuesto sobre Sociedades). Em resultado da referida isenção parcial, o artigo 28.o, n.o 2, da lei do imposto sobre as sociedades prevê que os clubes isentos, enquanto entidades sem fins lucrativos, devem pagar imposto sobre o rendimento das sociedades relativamente às suas receitas comerciais, a uma taxa reduzida de 25 %, em vez da taxa geral de 30 % (que era de 35 % até 2006 e de 32,5 % em 2007). (...) A vantagem para um clube que joga na primeira divisão nacional pode, além disso, ter efeitos sobre a concorrência e as trocas comerciais entre os Estados-Membros. Todos os clubes sujeitos à tributação de sociedades sem fins lucrativos estão, ou estiveram a dada altura, na primeira divisão nacional. Os clubes ativos na primeira e na segunda divisão competem pela participação em competições europeias e estão ativos nos mercados de merchandising e direitos televisivos. Os direitos de radiodifusão, o merchandising e os patrocínios são fontes de receitas pelas quais os clubes da primeira divisão nacional concorrem com outros clubes dentro e fora do seu próprio país. Quantos mais fundos os clubes tiverem disponíveis para atrair jogadores de excelência, ou para os manter, maior será o seu sucesso nas competições desportivas, o que promete mais receitas provenientes das referidas atividades. Além disso, a estrutura de propriedade dos clubes é internacional. Deste modo, o apoio financeiro estatal que concede uma vantagem a determinados clubes de futebol profissional sob a forma de uma taxa de tributação inferior à dos operadores concorrentes é suscetível de afetar as trocas comerciais intra-UE e de distorcer a concorrência, na medida em que a sua posição financeira será reforçada em comparação com a dos seus concorrentes no mercado do futebol profissional, em resultado do referido auxílio (30). Consequentemente, constitui um auxílio estatal na aceção do artigo 107.o, n.o 1, do Tratado. Este auxílio foi concedido aos quatro clubes anualmente desde a entrada em vigor da Lei 10/1990, em outubro de 1990, e até 2015. O facto de o referido efeito não ter sido o principal objetivo da Lei 10/1990 não é relevante (...) Ao reservar o direito de gozarem da taxa preferencial do imposto sobre as sociedades aplicável às associações sem fins lucrativos a determinados clubes de futebol profissional, a sétima disposição adicional da Lei 10/1990, de 15 de octubre, del Deporte, constitui um auxílio estatal nos termos do artigo 107., n.º1, do Tratado sobre o Funcionamento da União Europeia, a favor desses clubes de futebol, a saber: Athletic Club Bilbao, Club Atlético Osasuna, FC Barcelona e Real Madrid CF. O referido auxílio foi concedido ilegalmente pelo Reino de Espanha em violação do artigo 108.º, n.º3, do Tratado sobre o Funcionamento da União Europeia e é incompatível com o mercado interno'. DECISÃO (UE) 2016/2391 DA COMISSÃO de 4 de julho de 2016. <https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX%3A32016D2391>

[177] 'Real Madrid became the first football club to generate over €1 billion in revenue during the 2023/24 season and are at the top of the 2025 Money League. The completion of renovations works to the Bernabéu Stadium catalysed the growth of matchday revenues to €248m in 2023/24, a 103% uplift on the previous year. The increase was realised predominantly on account of the marketing of Personal Seat Licenses[1], which provided an uplift of c.€76m, as well as the sale of new VIP seats and the increased capacity of the stadium from December 2023. The club also reported a 20% increase in commercial revenue (from €403m to €482m), boosted by increased merchandise and new sleeve sponsorship'. <https://www.deloitte.com/uk/en/services/financial-advisory/analysis/deloitte-football-money-league.html>

Analysis of Club Revenues – 2023/2024 Season

Source: DELOITTE TOUCHE TOHMATSU, 2025.

According to LUIZ CAZORLA GONZÁLEZ-SERRANO, the 1990 Sports Act seemed to view the SAD as a 'magical solution' to the problems of financial and economic management in professional sports that ultimately failed miserably. He contends that this failure resulted from an 'unfortunate approach that attempted to solve a fundamental issue—club solvency and financial stability—through the imposition of a mandatory legal form',[178] rather than from the SAD structure's intrinsic incapability to suit the needs of football clubs.

[178] LUIZ CAZORLA GONZÁLEZ-SERRANO, *La Ley del Deporte y la oportunidad perdida para reconocer la libertad de organización jurídica a los clubes profesionales* (Madrid, Almacén de Derecho, 2019) <https://almacendederecho.org/la-ley-del-deporte-y-la-oportunidad-perdida-para-reconocer-la-libertad-de-organizacion-juridica-a-los-clubes-profesionales> ; 'Por ello, para acabar de certificar el ascenso la S.D. Éibar SAD se vio obligada a realizar una ampliación de capital social sin precedentes, cifrada en 1,7 millones de euros para alcanzar los 2,1 millones de euros que la ley le exigía (un aumento de capital del 430%)21. Esta ampliación era de cuatro veces el importe declarado por el club en sus cuentas: 422.253 euros. Para llegar a hacer frente a dicha ampliación, la directiva del club aprobó una ampliación del capital social de hasta 2.380.007 euros, a través de la cual consiguió asegurar su ascenso de categoría22. Como dato anecdótico, la S.D Éibar estableció un tope de inversión de 100.000 euros por individuo en la ampliación de capital, para evitar que grandes inversores tomaran el control del club y desapareciese lo que la propia directiva denominó como "sentimiento Éibar"'. JORGE DEL VALLE DE DIEGO, *Sociedades y asociaciones deportivas* (Valladolid, Universidad de Valladolid, 2019) 40

The psychological impact of being forced to become a SAD is also described by GONZÁLEZ-SERRANO as a motivator for 'hiding certain management practices that,[179] over the years, aggravated the financial situation of clubs until the widespread filing for insolvency'.[180]

Ex ante economic and financial control systems were established, clubs were given preferential treatment in agreements with the tax authority and social security during insolvency proceedings, and a collective broadcasting rights sales model was adopted (per Royal Decree-Law 5/2015) as a final step in resolving the financial crisis within clubs.[181]

The conversion to a sports joint-stock company (*sociedad anónima deportiva*, or SAD) is still a mandatory measure for deficit-running associative organizations, despite the numerous criticisms of the system currently in place in Spain. The organization of sports associations is restricted to clubs that have demonstrated a positive net equity balance in recent seasons.[182]

3.3. PORTUGAL

Although there are accounts of the game being played in Carcavelos as early as 1870, football in Portugal only became popular when REAL GINÁSIO CLUBE PORTUGUÊS, Portugal's first football team, was established in 1890[183] and used the associative style of organization.[184]

In Portugal, Decree No. 32.946/1943 and Law No. 2.104/1960 established the first legal frameworks controlling sports. According to Decree No. 32.946/1943, 'the primary interest of the state is the physical education of the Portuguese people, which must be pursued, above all,

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[179] 'Lo diferencial de los clubes de fútbol tienen que ver con su participación en competiciones; la existencia de impotantes aficiones y los elementos emocionales como la vinculación con una ciudad o región determinada. Estas características no concurren en un negocio mercantil normal y condicionan la actuación de los administradores sociales en punto a la definición y persecución del interés social (¿maximizar el valor de la empresa? ¿maximizar los triunfos?). Muchos de los males de las SAD encuentran su explicación en esta vertiente externa de su actividad, de especial naturaleza. En este sentido, se manifiesta Otero Lastres, J.M, en 'La vestidura jurídica de los clubes de fútbol y su situación actual'". LUIZ CAZORLA GONZÁLEZ-SERRANO, *La Ley del Deporte y la oportunidad perdida para reconocer la libertad de organización jurídica a los clubes profesionales* (Madrid, Almacén de Derecho, 2019) <https://almacendederecho.org/la-ley-del-deporte-y-la-oportunidad-perdida-para-reconocer-la-libertad-de-organizacion-juridica-a-los-clubes-profesionales>

[180] cf LUIZ CAZORLA GONZÁLEZ-SERRANO, *Anteproyecto de LD y libre elección de forma jurídica para clubes profesionales: ¡por fin!* (Madrid, 2019) <http://luiscazorla.com/2019/03/anteproyecto-de-ld-y-libre-eleccion-de-forma-juridica-para-clubes-profesionales-por-fin/>

[181] cf LUIZ CAZORLA GONZÁLEZ-SERRANO, *La Ley del Deporte y la oportunidad perdida para reconocer la libertad de organización jurídica a los clubes profesionales* (Madrid, Almacén de Derecho, 2019) <https://almacendederecho.org/la-ley-del-deporte-y-la-oportunidad-perdida-para-reconocer-la-libertad-de-organizacion-juridica-a-los-clubes-profesionales>

[182] cf VICTOR DE LEONARDO FIGOLS, *O contexto de adoção das SADs na Espanha: um modelo a não ser seguido*, (São Paulo, Ludopédio 2023)

[183] < https://gcp.pt/boas-vindas/>

[184] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 162

through appropriate gymnastics methods'.[185] In addition, the decree established guidelines for association creation, defining football as an additional activity (Article 20). Football, cycling, and boxing were officially recognized as official sports[186] by Law No. 2.104/1960, which also addressed professional sports as a social phenomenon.[187]

Portugal tackled the sports phenomenon from a management viewpoint for the first time with Law No. 1 of 1990 (*lei de bases do sistema desportivo*, or LBSD).[188] Sports started to be seen as a 'real industry, generating monetary flows of exorbitant magnitude',[189] which led to

[185] Preamble of Decree No. 32,946/1943. In Portugal, the criterion that differentiates commercial companies from other types of civil legal entities is clearly defined: 'Comecemos pela leitura do Artigo 1.º, n.º 2 do CSC. Estabelece-se, aí, que 'são sociedades comerciais aquelas que [1] tenham por objecto a prática de actos de comércio e [2] adoptem o tipo de sociedade em nome colectivo, da sociedade de quotas, de sociedade anónima, de sociedade em comandita simples ou de sociedade em comandita por acções' – acresentei-lhes os parênteses rectos para evitar dois aspectos. Os requisitos da comercialidade das sociedades são, então, (1) a prática de actos de comércio e (2) a adopção de um dos tipos de sociedades comerciais consagrados no Código das Sociedades Comerciais – chamamos, ao primeiro, requisito material, ou objecto, e, ao segundo, requisito formal, ou forma'. RUI POLÓNIA, *Direito das sociedades comerciais* (Coimbra, Almedina 2023) 36.

[186] Between 1960 and 1990, Portugal enacted Decree-Law No. 67/97, which, according to HUGO MIGUEL NICAU VIEGAS, sought from the outset to discourage clubs from opting for a special management regime instead of organizing themselves as sports companies, as such a regime would impose stricter liabilities on club executives. As stated in the preamble of the decree, this special regime aimed to introduce minimum standards to ensure "the necessary transparency and rigor" in the management of sports companies. To achieve this, the legal framework incorporated specific measures such as managerial accountability, financial transparency, and mandatory auditing by a certified public accountant. Viegas further notes the almost umbilical connection mandated by the decree between the founding club and the newly formed sports company. This is illustrated by provisions such as Articles 17 and 28, which grant preference rights to members of the founding club in both capital increases and their subscription, and Article 6(2), which requires that the corporate name of the sports company include a reference to the founding club. cf HUGO MIGUEL NICAU VIEGAS, *As sociedades desportivas no direito português* (Dissertação de mestrado, Lisboa, ISCTE – Instituto Universitário de Lisboa, 2015) 7

[187] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 163

[188] <https://diariodarepublica.pt/dr/detalhe/lei/1-1990-333524> The specific regulatory framework anticipated by the Lei de Bases only came into effect in 1995, with the enactment of Decree-Law No. 146/95 of June 21, which introduced the concept of a 'sports company' (*sociedade desportiva*)—abandoning the earlier notion of a "company with sporting purposes." This legislation marked the first formal legal regime for sports companies in Portugal. Among its main features, the decree addressed: the non-compulsory nature of establishing sports companies (in contrast to the mandatory models in Spain, France, and Italy); the prohibition on profit distribution; the imposition of a minimum share capital; the absence of a specific tax regime for sports companies; and the continued liability of the original club for outstanding debts. However, given the burdensome nature of the regime and the fact that incorporation as a sports company remained optional, the decree ultimately proved ineffective. Not a single sports company was formed during the period in which the original version of this Decree-Law remained in force. cf HUGO MIGUEL NICAU VIEGAS, *As sociedades desportivas no direito português* (Dissertação de mestrado Lisboa, ISCTE – Instituto Universitário de Lisboa, 2015) 5. In footnote 5, HUGO MIGUEL NICAU VIEGAS presents JOSÉ MANUEL MEIRIM'S explanation regarding the context of the LBSD (Lei de Bases do Sistema Desportivo). The author explains that one of the key factors contributing to the failure of this legislative initiative was the close connection between the creation of sports companies and the public indebtedness of football clubs. He further notes that, under Article 21(2) of the decree, the revenues generated by the sports company from ticket sales, stadium advertising, and broadcasting rights were liable for the debts incurred by the founding club between 1 January 1989 and the date of incorporation of the sports company. This provision effectively meant that any newly formed sports company would begin its existence burdened by substantial financial liabilities, due to the significant volume of public debts owed by the original sports association. It is therefore unsurprising that the decree failed to gain traction within the Portuguese legal system. cf JOSÉ MANUEL MEIRIM, *Regime Jurídico das Sociedades Desportivas – Anotado* (Coimbra, Coimbra Editora 1999)

[189] cf NUNO MIGUEL SOARES DOS SANTOS**,** *Sociedades Anónimas Desportivas em Portugal e a sua solvência nas ligas profissionais de futebol* (Dissertação de Mestrado, Instituto Politécnico do Porto, Porto, 2018) 5

this change. It is also important to note that 'many clubs were heavily indebted, particularly to the tax authority and social security'[190] during this time.

Law No. 1/1990 established important regulations for sports clubs. First, it stipulated that sports clubs were to be non-profit organizations and that the terms under which they may own stock or encourage the formation of sports businesses would be outlined under a special statute. Second, the rule prohibited real estate assets used for sports from being freely pledged as mortgage security and mandated that the money made by such businesses or their stock be utilized for the club's general sporting activities.[191]

It should be noted that the establishment of Sports Corporations[192] (*Sociedades Anónimas Desportivas,* or SAD) had a financial function as well because a large proportion of player salaries had previously been unreported and not contributed to the Social Security system. Through Decree-Law No. 303/99 and Law No. 107/97, the government established a legal framework in an attempt to legitimize these entities. Sports organizations were subject to control and auditing regulations, either through an external audit or a certified public accountant[193] as part of these steps to protect revenue.

According to LUCIANO MOTTA'S summary of the government's regulatory framework, a sports company may be formed in one of three ways: i) by 'converting' a sports club; ii) by legally incorporating professional teams; or iii) 'from scratch'[194] as a new legal entity. Motta claims that up until 2002, professional teams in Portugal had all legally incorporated to

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[190] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 163; LUÍS EMANUEL DE CAPELO OSÓRIO SARAIVA, *O mercado de transferências: evolução, mudanças e impactos* (Dissertação de Mestrado, ISCTE – Instituto Universitário de Lisboa, Lisboa 2011) 19; MARTINS DE OLIVEIRA, *A insolvência do clube fundador* (Porto, Universidade Católica Portuguesa, 20211) 9; JOSÉ SOUSA GIÃO, *O governo das sociedades desportivas*,In: *O governo das organizações: a vocação universal do corporate governance* (Governance Lab. Coimbra: Almedina, 2011) 233–260; HUGO MIGUEL NICAU VIEGAS, *As sociedades desportivas no direito português* (Dissertação de mestrado, Lisboa, ISCTE – Instituto Universitário de Lisboa, 2015) 6

[191] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 164

[192] cf JÚLIA EDUARDA PINTO SILVA, *Verdade ou ilusão?: uma análise crítica do sportswashing nas finanças* (Dissertação de Mestrado, 2024); DANIEL BEZERRA DE LIMA NOVO, *O fim nas sociedades desportivas – Que caminho?* (Dissertação de Mestrado, Universidade do Porto, Porto 2017); MICAEL LAMEGO DOS SANTOS, *A proteção do clube fundador na SAD: análise crítica à Lei das Sociedades Desportivas* (Dissertação de Mestrado, Lisboa, Universidade Católica Portuguesa, 2019); JOSÉ EDUARDO COELHO BRANCO JUNQUEIRA FERRAZ *et al*., *O regime jurídico das entidades desportivas voltadas à competição profissional: uma interpretação funcional da sua autonomia constitucional* (Rio de Janeiro, Universidade do Estado do Rio de Janeiro, 2020); JOSÉ MANUEL CHABERT, 'As sociedades desportivas' (1998) 22 *Revista Jurídica* 451–468; RICARDO COSTA, 'Os Clubes Desportivos e as Sociedades Desportivas na Lei de Bases da Actividade Física e do Desporto: Artigos 26º e 27º' in *Desporto & Direito Revista Jurídica do Desporto* (ano IV, n. 11, 2007); e MARIA DE FÁTIMA DE RIBEIRO, *A administração das sociedades desportivas* in *Homenagem ao Professor Doutor Germano Marques da Silva* (Lisboa, Universidade Católica Editora, 2020,) 1697–1714

[193] cf HUGO MIGUEL NICAU VIEGAS, *As sociedades desportivas no direito português* (Dissertação de mestrado, Lisboa, ISCTE – Instituto Universitário de Lisboa, 2015) 7

[194] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 165.

form sports corporations; none of the clubs chose to start from scratch with a new sports organization.[195]

Later, Portugal passed Law No. 30/2004, which recognized sports clubs as legal organizations under public law that are set up as associations to actively promote and participate in sports. In turn, sports companies were described as joint-stock companies whose primary objective is to compete in both professional and amateur sports.[196]

In Portugal, Decree-Law No. 10/2013 established an additional legal framework for sports firms. By abolishing the special management regime and establishing that participation in professional competitions would now require the incorporation of sports entities in the form of either a *sociedade anónima desportiva* (SAD)[197] or a *sociedade desportiva unipessoal por quotas* (SDUQ),[198] this decree sought to reform the previous legislation, which sought to treat all clubs wishing to participate in professional competitions equally. Additionally, it made it possible for a single sports company to operate across multiple sporting modalities, something that was previously forbidden.[199]

Clubs that wanted to maintain their 'autonomy' could do so under a corporate structure thanks to the *sociedade desportiva unipessoal por quotas* (SDUQ)[200] if the founding club continued to be the only stakeholder.[201] *Sociedades anónimas desportivas* (SADs) have the ability to issue both Class A and Class B shares. The founding club is the only entity that can subscribe for Class A shares, while other entities can purchase Class B shares. Politically, the law required that there be at least two executive directors for SADs and one for SDUQs, and it gave the founding club the power to veto motions made by the sports corporation (Article 23).

According to LUCIANO MOTTA,[202] Portuguese football still faces significant financial difficulties in spite of these significant reforms. For instance, FC PORTO SAD reported €532

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[195] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 165.
[196] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 167; RUI POLÓNIA, *Direito das sociedades comerciais* (Coimbra, Almedina, 2023) 406–07
[197] cf MASSIMO COCCIA, *Multi-ownership of professional sports club* in *I Congresso de Direito do Desporto* (Coimbra, Ed. Aledina 2005) 125–132
[198] cf LUÍS ALEXANDRE SERRAS DE SOUSA, 'Direito aos lucros nas sociedades anónimas desportivas – um verdadeiro direito?' (2013) 1–2 *Revista de Direito das Sociedades* 167–179. Concerning the differences between legal forms of business entities, see BERNARDO ALVES DA SILVA MARCELINO SIMÕES, *As sociedades desportivas profissionais em Portugal: enquadramento jurídico e desempenho financeiro* (Dissertação de mestrado, Coimbra, Universidade de Coimbra, 2024) 19–20
[199] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 20200 167
[200] cf HUGO MIGUEL NICAU VIEGAS, *As sociedades desportivas no direito português* (Dissertação de mestrado, Lisboa, ISCTE – Instituto Universitário de Lisboa, 2015) 10
[201] cf HUGO MIGUEL NICAU VIEGAS, *As sociedades desportivas no direito português* (Dissertação de mestrado, Lisboa, ISCTE – Instituto Universitário de Lisboa, 2015) 10
[202] Moving beyond a purely doctrinal and legislative narrative and turning to the realities observed within the sports system, it becomes evident that the legal restructuring of Portuguese football clubs has not achieved its intended

million in total liabilities and €165 million in negative working capital in the 2023 fiscal year, a decline of €30 million from 2022. The finances of Portugal's main clubs looked like this in 2023:[203]

Regarding the 2022–2023 season, Portugal's three main clubs' revenue for the 2023 fiscal year 2023 was as follows: SPORTING SAD: €210 million; FC PORTO SAD: €180 million [204].; and BENFICA SAD: €259 million. Therefore, even though financial difficulties still exist, the corporate model's adoption has changed the way Portuguese football is organized. Notably, the nation's top teams have embraced the SAD model: BENFICA SAD joined the capital markets in 2007,[205] while SPORTING SAD was formed in 1997, followed by FC PORTO SAD, VITÓRIA DE SETÚBAL SAD, and VITÓRIA DE SETÚBAL SAD in 1997.

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practical outcomes. Recent findings reveal that Portugal's three major clubs—Benfica, Porto, and Sporting Clube de Portugal (hereinafter, Sporting)—are in a state of technical insolvency, as their equity capital has fallen below half of their registered share capital. Benfica's financial condition is particularly alarming: According to a report by UEFA, the club holds a net debt of €354.2 million. Even though the Portuguese League has managed to reduce its overall debt by 24%, it still reports a net debt of €617.8 million, for more, refer to LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 167–168. Regarding Sporting SAD, LUÍS MIGUEL RODRIGUES NEVES provides a detailed account of the club's financial situation between 1998 and 2000. He explains that the formation of Sporting SAD unfolded in four stages: the provisional registration of the sports company's incorporation agreement; the initial public offering (IPO) launched on 11 August 1997 consisting of 2,000,000 shares priced at 1,000 escudos each; the incorporation general assembly held on 16 October 1997; and finally, the public deed formalizing the definitive constitution of the company, along with the transfer of assets to the SAD (including the professional football team and the bingo operation). The first four-year period following the company's incorporation, up to the year 2000, was marked by a major sporting achievement on 26 May 2000. From an economic and financial standpoint, the most notable trend was a sharp increase of 92.4% in personnel costs—from €11 million in 1998 to €21.2 million in 2000. Despite maintaining positive cash flow throughout the period, the company recorded accounting losses in each year (−€7.4 million in 1998, −€2.5 million in 1999, and −€11.4 million in 2000), resulting in a steady depreciation of its equity, which declined from €34.9 million to €13.5 million. Additionally, short-term loans more than doubled, rising from €14.4 million to €33.4 million. cf LUÍS MIGUEL RODRIGUES NEVES, *Sociedades anónimas desportivas e mercado de capitais: análise de uma década*. (Dissertação de Mestrado. Universidade Aberta (Portugal), 2009) 61

[203] cf ANDRÉ CABRITA MENDES, *SAD do FC Porto afunda-se no campeonato financeiro dos três grandes* (Lisboa, Jornal Econômico 2023*)* <https://leitor.jornaleconomico.pt/noticia/sad-do-fc-porto-afunda-se-no-campeonato-financeiro-dos-tres-grandes>

[204] In 2017, FC Porto used one-fifth of its player roster as collateral for financial operations. <https://financefootball.com/pt/2017/04/11/fc-porto-hipoteca-um-quinto-seu-plantel/>

[205] cf LUÍS MIGUEL RODRIGUES NEVES, Sociedades anónimas desportivas e mercado de capitais: análise de uma década (Dissertação de Mestrado, Universidade Aberta, Lisboa, 2009) 7

LUÍZ MIGUEL RODRIGUES NEVES's study, which examines BENFICA SAD's 2005 annual report and shows the link between athletic achievement and financial stability, is very pertinent:[206]

Source: BENFICA SAD, Annual Report and Accounts, 2005, p.25

Neves contends[207] that increasing money from athletic accomplishment promotes financial stability, which in turn creates investment opportunities,[208] thereby perpetuating the cycle of athletic success. However, he points out that because of the sector's structural deficit, revenues frequently fall short of costs, which leads clubs to turn to youth development as a financially sensible tactic.[209]

As the current financial situation demonstrates, Portuguese clubs still experience recurrent deficits despite being formally organized under the club-company model, whether as SADs or SDUQs. This can be attributed to either structural economic constraints, as LUIZ

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[206] cf LUÍS MIGUEL RODRIGUES NEVES, Sociedades anónimas desportivas e mercado de capitais: análise de uma década (Dissertação de Mestrado, Universidade Aberta, Lisboa, 2009) 14; cf B. (BJH) VAN DE RAKT, *The effect of ownership structure on financial and sporting performance for Eredivisie football clubs* (Tilburg, Tilburg University, 2024); EGON FRANCK, 'European Club Football after "Five Treatments" with Financial Fair Play — Time for an Assessment' (2018) 6 *International Journal of Financial Studies* art 97

[207] cf BERNARDO ALVES DA SILVA MARCELINO SIMÕES, *As sociedades desportivas profissionais em Portugal: enquadramento jurídico e desempenho financeiro* (Dissertação de mestrado, Coimbra, Universidade de Coimbra, 2024) 25

[208] cf ZÉLIA MARÍLIA MAGALHÃES RUSSO, *Impacto dos resultados desportivos na rendibilidade das ações das SAD portuguesas: o caso da Benfica SAD* (Dissertação de mestrado, Porto, Universidade do Porto, 2019) 44–45

[209] cf LUÍS MIGUEL RODRIGUES NEVES, *Sociedades anónimas desportivas e mercado de capitais: análise de uma década* (Dissertação de Mestrado, Universidade Aberta, Lisboa, 2009) 13–14; RUI PEDRO BORGES COUTO RIBEIRO, *A subavaliação contabilística dos ativos das SADs: o caso dos jogadores da formação* (Dissertação de Mestrado, Universidade do Porto, Porto, 2022)

MIGUEL RODRIGUES NEVES has identified, or management practices that are still rooted in pre-professional era.[210]

3.4. ENGLAND

England is recognized as the birthplace of modern football because of its fundamental contributions to the development of football as a sport and a social activity throughout Europe. Football was already being played in the 19th century in several similar games, but it was not until the FOOTBALL ASSOCIATION (FA)[211] was founded in 1863[212] that the sport was formally recognized and given its own set of rules, setting it apart from other similar games like rugby.[213]

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[210] cf BERNARDO ALVES DA SILVA MARCELINO SIMÕES, *As sociedades desportivas profissionais em Portugal: enquadramento jurídico e desempenho financeiro* (Dissertação de mestrado, Coimbra, Universidade de Coimbra, 2024) 38; LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 170

[211] cf ALEX FERNANDES DE OLIVEIRA, 'Origem do futebol na Inglaterra no Brasil, RBFF' (2012) 4(13) *Revista Brasileira de Futsal e Futebol*

[212] cf DAVID GOLDBLATT, *The ball is round: A global history of football* (London, Penguin UK 2007); cf MATTHEW TAYLOR, *Tony Mason, Association Football and English Society, 1863–1915*, Football(s). Histoire, culture, économie, société, v. 2, 2023, <https://preo.ube.fr/football-s/index.php?id=290>: 'Mason cannot draw more definite conclusions about the crowd because it is very difficult to obtain precise evidence about the socio-occupational status of the spectators. Admission charges give some indication about the crowd as do the advertisements that appeared in the programs. The existence of relatively cheap mass transportation enabled the crowds to get to games outside their neighborhood and intercity train travel made it possible for "away" fans to support their teams. In the 1880's the governing elite of Association Football was faced with its most important crisis, professionalism. Could gentlemen, many of them the products of posh public schools, be expected to play with working men who were paid to play a game? The distinction is summed up in Mason's description of the sentiments of N. L. Jackson, the amateur who was the captain in 1892 of an otherwise all professional England team. "Amateurs should not be compelled to mix with pros... Servants did not dine with their masters in the dining room, nor did they come and go through the front door, and professional footballers were paid servants. Professionalism had two immediate impacts on the men who ran the clubs. They had to adapt their principles to hire "paid gladiators" and then they had to find a way to cope with the economics of the situation. The social and economic background of the directors should lead us to think that most of them were firmly attached to the free market concepts of a capitalist economy. In the question of players' wage, the directors' belief in competition bowed to a stronger force, their desire not to see salaries raised by competitive bidding between clubs. In the 1901-2 season, the Football Association instituted Rule 32 which mandated the *maximum* (my italics) salaries and other terms that could be offered to a player. The maximum wage and the lifetime contractual hold the clubs had over a player combined to lock the professionals into a situation which gave them two choices—accept the offer made to them or find another way to make a living. Mason is quick to point out that many of the more important clubs followed the maximum wage restriction more in the breach than in the observance. Thus, football demonstrated two social values so common to Victorian England, the necessity for each class to know its place and the ability of the middle class to act with consummate hypocrisy when self-initiated regulations stood in the way of their pleasure'. CHARLES P. KORR, 'Association Football & English Society, 1863–1915 by Tony Mason' (1980) 7(3) *Journal of Sport History* 1980 114–116

[213] 'Apparus quasi simultanément, au tout début du xxe siècle, sur la scène sportive insulaire, le rugby et le football suivirent des trajectoires diamétralement opposées, au plus grand bénéfice du ballon rond. Et ce d'autant plus que le rugby eut également à lutter, un moment, contre les instances nationales elles-mêmes. Pour autant, depuis le mitan des années 1980 au moins, les adeptes du ballon ovale tentent d'inverser le cours des choses afin de battre en brèche l'hégémonie de leurs concurrents, y compris en jouant sur le registre des manifestations identitaires. Actuellement, l'importante présence médiatique insulaire du rugby est inversement proportionnelle à sa réalité sportive, alors que des mises en scènes culturelles et sportives lui confèrent une identité différente du football, son rival local – et modèle – de toujours'. REY DIDIER, «Jouer au rugby en Corse à l'ombre du football», *Football(s). Histoire, culture, économie, société*, v. 3, 2023, p. 141–152.

The transformation of amateur football players into professional sportsmen and the building of stadiums to hold bigger spectators were two signs of the professionalization of English football by the 1880s. The FA cup's format during this decade was detrimental to clubs that were eliminated early in the knockout stages because it prevented them from having meaningful competition[214] for the rest of the season. In 1888, clubs in the north responded by establishing the FOOTBALL LEAGUE (FL), which used a round-robin tournament system in which every side played every other team twice, guaranteeing competition all season long.[215]

England's first football clubs were established as unincorporated associations,[216;217] just as those in other European nations. To function more efficiently, these quickly switched to corporation forms.[218] The restricted liability granted to directors, which protected their personal

[214] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 105

[215] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 105

[216] 'Some football clubs are unincorporated associations, sometimes called private members' clubs. Unincorporated associations are a group of individuals who are bound together by the constitution or rules of the club. This means that the club is not a legal person in its own right, and so any contract of the club must be entered into by someone on behalf of the club. Normally a club has a committee to run the club and it will be a member or members of the committee which will enter into contracts and hold land on behalf of the club. Further guidance in relation to unincorporated associations is included in The FA booklet Guidance Notes for Members Clubs/Unincorporated Entities <http://www.thefa.com/TheFA/ RulesandRegulations/FARegulations/~/media/Files/ PDF/TheFA/GuidanceNotesFAU.ashx> (…) Unincorporated associations are private members clubs and do not have many of the legal requirements that apply to limited companies (such as the filing of accounts) and are not subject to outside scrutiny (unless they are charities) other than required by law. Within the constraints of the law, the rules or constitution of an unincorporated association can be whatever the members choose, and can usually be easily changed by the members. (…) The members of the governing committee have to enter into contracts in their own names. This means that the members of the committee could be personally liable if the club breaches a contract or if a claim is made against the club and the club has insufficient assets to meet the claim. Also, if there is an uninsured accident or an employee, officer or player of the club performs an act for which the club is held liable then possibly all of the committee or even all of the members could have to pay. Members are jointly and severally liable for any liabilities meaning one member could be liable for all of the club's debts if other members cannot pay. It is essential that where possible insurance is purchased to cover all of the club's activities. An unincorporated association does not have a separate legal identity from its members and so the members of the governing committee have to hold any land or investments of the club in their own name. This means that if the named individual leaves the club, all of the land or investments in their name needs to be transferred to someone else". FOOTBALL ASSOCIATION *et al*. *Club structures: A guide to club structures for national league system and other football clubs*.Charles Russel LLP, 2010, p.6. Cf. Scottish Law Commission, Discussion Paper on Unincorporated Associations (Scot Law Com DP No 140 2008).

[217] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 106. About the associative legal structure in rugby: 'This research sought to engage with the 275 rugby clubs operating within the Welsh Rugby Union league structure.2 The Cambridge dictionary defines a club as "an organisation of people with a common purpose or interest, who meet regularly and take part in shared activities."3 Ashton et al, referring to judicial commentary as to what features may indicate the existence of a club at law, have suggested the legal definition requires greater formalities than the dictionary alternative.4 Whether the AWRC engaged by this research do in fact adhere to legal definitions of a club is however of little significance to this research. It is rather those legal definitions pertaining to the legal forms utilised by the relevant organisations which is of interest and consequence'. RHYS EVANS, *Logics and legal forms: An empirical legal analysis of sports club decision-making* (Cardiff, Cardiff University, 2022. Tese de Doutorado. Cardiff University. Cf. GRAHAM MOFFAT et al., *Trust law*, 5. ed., Cambridge, Cambridge University Press, 2009.

[218] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 105–106

assets from the teams' debts, especially those resulting from pay hikes and stadium building,[219] was one of the main reasons for implementing a corporate model, according to LUCIANO MOTTA.

In 1885, the SMALL HEATH ALLIANCE was established as a professional club. Subsequently, in 1888, it was transformed into a limited company, SMALL HEATH FC LTD, which is now known as BIRMINGHAM CITY FC.[220] Liverpool Football Club (1892), PORTSMOUTH FOOTBALL CLUB (1898), and CHELSEA FOOTBALL CLUB (1892)[221] were among the most renowned clubs in England that were established as football companies from their inception.

Even though the corporate model was quickly adopted, not all societal groups embraced this business-oriented approach. According to LUCIANO MOTTA, specific policies were put in place to stop football from being exploited solely for financial gain. For instance, in 1912,[222] the FOOTBALL ASSOCIATION (FA) passed Rule 34, which forbade directors from receiving compensation, limited dividend payments to 5% of the nominal share value, and mandated that any money left over after a club's bankruptcy be given to a sports-related organization.[223] JOSHUA ROBINSON and JONATHAN CLEGG noted that at this time, few people thought football teams could turn a profit by the late 1970s or early 1980s.[224]

Rule 34 was in effect until 1980, when the FOOTBALL ASSOCIATION (FA) was under the control of new directors who implemented a series of new regulations. The following measures were implemented: (i) the authorization of remuneration for the administrators of sports entities, provided that they worked full-time; and (ii) the gradual increase in the percentage of dividend distribution from 10% to 15% in 1983.[225]

The evolution of MANCHESTER UNITED under Martin Edwards' leadership is a notable example from this era. EDWARDS took a different stance at a time when few predicted football

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[219] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto, 2020 106
[220] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 107
[221] cfLUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 107
[222] It was only in the latter part of English football's 150-year history that clubs began to be viewed as businesses. Until the 1980s, rooted in its origins as a loosely organized association of working-class men with amateur ideals, football culture instilled in club directors a disdain for profit-making and for managing a club in ways comparable to the industrial environments where players labored during the week. This ethos was formalized by the Football Association in the 19th century through what became widely known as Rule 34, which prohibited directors from receiving salaries and limited dividends to shareholders—reinforcing the notion that club owners were, above all, custodians. cf JOSHUA ROBINSON AND JONATHAN CLEGG, *A liga: como a Premier League se tornou o negócio mais rico e revolucionário do esporte mundial* (Rio de Janeiro, Versal, 2020) 55
[223] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 108
[224] cf JOSHUA ROBINSON; JONATHAN CLEGG, *A liga: como a Premier League se tornou o negócio mais rico e revolucionário do esporte mundial* (Rio de Janeiro, Versal, 2020) 55
[225] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 108–109

clubs would be financially viable, especially in an era tainted by *hooliganism*, dwindling attendance, and the 1985 exclusion of English clubs from European championships.[226] MANCHESTER UNITED had been relegated in 1970 and had not won the English championship since 1967 when he took over as president.

ALEXANDER CHAPMAN FERGUSON, a manager with six Scottish club experiences who had previously been courted by RANGERS and ARSENAL, was hired by EDWARDS. Ferguson led MANCHESTER UNITED until 2013, becoming the most successful manager in English football history. Given the club's poor position at the time, EDWARDS' 1982 jersey sponsorship deal with Japanese business SHARP, worth £500,000 per season, was a noteworthy accomplishment.[227]

Furthermore, EDWARDS altered the dynamics of kit purchases by forming a partnership with Admiral, the same company that manufactured the English national team uniforms. This partnership generated an estimated £15,000 annually at the time. Ultimately, this approach facilitated the negotiation of a ten-year contract with NIKE, which was valued at £303 million.[228] EDWARDS implemented a more aggressive marketing strategy, which resulted in the production of £44 million in branded merchandise.[229] In 1998,[230] the club's turnover surpassed that of both ARSENAL and LIVERPOOL combined.

FERGUSON'S leadership on the field, when combined with other strategic management initiatives like stadium upgrades and ticketing changes, produced a positive feedback loop of both athletic and financial success. The 1992–1993, 1993–1994, 1995–1996, 1996–1997, 1998–1999, 1999–2000, 2000–2001, 2002–2003, 2006–2007, 2007–2008, 2008–2009, 2010–2011, and 2012–2013 seasons[231] were among the seasons in which Manchester United won the PREMIER LEAGUE.[232]

Many other teams did not benefit from MANCHESTER UNITED'S financial and athletic success, which was mostly due to the consistency of its coaching staff and leadership from

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[226] cf JOSHUA ROBINSON; JONATHAN CLEGG, *A liga: como a Premier League se tornou o negócio mais rico e revolucionário do esporte mundial* (Rio de Janeiro, Versal, 2020) 55–56

[227] cf JOSHUA ROBINSON; JONATHAN CLEGG, *A liga: como a Premier League se tornou o negócio mais rico e revolucionário do esporte mundial* (Rio de Janeiro, Versal, 2020) 56

[228] cf JOSHUA ROBINSON; JONATHAN CLEGG, *A liga: como a Premier League se tornou o negócio mais rico e revolucionário do esporte mundial* (Rio de Janeiro, Versal, 2020) 57

[229] cf S. HAMIL, 'Case 9: Manchester United: the commercial development of a global football brand' in SIMON CHADWICK AND SEAN HAMIL (EDS), *International cases in the business of sport* (Oxford, Butterworth-Heinemann, 2008) 114–134 <http://dx.doi.org/10.1016/B978-0-7506-8543-6.50014-7>

[230] That year, Manchester United received an acquisition offer from Rupert Murdoch's BSkyB in the amount of £623 million. JOSHUA ROBINSON; JONATHAN CLEGG, *A liga: como a Premier League se tornou o negócio mais rico e revolucionário do esporte mundial* (Rio de Janeiro, Versal, 2020) 60

[231] cf <https://www.manutd.com/en/history/trophy-room/premier-league>

[232] cf *30 anos de Premier League: conheça a história de criação da liga e o caminho até o sucesso* <https://www.lance.com.br/futebol-internacional/30-anos-de-premier-league-conheca-a-historia-de-criacao-da-liga-e-o-caminho-ate-o-sucesso.html>

1982. Only 12 of the 92 English league clubs turned a profit during this time.[233] English football teams accrued €149 million[234] in bank debt in 1983 alone.

For instance, the federation penalized LEEDS UNITED FOOTBALL CLUB, a traditional English club, in 2003 for the insolvency of its managing business, which had accumulated debts of $70 million [235] and consequently relegated the team to the third tier. PORTSMOUTH FOOTBALL CLUB was another example: in the 2009–2010[236] season because of a total debt of €180.7 million.[237]

LUCIANO MOTTA highlights that private organizations in England have complete control over how they conduct business. As a result, clubs, professional or amateur, are not legally required to follow a certain legal model under English law. The most popular forms of clubs are (i) unincorporated organizations, (ii) private companies limited by guarantee, (iii) private companies limited by shares, (iv) community interest businesses, and (v) cooperatives or community benefit societies. Clubs are allowed to select the structure that best fits their needs.[238]

It is still true that the PREMIER LEAGUE makes the most money in Europe (€7.1 billion), which is almost equal to the combined earnings of the BUNDESLIGA (€3.6 billion) and LA LIGA (€3.7 billion). The use of corporate governance frameworks, as well as smart revenue generation and investment techniques within English football, are some of the variables that may be responsible for this financial success.

However, financial issues still exist even though PREMIER LEAGUE clubs make a lot of money. This implies that more focus needs to be placed on football operations' overall governance and management procedures in addition to revenue streams.[239]

3.5. GERMANY

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[233] cf FERNANDO DUARTE, *Ingleses dominam também nas dívidas, diz Uefa* (Rio de Janeiro, O Globo 2020) <https://oglobo.globo.com/esportes/ingleses-dominam-tambem-nas-dividas-diz-uefa-3049408>

[234] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 110–114

[235] cf *Dívidas levam os Leeds à terceira divisão do futebol inglês* <https://www.uol.com.br/esporte/futebol/ultimas/2007/05/04/ult59u119905.jhtm>; cf *Leeds United tenta escapar da falência* <https://ge.globo.com/ESP/Noticia/Arquivo/0%2C%2CAA663711-4274%2C00-LEEDS%2BUNITED%2BTENTA%2BESCAPAR%2BDA%2BFALENCIA.html>

[236] The second judicial reorganization occurred in 2012. cf *Portsmouth enter administration again and suffer 10-point penalty*. <https://www.theguardian.com/football/2012/feb/17/portsmouth-enter-administration-10-point-penalty>; TIAGO COTA BAPTISTA, *Reflexos do endividamento no equilíbrio financeiro dos clubes de futebol: Estudo de caso aplicado à Liga NOS* (Lisboa, Universidade de Lisboa, 2022) 4

[237] Cf. LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte Sporto, 2020) 115

[238] Cf. LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa*, (Belo Horizonte, Sporto, 2020) 114

[239] Cf. LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa*, (Belo Horizonte, Sporto, 2020) 116

Around the 19th century, amateur football gained popularity in Germany after being brought there by the English. This trend has been seen in Brazil and other European nations. DRESDEN FOOTBALL CLUB was established in 1874, making it one of the oldest football teams in the nation. The national football governing body, the DEUTSCHER FUSSBALL BUND E V. (DFB),[240] was founded a few years later in 1900 and had about 86 member clubs.[241]

For the sake of this research, it is important to note that Germany maintained a non-interventionist policy model[242] by following England's example of not passing explicit laws that control the formation of sports enterprises or football clubs. At first, clubs took on the legal structure of nonprofit organizations or associations (*eingetragener verein*).[243]

The German civil code (*bürgerliches gesetzbuch,* or BGB), notably §§ 21 to 79, governs the registered association and contains the following important clauses: (i) nonprofit associations are granted legal personality under § 21 BGB; (ii) § 57 BGB specifies the minimal statutory requirements, including name, registered office, purpose, and indication of registration;[244] (iii) § 26 BGB requires the presence of a management board that handles both extrajudicial and judicial representation; and (iv) § 65 BGB requires the association to include the suffix *eingetragener verein* in its name.

By using their bylaws to organize themselves within the bounds of the law, these associations enjoy a high degree of *privatautonomie*. They typically consist of at least three governing bodies: (i) the *mitgliederversammlung* (general assembly), which is the supreme body in charge of approving budgets, choosing board members, and making decisions regarding dissolution, among other things; (ii) the *vorstand* (executive board), which acts as the association's representative and operational; and (iii) the *kassenprüfer* (audit committee), which is in charge of monitoring the association's finances.

To attract investment, engage into commercial agreements, and participate in international competitions, football clubs were obliged to modify their legal structures beginning in the 1960s.[245] Consequently, numerous organizations implemented a hybrid

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[240] cf LEANDRO STEIN, *60 anos da revolução no futebol alemão: a história da criação da Bundesliga* <https://trivela.com.br/alemanha/bundesliga/bundesliga-criacao-historia/>

[241] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 151

[242] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 152

[243] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 152

[244] 'The name must be clearly distinguishable from the names of existing registered associations within the same locality or municipality'. §57, (2), do BGB.

[245] cf. SONJA BRANDMAIER; PETER SCHIMANY, *Die Kommerzialisierung des Sports: Vermarktungsprozesse im Fussball-Profisport* (Münster, LIT Verlag, 1998): 'Die wichtigsten Marktteilnehmer im Sportmarkt sind die Konsumenten. Dabei muss zwischen zwei Arten von Konsum unterschieden muss. Auf der einen Seite steht der aktive Sportkonsum, der die Nachfrage nach physischen Aktivitäten darstellt. Auf der anderen Seite steht die

structure, which involved the preservation of the association (*eingetragener verein* or *EV*) and the establishment of a for-profit subsidiary. These subsidiaries typically took one of the following forms: (i) *GmbH* (*Gesellschaft mitbeschränkter Haftung*), a limited liability company; (ii) *AG* (*Aktiengesellschaft*), a joint-stock corporation; or (iii) *GmbH & Co. KGaA*, a hybrid legal entity that combines elements of a limited liability company and a partnership

passive Partizipation, womit der Zuschauer gemeint ist. Er ist an der sportlichen Leistung eines Dritten interessiert ist und sieht sich gerne diese Sportveranstaltungen in den Medien oder am Ort des Geschehens an.33 Daher gilt generell zu unterscheiden, in welchem physischen Maße die Teilnehmer aktiviert sind. Je stärker ihre körperliche Betätigung ist, desto eher gehören sie der Leistungsposition an. Die Publikumsposition wird dann eingenommen, wenn physische Belastung nicht vorhanden ist. Motive und Nachfrageverhalten der Teilnehmer im Sportmarkt sind daher unterschiedlich.34 Laut Shamir und Ruskin werden Angebote in Form von Trainingseinheiten und Wettkämpfen dem Sportlermarkt zugeteilt, Reportagen und Sportübertragungen dem passiven Sportkonsumenten. Diese zwei Teilnehmergruppen des Sportmarktes sind aus Motivationssicht grundlegend unterschiedlich, treffen jedoch beim Wettkampf aufeinander. Während der Sportler hier möglichst viele ergiebige Pausen zwischen seinen Belastungsphasen möchte, damit er das bestmögliche Ergebnis erzielen kann, möchte der Zuschauer wenige Pausen erleben, um die größtmöglichste Unterhaltung geboten zu bekommen. Im heutigen Sportmarkt werden deshalb viele Sportarten im Regelwerk verändert, damit die Veranstaltungen attraktiver für das Publikum werden und damit verbunden auch das mediale Interesse steigt. Veranstalter von Sportereignissen stehen immer mehr in der Pflicht, sich zu entscheiden, wie der Wettkampf zeittechnisch umgesetzt wird.35 Dazu zählt auch das Thema der Eventinszenierung, die versucht, die Sportveranstaltung für Zuschauer reizvoller zu machen. Speziell der Sportlermarkt ist hier von hoher Bedeutung, da dieser die Ausgangsbasis für den Zuschauermarkt ist. Nicht jede Leistung zielt jedoch auf den Zuschauermarkt ab, da gerade der Breiten- und Freizeitsport lediglich als Freizeitbeschäftigung und Spaß an Bewegung gesehen wird. Anders sieht es im Leistungs- und Spitzensport aus, welche absatzorientiert sind und der Finanzierung des Sportangebotes auf Vereinsseite dienen sollen. Folglich wird hier hauptsächlich erwerbs- und außenorientiert gehandelt.36 Charakteristisch ist dabei das hohe Maß an Marketingaktivität. Der Sportlermarkt, also der Markt für bewegungsaktiven Sportkonsum, wird von vielen Motivationsfaktoren des jeweiligen Athleten beeinflusst. So gilt der Fußball als sehr dynamische, aggressive und schnelle Mannschaftssportart und zieht dadurch laut Hermanns und Riedmüller hauptsächlich junge und männliche Sportler an, die nach Erlebnis, Interaktion und Leistungsorientierung streben.37 Die Menschen, die selbst Fußball spielen oder gespielt haben, sind zum Großteil als passive Sportkonsumenten vor dem Fernseher oder im Stadion zu finden sind. Die genannten Nachfrageeigenschaften von aktiven Fußballspielern können folgerichtig auch auf die der Zuschauer übertragen werden. Daher ist zu beachten, dass die Wirkungsweise von Spieltagsaktionen bestmöglich auf diese charakteristischen Eigenschaften angepasst werden. Im Mittelpunkt des aktiven Sportkonsums steht die Nachfrage nach Bewegungsangeboten. Auch hier sind die Auswirkungen der Erlebnisgesellschaft zu erkennen. Speziell die Individualisierung ist dabei auffällig. So können bei Sportangeboten, wie beispielsweise in Fitness Studios, zunehmend Abonnements abgeschlossen werden, welche anhand der Wünsche und Vorstellungen des Sportlers ganz individuell vom Anbieter zusammengestellt und preislich angepasst werden.38 Die Vermarktungsmöglichkeiten und die damit verbundene Kommerzialisierung des Sports ist im heutigen Zeitalter der ökonomischen Ausrichtung von Vereinen und Verbänden ein brisantes Thema. Durch den stetig wachsenden Zuschauermarkt im Sport ist es in der heutigen Zeit möglich, große Mengen an Geld umzusetzen. Sport ist längst keine reine Freizeitbeschäftigung mehr. Dies kann u.a. aus aktuellen Berechnungen des BMWi39 entnommen werden. So trägt der Sport im Jahr 2018 gut 60 Milliarden Euro zur Bruttowertschöpfung in Deutschland bei. Dazu zählen speziell die Ausgaben des passiven Sportkonsums. Durch die folgende Statistik, entworfen vom BMWi für das Jahr 2015, wird sichtbar, dass der Konsum im Fußball mit 5.078 Millionen Euro den mit Abstand umsatzstärksten Bereich aller Sportarten in Deutschland ausmacht'. DANIEL HERR GROSS, Eventisierung - *Die Torvorlage für ein erfolgreiches Fußballspiel? Eine Analyse über den Status Quo des Rahmenprogramms von Fußballspielen für die Erlebnisgesellschaft anhand des FC Bayern München.* (Munchen 2018) 10–11

limited by shares. For example, FC BAYERN MÜNCHEN implemented a *GmbH* structure, while BORUSSIA DORTMUND[246] implemented a *GmbH & Co. KGaA*[247] structure.

[246] Another example, with a slightly more complex structure, is that of Borussia Dortmund, which remains an association-based club. The club operates through a partnership limited by shares (Borussia Dortmund GmbH & Co. KGaA). The general partner is Borussia Dortmund Management GmbH, a company wholly owned by the Borussia Dortmund association. The managing partner is a separate company whose shareholding structure is as follows: Evonik Industries (14.78%), Bernd Geske (9.33%), Borussia Dortmund (the association-based club – 5.53%), Signal Iduna (5.43%), Puma (5%), and other shareholders (59.93%). cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 65

[247] On the corporate structure and functioning of Borussia Dortmun: 'As a legal business form, the GmbH & Co. KGaA, is quite rare. It consists of two different types of shareholder: general partners with unlimited liability and limited liability shareholders (whose liability is commensurate with their capital contribution). The modified form GmbH & Co. KGaA, which has been chosen by BVB Dortmund (and also Hannover 96), is different in one key respect; the partner with unlimited personal liability is a company, which itself has only limited liability. The foundation of a GmbH (limited liability company), acting as general partner of the KGaA (a limited partner with share capital), minimizes the risks inherent in unlimited liability status. The DFB's special provisions concerning this legal form of business organization not only allow the company to gain more capital through the stock exchange than would be possible for an AG (public limited company), but enables the club to retain sovereignty over the company. With respect to football clubs, the DFB imposed the following conditions for limited partnerships (KGs). In order to ensure the influence of the club over its administration, the club must be the general partner of the KGaA (or the only partner of the GmbH in between). In such a case, it is possible for the parent club to possess less than 50 per cent of the shares, as long as the parent club exercises sufficient influence over the development of the subsidiary company. Hence a football GmbH & Co. KGaA is organized as follows: the parent club is the (100 per cent) owner of a limited liability company (GmbH), which itself is the personally liable general partner of a limited company with share capital (KGaA). Whilst a proportion of the voting shares (which does not have to amount to 50 per cent plus one) is owned by the parent club, the rest of the shares may be owned by other limited liability shareholders. The law affords the KGaA the opportunity to outline the general structure of the company in its statutes, but prescribes the existence of three organs: the personally liable general partner/partners, the supervisory board and the general meeting of the limited liability shareholders. The personally liable partner (or partners) manages the KGaA, that is, it has managerial control and represents the company in its external relationships. The personally liable partner is fairly autarchic in relation to the supervisory board which has no influence on the selection of the managers (though the skills of individuals on the supervisory board may well be of value to the personally liable partner). The limited liability shareholders basically function as providers of capital. They execute their rights at general meetings, which remain the main decision-making organ of the company, albeit that most decisions are not binding and may not necessarily be implemented. The members of the BVB Dortmund are formally involved in the decision-making processes which are carried out during the annual general meeting of the KGaA, because every member owns a share of the KGaA. The organizational structure of the BVB Dortmund as a whole can be characterized as a loose coupling of partly autonomous sections. The annual general meeting of the e.V. elects an economic committee, the candidates of which are shortlisted by the election committee. The economic committee consists of the same members who constitute the advisory council of the KGaA. The advisory council of the KGaA appoints the managing board of the GmbH, which again has an overlapping membership with the managing board of the KGaA. Hence the members of the club have the opportunity (if only theoretically) to dismiss the managing board of the KGaA. This organizational structure allows for a loosely coupled decision-making connection between the e.V. and the joint stock company, but nevertheless, it ensures a degree of continuity over decision-making. It is thus possible to reach decisions quickly in a range of different areas, because the members of the managing boards of the club, the GmbH, and the KGaA are identical. The GmbH & Co. KGaA comprises the whole economic business including the professional football, the amateurs, youth teams and the ladies' handball first team. In addition, a couple of subsidiary companies were founded in order to provide the joint stock company with a degree of economic independence from the performance of the teams on the field of play. The (internal) organizational structure of the GmbH & Co. KGaA is that of a modern company. Those sections which are not part of the core business (that is to say, sections other than the performance of the professional, contract, players) and all the subsidiary companies, have clearly defined goals and objectives and are allowed to act autonomously within the scope of their budgets. The managing board of the KGaA only defines strategic goals. But in the core business, the performance of the first team, the management intervenes in the operative business, i.e. it decides which players to buy and sell. In this divided, goal-oriented structure of the BVB Dortmund, the loose coupling of the separate business sections becomes clear. The decision-making process

FC BAYERN MÜNCHEN is perhaps the most renowned football club in Germany, a distinction mostly due to its extensive history of athletic achievement. This recognition arises not solely from its accomplishments on the field.[248] INDEED, FC BAYERN MÜNCHEN achieved a record revenue of approximately €640.5 million [249] following the 2016/2017 season. As per DANIEL HERR GROSS, the club's leadership attributes its financial and sporting success to two critical decisions made in 2002:[250] the separation of the football department from the parent association (EV) and its transition to a joint-stock company *(Aktiengesellschaft)*. As a result of the company's listing on the stock exchange, the club's revenue increased by fourfold from 2002.[251]

According to Deloitte, in 2023, FC BAYERN MÜNCHEN and FC BAYERN MÜNCHEN were in fifth and eleventh place,[252] respectively, among the highest-earning football teams in Europe.[253]

takes place top-down in the core business but in other sections of the business decisions can be reached autonomously. With respect to the goal enforcement of the KGaA, the two managers implement all the operative, as well as strategic, decisions in the core business. They are both publicly perceived to be competent managers who have successfully developed the organization. This helps to legitimize their decisions within the organization. Theoretically, the members of the club have the chance to dismiss the two managers, but there are many impediments that make this case very unlikely. The prospects for membership participation are largely reduced to a symbolic act'. cf UWE WILKESMANN AND DORIS BLUTNER, 'Going public: The organizational restructuring of German football clubs' (2002) 3(2) *Soccer & Society* 31–33

[248] 'We suggest that decision-making processes in companies and communities of interest have converged for the two following reasons: Seen from a commercial perspective, the adjustment of the company structure results from the recognition that goals cannot be reached efficiently without sufficient commitment of the employees to those goals. The more bottom-up elements are integrated into the decision-making processes, the more likely it is that the employees will show the requisite degree of commitment. Seen from the perspective of the professional football clubs, decision-making structures are adjusted to be more like company structures because a bottom-up orientation can endanger the organizational goals and their consequent implementation. Aims and procedures, which have been agreed upon once, are subject to constant revision through bottom-up decision-making structures. But, in recent years, the environment of professional football clubs has changed dramatically (e.g. becoming increasingly competitive, having a more mobile workforce) and the continuity of the organizational goal has become increasingly important for financial and playing success'. cf UWE WILKESMANN AND DORIS BLUTNER, 'Going public: The organizational restructuring of German football clubs' (2002) 3(2) *Soccer & Society* 20

[249] cf DANIEL HERR GROSS, Eventisierung - *Die Torvorlage für ein erfolgreiches Fußballspiel? Eine Analyse über den Status Quo des Rahmenprogramms von Fußballspielen für die Erlebnisgesellschaft anhand des FC Bayern München* (Munchen 2018) 28–29

[250] cf DANIEL HERR GROSS, Eventisierung - *Die Torvorlage für ein erfolgreiches Fußballspiel? Eine Analyse über den Status Quo des Rahmenprogramms von Fußballspielen für die Erlebnisgesellschaft anhand des FC Bayern München* (Munchen 2018) 28; cf P. Wicker and C. Breuer, 'Scarcity of resources in German non-profit sport clubs' (2011) 14(2) *Sport Management Review* 188–201 <http://dx.doi.org/10.1016/j.smr.2010.09.001>

[251] The shareholding structure of FC Bayern München is composed of FC Bayern München e.V., Adidas AG, Audi AG, and Allianz SE.

[252] cf EGON FRANCK, 'Private firm, public corporation or member's association – Governance structures in European football' (2010) 5(2) *International Journal of Sport Finance* 108–127

[253] <https://www.deloitte.com/uk/en/services/financial-advisory/analysis/deloitte-football-money-league.html>

Source: DELOITTE TOUCHE TOHMATSU, 2025.

Significant growth in marketing revenue, especially from sponsorships and merchandising, as well as sizeable surpluses from player transactions[254] contributed to FC BAYERN MÜNCHEN'S financial success. Together with these elements, the personnel cost ratio was significantly lower than 50% of the organization's total income.[255]

The goal of separating the nonprofit organization from the operational control of athletic activities was the driving force behind the move toward a corporate structure for managing the club's athletic department, even though German [256] clubs are not required by law to adopt a corporate legal form. To protect themselves from total takeovers by foreign investors, [257] certain German clubs implemented the so-called '50+1 rule' as football grew more and more commercialized. With the help of this regulation, the professional football organization's parent club (*eingetragener Verein*, or EV) is guaranteed to hold at least 50% of the voting shares.[258]

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[254] cf HELMUT M. DIETL, EGON FRANCK, AND MARKUS LANG, 'Why football players may benefit from the 'shadow of the transfer system' (2008) 26 *European Journal of Law and Economics* 129–51

[255] <https://fcbayern.com/en/news/2023/11/fc-bayern-munchen-annual-accounts-for-2022-23-season? > cf NOWY, T.; WICKER, P.; FEILER, S.; BREUER, C. *Organizational performance of nonprofit and for-profit sport organizations*. European Sport Management Quarterly, p. 1–21, 2015. Available at:http://dx.doi.org/10.1080/16184742.2014.995691; TIMO PEETERS; STEFAN SZYMANSKI, *Financial fair play in European football*, Economic Policy, v. 29, n. 78, 2014, p. 343–390. Available at:http://dx.doi.org/10.1111/1468-0327.12031.; A. PICOT, *Der Beitrag der Theorie der Verfügungsrechte zur ökonomischen Analyse von Unternehmensverfassungen*, In: *Unternehmensverfassung als Problem der Betriebswirtschaftslehre*, Berlin, Erich Schmidt Verlag, 1981; K. RUOSS, *Allokation von Verfügungsrechten und die Governance von Fußballunternehmen: Eine empirische Analyse unter institutionenökonomischen Aspekten*, In: *Organisationsökonomie humaner Dienstleistungen: 24*, München/Mering, Rainer Hampp Verlag, 2009.

[256] cf B. FRICK, *Die Voraussetzungen sportlichen und wirtschaftlichen Erfolges in der Fußball-Bundesliga*, In: *Business-to-Business-Marketing im Profifußball* (Wiesbaden, Deutscher Universitätsverlag 2004) 71–93 <http://dx.doi.org/10.1007/978-3-322-81649-8_4>

[257] cf M. W. HANSEN, J. E. TORP, AND H. SCHAUMBERG-MÜLLER, *What explains Asian investments in Denmark?*, In: *Internationalization of emerging economies and firms* (Basingstoke, Palgrave Macmillan 2011) 343–66

[258] HELMUT M. DIETL, EGON FRANCK, TARIQ HASAN, AND MARKUS LANG argue that the rule serves as a mechanism to preserve sporting integrity: 'In principle, an additional form of governance, a "leaguecorporation", is feasible for organizing relationships among participating entities. However, it is well known why corporate solutions have failed to organize sports leagues successfully (Franck, 1995, 2003). Firstly, if clubs were consolidated under one corporate roof, they would act as local subsidiaries of the leaguecorporation. Simultaneously, the league-corporation's property rights can be interpreted as an endowment with decision rights reaching into the subsidiaries. Consumers would suspect the corporate league-owner of influencing the rules of the game discretionarily in order to maximize his profits. The possibility of doing so would therefore significantly undermine the integrity and credibility of the championship race. To the extent that consumer demand is increasing in the fairness and integrity of the championship, such conflicts of interest would adversely affect demand. From

As long as the founding organization retains voting control, the regulation allows the professional team to be set up as a GmbH (limited liability company), KGaA (partnership limited by shares), or AG (public limited company). The LEX LEVERKUSEN & WOLFSBURG is a notable exception; Paragraph 8, Section 2 of the DFL (*Deutsche Fußball Liga*) statute permits an exception to the 50+1 rule in specific circumstances.

The exemption was specifically designed to accommodate the requirements of BAYER 04 LEVERKUSEN and VFL WOLFSBURG, both of which are classified as 'factory clubs' even though neither team is explicitly referenced in the statute. Corporations were already the primary investors in these organizations prior to the establishment of the rule. BAYER 04 LEVERKUSEN is the successor to a corporate club that was established in 1904 at the behest of employees of the German chemical company BAYER AG. VFL WOLFSBURG, which was not initially established as a corporate club, has been consistently sponsored by VOLKSWAGEN AG since 1952.

An organization that has supported the club and sport in general for at least 20 years—starting prior to 1 January 1999—may be permitted to purchase a majority of voting shares under the DFL statute, circumventing the restrictions of the 50+1 rule.[259]

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this viewpoint, it is not surprising that attempts to organize leagues as corporations have remained unsuccessful so far. Consumers have revealed their preferences, and attendance figures reflect that they prefer– so to speak– the Chicago Bulls to the Harlem Globetrotters and therefore genuine sportive competition to a mere show. Thus, corporate league organizations face additional costs of credibly signaling the absence of exerting influence onto on-pitch outcomes– even in the presence of possibilities of doing so. These considerations also apply to organizational forms similar to the league-corporation such as franchising. In a franchising organization, the franchisor will always possess residual rights. The franchisor can issue additional licenses, be unwilling to prolong existing franchising contracts, and so forth. From this viewpoint, the potential for affecting the sportive outcome by the franchisor remains significantly high (…) A remedy for these problems is to unite all agents under one legal entity. The formal analysis has shown that a forward integration of club-owners into championship production is the preferable form for this entity. This is due to the fact that the clubs remain independent but are still able to exert influence over matters that affect the league as a whole. Basically, a merger of all clubs into one league-corporation is possible, too. However, as discussed in Section 1, such an organizational arrangement would raise new unfavorable issues. First of all, if clubs were not independent but united under one corporate roof, the corporate league-owner would have a hard time convincing consumers of the integrity of the championship race. This is due to the fact that, in such a situation, the league owner possesses strong incentives to distort the championship as a whole or single games into his favor. But the integrity of the championship race is one of the main pillars of consumer satisfaction with the product 'professional sports championship'. Cf. H. M. DIETL, E. FRANCK, T. HASAN, AND M. LANG, 'Governance of professional sports leagues — Cooperatives versus contracts' (2009) 29 *International Review of Law and Economics* 128–135

[259] 'Ausnahmen bestätigen bekanntermaßen die Regel. Daher erfasst Paragraph 8 Absatz 2 der Satzung der DFL auch die Möglichkeit einer Befreiung von der 50+1-Regel unter bestimmten Voraussetzungen. Historisch gesehen trägt dieser Absatz den Namen „Lex Leverkusen" oder „Lex Wolfsburg". Obwohl keines der beiden Teams im Abschnitt der Satzung ausdrücklich erwähnt wird, wurde die Freistellung zunächst auf die Bedürfnisse von Bayer 04 Leverkusen und des VfL Wolfsburg zugeschnitten, beide bekannt als „Werksclubs".In beiden Fällen wurde die Freistellung notwendig, da die jeweiligen Unternehmen lange vor der Einführung der 50+1-Regel die Hauptsponsoren der Vereine waren. Bayer 04 Leverkusen ist damit der direkte Nachfolger eines Betriebssportvereins, der 1904 auf Wunsch der Mitarbeiter des deutschen Chemiekonzerns Bayer AG gegründet wurde. Im Gegensatz dazu war der VfL Wolfsburg kein Betriebssportverein, aber der Automobilhersteller

As HENNING ZÜLCH and HENDRIK PIEPER observe, 'It is commonly argued that BAYER LEVERKUSEN and WOLFSBURG enjoy a competitive advantage over other bundesliga clubs because they can receive substantial financial support from their corporate backers'.[260] Due to this reasoning, the DFL arbitration panel changed the exception in 2011, eliminating the restriction that only firms could own clubs as well as the need for a start date for such sponsorship.

The writers note that this exemption has only been given once: In 2015, Dietmar Hopp, a co-founder of the software corporation SAP, was given permission by the DFL to take over full control of TSG 1899 Hoffenheim after he proved he had invested almost €350 million over 25 years.[261]

The RASENBALLSPORT LEIPZIG (RB LEIPZIG) lawsuit was another noteworthy development in German football. Article 12(2) of the DFL statute forbids rebranding or renaming clubs for marketing purposes. The RED BULL firm created a new club with a neutral name to get around this ban. RED BULL, which holds 99 percent of the club's shares, provided RB LEIPZIG with significant financial support and allowed them to purchase the sports license of amateur team SSV MARKRANSTÄDT. With the DFL'S[262] approval, RB LEIPZIG has been a BUNDESLIGA competitor since the 2016–17 campaign.

LUCIANO MOTTA therefore concludes that many football firms in Germany have the nonprofit organization as its sole stakeholder as a result of the 50+1 rule's implementation. He confirms that 'German football remains, in essence, associative, since ownership and control over administrative decisions still rest with the member-based club',[263] despite the small number of clubs that are eligible for the rule's exception.

Volkswagen AG ist seit 1952 kontinuierlich Hauptsponsor des Vereins. Gemäß Paragraph 8 Absatz 2 der Satzung ist es erlaubt, dass ein Rechtsträger, der den Sport sowie die umliegende Gesellschaft seit mindestens 20 Jahren und mit Beginn vor dem 1. Januar 1999 maßgeblich und kontinuierlich unterstützt, eine Ausnahme von der Regel erhalten und Mehrheitsaktionär werden kann. Es wurde damit ein Datum festgelegt, bis wann das Sponsoring für einen Verein begonnen haben muss. Zudem wurde festgelegt, dass nur Unternehmen einen Fußballverein in Deutschland übernehmen dürfen'. HENNING ZÜLCH AND HENDRIK PIEPER, *Ist die 50+1-Regel noch zeitgemäß?* (Leipzig, HHL Leipzig Graduate School of Management, 2020) 7–8; cf MANUEL HOFMEISTER, *Die „50+1"-Regel der Deutschen Fußballliga (DFL) im Lichte der Grundfreiheiten der Europäischen Union* (Linz, Johannes Kepler Universität 2021)

[260] cf HENNING ZÜLCH AND HENDRIK PIEPER, *Ist die 50+1-Regel noch zeitgemäß?* (Leipzig, HHL Leipzig Graduate School of Management, 2020) 8

[261] cf HENNING ZÜLCH AND HENDRIK PIEPER, *Ist die 50+1-Regel noch zeitgemäß?* (Leipzig, HHL Leipzig Graduate School of Management, 2020) 8

[262] cf HENNING ZÜLCH AND HENDRIK PIEPER, *Ist die 50+1-Regel noch zeitgemäß?* (Leipzig, HHL Leipzig Graduate School of Management, 2020) 9; cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 155

[263] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 156; S. PRIGGE and H. VÖPEL, *Investoren und Mäzene im Fußball – eine Typologie externer Kapitalgeber* (HWWI

The German approach has produced profitable results, despite criticism that the 50+1 restriction deters larger-scale investments. Because the clubs are held to strict fiscal accountability, transparency,[264] and sound governance standards, the system encourages consistent income growth.[265]

3.6. THE UNITED STATES OF AMERICA

In the United States, baseball was the first sport to adopt the club-as-business model, not football. American professional sports teams were originally intended to be privately held, profit-driven businesses.

According to DAVID Q. VOIGT, the history of major league baseball, a sport that had remarkable growth during the civil war era, changed quickly from being a local sport played by gentlemen and mercenaries to becoming a well-liked national pastime that was enjoyed by people from all walks of life. To capitalize on baseball's explosive growth and advance the notion that it was 'America's national game', [266] a group of promoters established the first commercial major league in 1871.

Standpunkt, 2014); PROFANS, *ProFans stellt fest: 50+1 ist nicht verhandelbar!*, 2018. Available at:http://www.profans.de/allgemein/profans-stellt-fest-501-istnicht-verhandelbar.; PROVEREIN 1896, *Interview: Kurvengeflüster Aachen*, 2016. Available at:http://proverein1896.de/2016/11/interview-kurvengefluester-aachen/; PUNTE, J. H. M. *Die Kapitalgesellschaft als Rechtsform professioneller Fußballklubs im Spannungsfeld von Verbandsautonomie und Europarecht*. Oldenburg: Oldenburger Verlag für Wirtschaft, Informatik und Recht, 2012; RAN. *Lockerung von 50+1 in Coronazeiten für Seifert "vielleicht nicht der richtige Ansatz".* Ran.de, 31 mar. 2020. Available at:https://www.ran.de/fussball/news/lockerung-von-50-1-in-coronazeiten-fuer-seifert-vielleicht-nicht-der-richtige-ansatz-146342. RB-LIVE, *Wachsen stetig": RB hat jetzt 19 Mitglieder – Pyro-Aussprache zwischen Mintzlaff und Fans*, 13 dez. 2019. Available at: https://rblive.de/news/wachsen-stetig-rb-leipzig-hat-jetzt-19-mitglieder-pyro-aussprache-zwischen-mintzlaff-und-fans-3292857; T. REED, *Werdet nicht wie wir!*, 11 Freunde, 21 mar. 2018. Available at:https://www.11freunde.de/international/premier-league/werdet-nicht-wie-wir-a-a82d942e-0004-0001-0000-000000536776; M. ROHDE; C. BREUER, *Europe's elite football: Financial growth, sporting success, transfer investment, and private majority investors*, International Journal of Financial Studies, v. 4, n. 2, 2016a; M. ROHDE; C. BREUER, *The financial impact of (foreign) private investors on team investments and profits in professional football: Empirical evidence from the Premier League*, Applied Economics and Finance, v. 3, n. 2, 2016b; M. ROHDE; C. BREUER, *The market for football club investors: A review of theory and empirical evidence from professional European football*, European Sport Management Quarterly, v. 17, n. 3, 2017, p. 265–289.

[264] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 162

[265] cf H. M. DIETL AND E. FRANCK, 'Governance failure and financial crisis in German football' (2007) 8(6) *Journal of Sports Economics* 662–69 <http://dx.doi.org/10.1177/1527002506297022>

[266] 'Certainly liberal nationalism as an integrating social force is reflected in the rising sporting institutions of America. It is a theme writ large in the history of major league baseball, a sport that grew to impressive proportions during the Civil War era. Moving speedily from an eastern regional sport played by snobbish gentlemen and their muscular mercenaries, the war helped to diffuse the sport and popularize it among Americans of all classes. Part of the fruit of this rapid growth process was an immediate postwar baseball boom which commercialists quickly exploited. In 1871 a group of opportunistic promoters organized the first commercialized major league to cash in on the boom. In doing so, they made every effort to press baseball's claim to being America's National Game'. DAVID Q. VOIGT, 'Reflections On Diamonds: American Baseball and American Culture' (1974) 1(1) *Journal of Sport History* 8

By commercializing baseball, ALBERT GOODWILL SPALDING became the first millionaire. Before relocating to Boston, where he threw the major league champions from 1872 to 1875 for the RED STOCKINGS, SPALDING founded and oversaw the FOREST CITY TEAM IN ROCKFORD, Illinois. Promoting the notion that baseball was the national pastime of the United States[267] was a major factor in his success. SPALDING reinforced this sense of national identification in his publications by publishing official manuals for all American leagues through his organization, the American Sports Publishing Company.[268]

In 1869, the CINCINNATI RED Stockings became the first baseball club to be entirely professional after a period in which it was illegal to pay players. They quickly outperformed amateur teams.[269] Teams quickly adopted professionalism, which resulted in the establishment of the first professional league, the National Association of Professional BASE BALL PLAYERS (1871), which disbanded in 1875. Major League Baseball (MLB)[270] was established in 1903 because of an agreement between the NATIONAL LEAGUE and the AMERICAN LEAGUE following a string of league rivalries. Since then, MLB has run on a franchise model, with each team operating as an independent company.

Other important leagues also arose in the 20th century. The NATIONAL FOOTBALL LEAGUE (NFL),[271] which was founded in 1920, did not become stable or dominant in the sport until 1966, when it merged with the AMERICAN FOOTBALL LEAGUE.[272] Similar challenges were

[267] cf DAVID Q. VOIGT, 'Reflections On Diamonds: American Baseball and American Culture' (1974) 1(1) *Journal of Sport History* 3–25, 8
[268] cf DAVID Q. VOIGT, 'Reflections On Diamonds: American Baseball and American Culture' (1974) 1(1) *Journal of Sport History* 3–25, 10
[269] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 119
[270] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto, 2020) 121
[271] For an analysis of the American Needle v. National Football League case from an antitrust perspective, see: 'American Needle v. National Football League, the U.S. Supreme Court will decide whether, and to what extent, section of the Sherman Antitrust Act regulates a professional sports league and its independently owned franchises. For the first time, the Court could characterize a league and its teams as a single entity, meaning that the league and its teams are not able to "conspire" because they share one "corporate consciousness," and thus cannot violate section through even the most anticompetitive behaviors. Such an outcome would run counter to the sports league-related decisions of most U.S. Courts of Appeals, which have generally rejected the single entity defense because teams often do not pursue common interests. It would, however, prove consistent with the views of the Seventh Circuit, which in 2008 determined in American Needle that the National Football League and its teams constitute a single entity for purposes of apparel sales. This Feature provides a substantive analysis of American Needle, the relationship between antitrust law and professional sports, and the merits and weaknesses of the single entity defense for professional sports leagues and their teams. The Feature also projects how American Needle may influence the legal strategies and business operations of other sports associations. The Feature discourages the Court from recognizing the NFL and similar leagues as single entities, and recommends that Congress consider targeted, sports-related exemptions from section 1'. MICHAEL A. MCCANN, 'American Needle v. National Football League: An Opportunity To Reshape Sports Law' (2010) 119(4) *The Yale Law Journal* 726–81
[272] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 121

experienced by the NATIONAL BASKETBALL ASSOCIATION (NBA), which in 1976[273] merged with the NATIONAL BASKETBALL LEAGUE and then the AMERICAN BASKETBALL ASSOCIATION to become the only major basketball league.

Notwithstanding early difficulties in uniting national leagues, the American sports industry has grown as a market [274] and as a highly structured organization.[275] Nonetheless, the American model has distinct operational characteristics in contrast to the systems in Brazil and Europe. According to LUCIANO MOTTA, the American system places more emphasis on the entertainment product as a whole than on specific teams. The idea that 'no club or group of clubs should dominate the competition for an extended period of time'[276] is foundational to the American system. To keep the league's finances in balance, measures like revenue sharing, salary caps, draft systems, luxury or competitive balance taxes, and player signing limitations are implemented.[277]

The circumstances in football in the United States also diverge greatly from the models used in Brazil and Europe. The US Soccer Federation is responsible for the organization of soccer in the United States, which does not employ a promotion and relegation system. The primary men's leagues are as follows: i) MAJOR LEAGUE SOCCER (MLS); ii) USL CHAMPIONSHIP; iii) USL LEAGUE ONE; iv) MLS NEXT PRO; and v) NISA (National Independent Soccer

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[273] 'When the league moved into the space in 2005, domestic TV rights had just cleared the billion-pound mark for the second successive cycle. Ratings were through the roof. Yet for the most popular sports league on the planet, the offices have none of the ostentation or scale of the NFL's, which are perched high above the corner of Fifty-First Street and Park Avenue in New York, or the NBA's, which live in a fifty-one-story tower two avenues over. In part, that's because the Premier League has roughly ten times fewer employees than the NFL or NBA, with a headcount hovering around 110'. JOSHUA ROBINSON AND JONATHAN CLEGG, *A liga: como a Premier League se tornou o negócio mais rico e revolucionário do esporte mundial* (Rio de Janeiro, Versal 2020) 247

[274] The NBA generated $11.34 billion in revenue during the 2023/2024 season, marking an increase of over $700 million compared to 2022. The average revenue per franchise in the 2023/2024 season reached $377.97 million, which represents a $20 million rise from the previous year and more than double the figure recorded a decade earlier. <https://talksport.com/nfl/2306118/highest-paid-coaches-us-2024-nba-nfl-reid-kerr/? >

[275] 'The NFL made nearly $13 billion last season before any of the league's 32 teams sold a single ticket, hot dog, soda, or beer. That information comes via the summertime tradition of the Packers releasing their annual financial report. Green Bay is the only publicly owned NFL franchise and therefore releases key revenue figures that the other 31 teams keep private. This week, the Packers reported a $60.1 million operating profit for the fiscal year ending on March 31. That came after bringing in $654 million in total revenue, up roughly 7% from the prior year. The majority of that came from Green Bay's share of national revenue that the NFL distributed equally among its franchises. For the 2023 season, that payment was $402.3 million, up from $374.3 million in '22. From the Packers' report, it can be determined the NFL made $12.87 billion in national revenue during the 2023 season. Media rights drove the majority of that, but things like official league sponsors and ticket sales for international and playoff games factored in, too. In '22, the NFL's national revenue sum was $11.98 billion'. <https://frontofficesports.com/pulling-back-the-curtain-on-the-nfls-25-billion-revenue-dream/? > Outro exemplo é a compra do Boston Celtics, em 2025, por cerca de R$ 34,5 bilhões de reais para a *Symphony Technology Group*. Outros times foram negociados em valores altos como o Phoenix Suns (US$ 4 bilhões), Milwaukee Bucks (US$ 3,5 bilhões) e Dallas Mavericks (US$ 3,5 bilhões), todos em 2023. Available at: https://www.espn.com.br/nba/artigo/_/id/14937990/boston-celtics-vendido-r-345-bilhoes-vira-maior-negocio-historia-esportes-americanos.

[276] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa* (Belo Horizonte, Sporto 2020) 122

[277] cf LUCIANO DE CAMPOS PRADO MOTTA*, O mito do clube empresa*, Belo Horizonte, Sporto 2020) 123

Association, not yet completely implemented). Women's soccer is predominantly organized around two leagues: THE NATIONAL WOMEN'S SOCCER LEAGUE (NWSL) and the USL SUPER LEAGUE.[278]

Using a *single-entity* model, MAJOR LEAGUE SOCCER LLC[279] assigns investor-operators, who basically obtain a license from the league, day-to-day club management while the league retains central control over all commercial and contractual rights. When MAJOR LEAGUE SOCCER (MLS) first started off, it drew in investor-partners who gave each other about €7.9 million in exchange for equity rights. Because of this, players have contracts with the league's top players[280] as a whole rather than with specific teams, each of which has a set quota for acquiring. It is significant to remember that, in contrast to other nations, the relationship between teams and their supporters is typically weaker in the US. Additionally, because of the intense competition among leagues, marketing expenditure is essential to the expansion of the sport.[281]

The MLS model requires clubs to share income[282] and expenses equally, centralizes decision-making power, and sets a salary cap. All teams are incorporated into a single legal and financial entity, reflecting MLS's status as a limited liability company (LLC). LUIZ ROBERTO

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[278] cf DAVID G. SURDAM, *The big leagues go to Washington: Congress and sports antitrust, 1951–1989* (Urbana, University of Illinois Press 2015). For a comprehensive analysis of American sports law, consult JOHN O. SPENGLER, PAUL M. ANDERSON, DANIEL P. CONNAUGHTON, AND THOMAS A. BAKER III, *Introduction to sport law* (Champaign, Human Kinetics, 2022); WALTER T. CHAMPION JR., *Sports law in a nutshell* (West Academic Publishing 2017); STEFAN WALZEL AND VERENA RÖMISCH, *Managing sports teams: economics, strategy and practice* (Cham, Springer 2021)

[279] In the United States, in addition to the LLC (Limited Liability Company), there are also General Partnerships, Limited Partnerships, Public Corporations, and Close Corporations: "A corporation is a LEGAL ENTITY separate from its shareholders, with rights and liabilities entirely distinct from theirs. A corporation may sue, be sued by, and contract with any other party, including any one of its shareholders. A transfer of stock in the corporation from one individual to another has no effect on the corporation's legal existence. Title to corporate property belongs not to the shareholders but to the corporation. Even where a single individual owns all of the stock of the corporation, the respective existences of the shareholder and the corporation are distinct. Limited Liability .A corporation is a legal entity and is therefore liable out of its own assets for its debts. Generally, the shareholders have LIMITED LIABILITY for the corporation's debts—their liability does not extend beyond the amount of their investment—although later in this chapter we will discuss certain circumstances under which a shareholder may be personally liable. Free Transferability of Corporate Shares. In the absence of contractual restrictions, shares in a corporation may be freely transferred by sale, gift, or pledge. The ability to transfer shares is a valuable right and may enhance their market value. Transfers of shares of stock (discussed in Chapter 24) are governed by Article 8 of the Uniform Commercial Code, Investment Securities". Para mais, conferir: RICHARD A. MANN AND BARRY S. ROBERTS, *Contemporary business law* (St. Paul, West Group, 1996) 573–662

[280] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 131

[281] cf LUCIANO DE CAMPOS PRADO MOTTA, *O mito do clube empresa* (Belo Horizonte, Sporto 2020) 131

[282] cf LUIZ ROBERTO MARTINS CASTRO, *Brevíssima considerações acerca da estrutura da major league soccer* (Brasília, IBDD 2020) <https://ibdd.com.br/brevissimas-consideracoes-acerca-da-estrutura-da-major-league-soccer/? >

MARTINS CASTRO [283] provides a graphic describing the clubs that fall under this concept in his 2020 analysis.

Source: INSTITUTO BRASILEIRO DE DIREITO DESPORTIVO, 2020.

It is clear that American soccer's club governance, league legal framework, and market structure are very different from any other model that has been discussed thus far. Despite continuous criticism about the lack of competitive spirit and the restricted autonomy given to franchised clubs, a lot of emphasis is placed on commercial partnerships and competitive balance to professionalize the entire sport, especially in Major League Soccer (MLS).

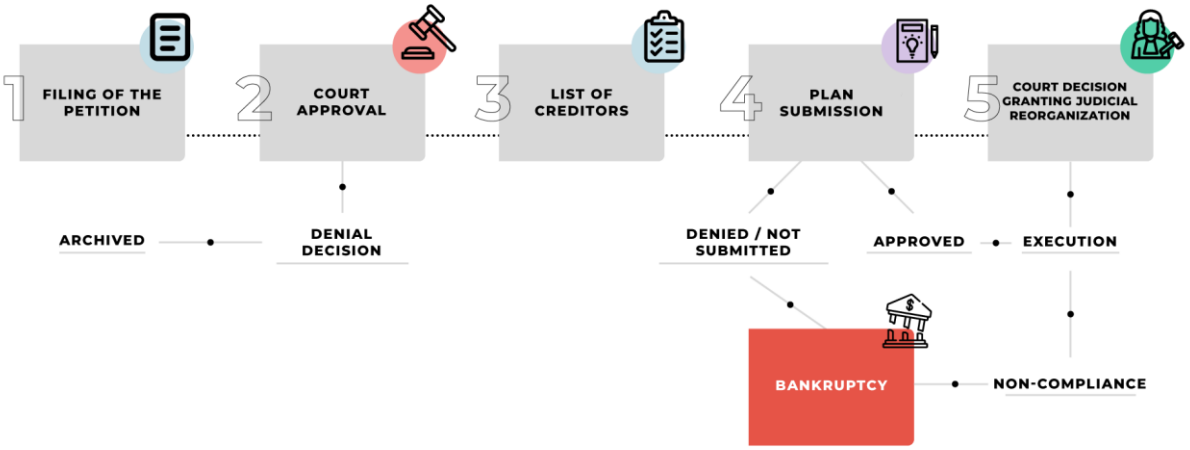
After examining the many club-company models seen in the main leagues throughout the world, it is evident that professional management, legal framework, and financial distress are important factors to consider when dealing with insolvency. This is particularly important in Brazil, since the legal system provides suitable instruments to address these problems during the judicial restructuring procedure.

[283] The League retains ownership of all commercial and broadcasting rights, both nationally and internationally. However, teams are allowed to enter into local broadcasting and sponsorship agreements within their respective cities. Intellectual property also belongs to the League, although clubs may exploit it locally. Lastly, player contracts are signed directly with the League; nonetheless, it is the responsibility of each team to select the players that will compose their roster from a list previously prepared by the League LUIZ ROBERTO MARTINS CASTRO, *Brevíssima considerações acerca da estrutura da major league socce*r (Brasília, IBDD, 2020) <https://ibdd.com.br/brevissimas-consideracoes-acerca-da-estrutura-da-major-league-soccer/ >

4. THE JUDICIAL REORGANIZATION PROCESS IN BRAZIL

4.1. JUDICIAL RESTRUCTURING PURSUANT TO LAW NO. 11,101/2005

OVERVIEW OF THE JUDICIAL REORGANIZATION PROCESS IN BRAZIL[284]



Source: Own elaboration based on Law No. 11,101 of 2005.

4.1.1. PLEADING PHASE

The postulatory phase in Brazilian judicial reorganization proceedings commences with the submission of the initial petition and continues until the court renders a decision to either approve or deny the request for initiation of the proceeding, as stipulated by Article 52 of Law No. 11,101/2005.

The initial petition must provide specific economic and financial justifications for the debtor's dilemma and must be supplemented by the documentation listed in Article 51 of Law No. 11,101/2005:

- Financial statements for the three most recent fiscal years, as well as those prepared for the filing, including: (a) balance sheet; (b) statement of accumulated results; (c) income statement from the conclusion of the last fiscal year; (d) managerial cash flow

[284] The infographic is a simplified representation of the entire judicial reorganization process, which may involve several additional events between the filing and the granting of reorganization. Here, as a matter of methodological delimitation, the topic of cross-border insolvency under a comparative law perspective will not be addressed. For further discussion on the subject, see: SEFA M. FRANKEN, 'Cross-Border Insolvency Law: A Comparative Institutional Analysis' (2014) 34(1) *Oxford Journal of Legal Studies* 97–131

report and its forecast; and (e) description of any companies within the corporate group, whether de facto or de jure;[285]

- A comprehensive nominal roster of creditors, regardless of their involvement in the reorganization, encompassing those with obligations to provide or perform, along with their physical and electronic addresses, the kind and current value of the claims, the source of the credits, and the schedule for maturity;
- A comprehensive list of employees, specifying their positions, salaries, benefits, and other entitlements, together with the reference month and any overdue sums;
- A certificate of good standing from the Public Registry of Companies, the revised articles of incorporation, and the minutes documenting the appointment of the present directors;
- A catalog of the personal assets belonging to the controlling owners and the directors of the debtor;
- Revised bank statements and information regarding all financial investments, encompassing investment funds and stock market assets, provided by the pertinent financial institutions;
- Certificates from protest notaries situated in the debtor's business location or residence, as well as in municipalities where it operates branches;
- A signed enumeration of all legal actions and arbitration proceedings involving the debtor, including labor disputes, along with estimated sums at stake;
- A comprehensive report of the debtor's tax obligations; and
- A compilation of non-current assets and rights, encompassing those exempt from judicial reorganization, alongside agreements established with creditors possessing fiduciary ownership of tangible or intangible assets, lease contracts, commitments to sell or transfer real property featuring irrevocability or irreversibility clauses (including in real estate developments), or agreements with title reservation.

The debtor must also adhere to the stipulations of Article 48 of Law No. 11,101/2005, which delineates the criteria for petitioning for judicial reorganization in Brazil:

[285] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (15th edn, São Paulo, Saraiva Jur 2021) 218

- The debtor must have consistently participated in its company operations for a minimum of two (2) years;[286]
- The debtor must not be in bankruptcy, or, if previously declared bankrupt, must have had their liabilities discharged by a definitive and binding judicial ruling;
- The debtor must not have undergone judicial restructuring in the past five (5) years;
- The debtor must not have secured judicial reorganization under the special regime for micro and small firms in the preceding five (5) years; and
- Neither the debtor nor any of its directors or controlling shareholders may have been convicted of any offenses enumerated in Articles 168 to 188 of Law No. 11,101/2005.

At this procedural juncture, the judicial determination—whether to accept or deny the petition—simply ascertains if the legal criteria for processing the claim are satisfied. This encompasses the validity of the petitioner and the sufficiency of the proof of the presence of an economic and financial crisis.[287]

Conversely, the ruling that permits judicial reorganization is the one that, by the conclusion of the full procedural process, ratifies the endorsement of the reorganization plan, as determined by the creditors or mandated by the court via *cram down.*[288]

The phase prior to the decision to grant the request for judicial reorganization is dedicated to evaluating the company's potential for recovery—either by investigating the underlying cause of the crisis or by assessing its future ability to generate cash flow[289], attract

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[286] The exercise of business activity for a minimum period of two (2) years must be proven through the applicant's records filed with the competent authority. In the case of a rural producer, this requirement must be fulfilled by means of the Fiscal Accounting Bookkeeping (*Escrituração Contábil Fiscal*, or ECF), or through any legally required accounting records that may replace the ECF (Article 48, §2, of Law No. 11,101/2005).

[287] It is important to note that, even though not expressly required under Article 48, it is advisable to include in the initial petition the recovery measures that will be proposed in the reorganization plan.

[288] Article 58 of Law No. 11,101/2005. The corresponding provision under Chapter 11 of the U.S. Bankruptcy Code is found in Section 1129 (b): 'Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan'. This will be further addressed below.

[289] ROBERT L. JORDAN And WILLIAM D. WARREN contend that 'even for an insolvent corporation operating at a loss, continued operation may be more beneficial to unsecured creditors than liquidation'. They assert that if the corporation can produce revenues above its expenses throughout the restructuring period, then 'that surplus income will be accessible to fulfill unsecured claims'. cf ROBERT L. JORDAN AND WILLIAM D. WARREN, *Bankruptcy* (4th ed, Westbury, The Foundation Press 1955) 723; Furthermore, JORDAN and WARREN propose that, if a corporation—although insolvent—can generate adequate income, this situation may lead to a more efficient fulfillment of creditors' claims than compulsory liquidation. In summary, abruptly terminating a company's operations that still hold revenue-generating potential may squander productive assets and forfeit prospects for

investment, or liquidate assets to alleviate financial distress. The primary aim is to guarantee the correct implementation of the idea of corporate preservation, as articulated in Article 47[290] of Law No. 11,101/2005[291].

financial recovery and the fulfillment of obligations. cf CHARLES JORDAN TABB AND RALPH BRAUBAKER, *Bankruptcy law: principles, policies, and practice* (Cincinnati, Anderson Publishing Co 2003) 595. Moreover, as per CHARLES JORDAN TABB: 'Point one, and the most often repeated justification for chapter 11, is to maximize the value of the debtor firm. The operative assumption is that there is a going-concern surplus for a reorganized firm over and above its liquidation value. In short, the most fundamental reason for having a corporate rescue procedure such as chapter 11 is to maximize value for the benefit of all stakeholders in the enterprise. More money is better than less. What was true a quarter-century ago remains true today: "Point one, then, is that a business is worth more alive than dead—i.e., it is worth more as a going concern than in a forced sale liquidation; and that all affected parties, defined broadly, benefit if that going concern is maintained." Of course, the foregoing statement only holds true if the debtor firm as a forward-looking matter has a profitable business, on an income statement basis. Letting financial bygones be bygones, is this a viable enterprise? Does the firm make enough money to pay its current expenses and turn a profit? A horse-and-buggy company a hundred years ago, after the invention of the automobile, likely would not be worth saving. Today, many bricks-and-mortar retailers face the same fate in an Amazon/Walmart world. Accordingly, as a cautionary note, it bears remembering that chapter 11 is not justified for every business'. CHARLES J. TABB, 'What's Wrong with Chapter 11?' (2021) 71 *Syracuse Law Review* 3

[290] Article 47 of Law No. 11,101/2005 establishes that the purpose of judicial reorganization is to enable the debtor to overcome its situation of economic and financial crisis, to ensure the preservation of the productive activity, the employment of workers, and the interests of creditors, thereby promoting the continuity of the business enterprise, its social function, and the stimulation of economic activity.

[291] During this period, subsequent to a succession of financial crises impacting significant enterprises (e.g., the railroad sector), bankruptcy law reached a pivotal juncture, transitioning its emphasis from mere asset liquidation and creditor reimbursement to the preservation of the enterprise itself. The transformation was prompted by the increasing political and social significance of substantial corporate bankruptcies due to the extensive and detrimental effects they generated. On this subject, several authors point out: 'As lawmakers wrestled over federal bankruptcy legislation, another insolvency drama unfolded entirely outside of Congress. During the course of the nineteenth century, the railroads emerged as the nation's first large-scale corporations. The early growth of the railroads was fraught with problems. Due both to overexpansion and to a series of devastating depressions, or panics, numerous railroads defaulted on their obligations—at times, as much as 20 percent of the nation's track was held by insolvent railroads. Rather than look to Congress, the railroads and their creditors invoked the state and federal courts. By the final decades of the nineteenth century the courts had developed a judicial reorganization technique known as the equity receivership. It was this technique, rather than the Bankruptcy Act of 1898, that became the basis for modern corporate reorganization'. DAVID A. SKEEL JR., *Debt's dominion: a history of bankruptcy law in America* (Princeton and Oxford, Princeton University Press 2001) 48; [291]'Although corporate reorganization has gone hand in glove with general bankruptcy law for many decades now, its origins are quite distinct. The bankruptcy debates that led to general legislation in 1800, 1841, 1867, and 1898 had little to do with the reorganization of large corporations. To be sure, both the 1867 act (after an amendment in 1874) and the 1898 act did include corporate bankruptcy. But lawmakers focused entirely on individuals and small corporations in their deliberations, and the Bankruptcy Act reflected this. The corporate bankruptcy provisions were useful only for small businesses; more substantial firms simply ignored them. To trace the real origins of corporate reorganization, we must look elsewhere. The "elsewhere" that lies at the heart of early reorganization can be distilled to a single word: railroads. In a very real sense, the history of corporate reorganization is the history of nineteenth century railroad failure. The periodic collapse of the railroads led to the first true reorganizations—which were called equity receiverships. When Congress finally added a meaningful corporate reorganization option to the Bankruptcy Act in the 1930s, it took all of its cues from the railroad receivership techniques that had long been used in the courts. Although corporate reorganization traveled on a very different track than the rest of bankruptcy, we will see several familiar themes as we explore its origins. As with nineteenth-century bankruptcy legislation, American federalism, with its division of authority between Congress and the states, played a crucial role both in the emergence of the great railroad receiverships and in the shape the receiverships took. As with general bankruptcy, the process produced a powerful and distinctive bar. The bar, together with the Wall Street banks it represented, was the most obvious beneficiary, and a principal cause, of the reorganization technique. But that is the end of the story. Let us first go back to the colorful beginning'. TODD J. ZYWICKI AND DAVID A. SKEEL, 'The past, present, and future of bankruptcy law in America' (2003) 101(6) *Michigan Law Review* 2016–36

FÁBIO ULHOA COELHO [292] asserts that not all enterprises merit preservation,[293] as the restructuring of economic activity incurs substantial costs—costs that must be borne by someone, either through capital infusion into the ailing business or through the partial or complete forfeiture of creditor claims.

Legal study has historically acknowledged the notion of corporate preservation as a corollary to the enterprise's social mission, considering it the paramount premise in the interpretation of judicial reorganization. This is due to the principle's direct derivation from the fundamental purpose of reorganization law:[294] the restoration of viable enterprises.[295;296]

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[292] cf FÁBIO ULHOA COELHO, *Curso de direito comercial* (São Paulo, Revista dos Tribunais, 2016) 356

[293] cf CHARLES J. TABB, 'What's Wrong with Chapter 11?' (2021) 71 *Syracuse Law Review* 3

[294] cf MARTA ZABALETA DÍAZ, *El principio de conservación de la empresa en la ley concursal* (Navarra, Thomson Civitas 2006) 33. Morerover, they assert: 'La Ley Concursal recupera la satisfacción de los acreedores como finalidad del procedimiento, pero sin que por ello sea ajena a las ventajas que tanto para los acreedores como para el resto de intereses afectados por la crisis pueden derivarse de la conservación de la estructura empresarial'. Marta Zabaleta Díaz, *El principio de conservación de la empresa en la ley concursal* (Navarra, Thomson Civitas 2006) 23

[295] cf JOÃO COSTA-NETO AND LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen Juris 2023)

[296] Concerning the scope and limits of judicial assessment in U.S. bankruptcy proceedings: '§207: The limits of judicial expertise: reliance on the parties? The bankruptcy judge will not ordinarily be expert at valuation techniques. Indeed as will be seen upon examination of the Atlas Pipeline SEC advisory opinion, there is some basis to fear that expert agencies, even those whose personnel have a finance background, will issue opinions that are internally inconsistent. Judges are not usually trained for valuation; financiers are. The problem may be deeper than a question of technical expertise. Since valuation is a guess about future states of the economy, future prices of the company's product, and future costs of the company's production, even a good knowledge of the tools for valuation (discounting, variance, diversification, etc.) may not be enough. Knowledge or a feel for the particular industry and sometimes the particular company is required. Is an adversary proceeding the best place to get it? Financial analysts will themselves come up with differing valuation figures. The economic analysts at Merrill Lynch might tell the industry analyst to assume a 2% growth rate in the gross national product. The economist at Goldman Sachs might be more optimistic and assume a 3% growth rate. Merrill Lynch's oil analyst could conclude oil will go to $15 per barrel next year, while Goldman's is projecting $20 per barrel. These differences would lead Goldman (or its client) to buy the oil property from Merrill Lynch's client. Who is right? Usually we have no need for a judicial second guess; in a market economy, the project goes to the higher bidder. Is the deeper problem with judicial valuation that the court is not spending its own money and accordingly might more easily make a mistake or let nonfinancial considerations infect its valuation determination? Could the court effectively use experts? Could the court rely on the parties to bring forth experts who will present the relevant valuation data? Consider the district court opinion in In re New York, New Haven and Hartford RR, 4 Bankr. 758 (D. Conn. 1980). The Second Circuit affirmation is reproduced infra at ¶155'. MARK J. ROE, *Bankruptcy and corporate reorganization: legal and financial materials* (New York, Foundation Press 2000) 20; CHARLES JORDAN TABB warns that the notion that a corporation holds greater value when operational than when defunct necessitates thorough verification. Tabb asserts that the claim is valid only if the debtor operates a lucrative enterprise backed by verified income and corroborating financial proof. He poses multiple inquiries to evaluate the feasibility of the venture: (i) Can previous financial difficulties be overlooked—specifically, is the enterprise today viable? (ii) Is the organization currently producing adequate revenue to pay its ongoing expenses and achieve profitability? (iii) Does the business model, both in its current state and future outlook, indicate a feasible trajectory for recovery? TABB determines that the frequency of disposing insolvent companies does not inherently need enhanced court-supervised rehabilitation processes. He inquires whether out-of-court workouts should not be favored to circumvent the procedural complexities and expenses linked to Chapter 11. His perspective prompts a wider examination of the suitability and efficacy of advocating informal restructuring methods instead of judicial action. Charles J. Tabb, 'What's Wrong with Chapter 11?' (2021) 71 *Syracuse Law Review* 3,4.

Furthermore, Brazilian insolvency law does not work on the assumption that every firm must be preserved. As COELHO observes, there exists no notion of 'preservation of the company at all costs' in Brazilian law, nor, to our knowledge, in any analogous legal system.[297] RICARDO NEGRÃO contends that the preservation of the company—referring to the recovery—emerges as a result of the initiation of the judicial reorganization process, rather than as a concept applicable in instances of normative dispute.[298] From a doctrinal perspective, the preservation principle may function as a guiding vector for the procedural framework of reorganization, but it should not be utilized to supersede explicit legislative rules or to resolve disputes between the parties concerned.[299][300]

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[297] cf RICARDO NEGRÃO, Preservação da empresa, São Paulo, Saraiva Educação, 2019, p.34. From the creditors' perspective, in contrast, and following the structure of the new legislation—currently Law No. 11,101 of 2005—there is a clear concern with ensuring economic flow and the security of commercial relations, as evidenced by the presentation of Amendment No. 06 of 1994 by Federal Deputy Amaral Neto. The Deputy argued that the benefits proposed by the bill would be "excessively burdensome for creditors." He further noted that the most serious consequence of such discouragement to economic activity would be the "increase in unemployment," with broader repercussions such as a decline in investment and a reduction in the availability of credit. See: BRASIL. Câmara dos Deputados. Diário da Câmara dos Deputados de 3 de dezembro de 1999, p.61. Available at:http://imagem.camara.gov.br/Imagem/d/pdf/DCD03DEZ1999SUP.pdf#page=558. Acesso em: 15 de março de 2022.

[298] cf RICARDO NEGRÃO, *Preservação da empres*a (São Paulo, Saraiva Educação 2019) 43 .

[299] In the realm of comparative law, there is a more pronounced institutional and procedural concern with addressing exceptional cases in which the distressed company has a substantial impact on the social sphere. In such jurisdictions, the potential failure of a reorganization plan—despite possibly ensuring the satisfaction of creditors' claims—is approached with caution due to the broader social consequences it may trigger. This concern consistently guides the solutions adopted and shapes the decisions taken throughout the reorganization process. cf ADRIANA VALÉRIA PUGLIESI GARDINO**,** *A falência e a preservação da empresa: compatibilidade?* (Tese de Doutorado, Universidade de São Paulo, São Paulo, 2012) 59–60. In relation to the same critical perspective: 'The final concern this Article will raise is closely connected with the forum selection problem. That is the problem of bankruptcy judges writing the law they think best through a capacious application of § 105(a) and their equitable powers. Almost from the day the ink was dry on the Bankruptcy Reform Act of 1978, bankruptcy judges have been rewriting the law that Congress gave us to make it "better." This Article would call this "judicial legislation," which, of course, as the name suggests, should not happen in our three-branch system of government. Often the judicial legislation under § 105(a) involves authorizing payouts that vary from the Code's priority scheme, a problem we discussed earlier. It has therefore come to pass that critical vendor orders, structured dismissals, gifting plans, and sub rosa "sale" orders, all have been blessed by bankruptcy courts grabbing their equitable pen and altering the terms of the Bankruptcy Code. It's as if we still are living in the long-ago environs of equity receiverships, where there was no statutory law, and judges did have to write the law. But now there is a statute. It's a long one. Hundreds of pages. For better or worse, Congress gave us the Bankruptcy Code. As a matter of separation of powers, this Article submits that bankruptcy judges should have to live with the law Congress wrote, and have no power to "fix" that law by invoking their equitable powers under § 105(a). It is important to note that, for the most part at least, the Supreme Court agrees. From time to time, the Court has stepped in and nixed, usually on separation of powers grounds, the judicial rewriting of the Bankruptcy Code*'*. CHARLES J. TABB, 'What's Wrong with Chapter 11?' (2021) 71 *Syracuse Law Review* 23; cf JOÃO COSTA-NETO AND LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen Juris 2023)

[300] In United States: Regarding Chapter 11 and the correlation between duration and performance following reorganization: 'We find that among firms that file Chapter 11 those that are smaller have better operating performance, and are in higher operating margin industries spend less time in Chapter 11. Firms are more likely to emerge as going concerns and to achieve positive post reorganization profitability if they significantly reduce assets and liabilities while in Chapter 11. Higher pre-bankruptcy industry-adjusted operating margins and improvements in margin are associated with post-reorganization profitability but do not impact the decision to

The philosophy of commercial law, from the creditors' viewpoint, introduces a significant aspect: the apprehension of systemic failures. According to JUAN ESTEBAN PUGA VITAL, the failure of an economically active debtor can adversely affect macroeconomic performance, potentially leading to widespread insolvency and a chain reaction of bankruptcies[301] that disrupts the circulation of wealth.[302]

Another factor evaluated by the court during the preliminary phase of judicial reorganization is the determination of active standing, which refers to the individuals legally authorized to seek the advantages of judicial reformation. In Brazil, the contention principally resides not in the procedural dimension, but in the applicability of Law No. 11,101/2005.

Article 1 of Law No. 11,101/2005 stipulates that judicial reorganization may be conferred to entrepreneurs or business entities, explicitly excluding individuals who do not engage in commercial operations.[303] The law also explicitly excludes public companies, mixed-

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reorganize. These results reveal characteristics and actions associated with successful reorganizations and, furthermore, suggest that Chapter 11 allows promising firms to successfully reorganize'. DIANE K. DENIS AND KIMBERLY J. RODGERS, 'Chapter 11: duration, outcome, and post-reorganization performance' (2007) 42(1) *The Journal of Financial and Quantitative Analysis* 101–18.

[301] cf JOÃO COSTA-NETO; LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen Juris 2023)

[302] "*tratándose de una deudor de entidad relativa en la economía… pueden incidir negativamente, con mayor o menor fuerza, en el funcionamiento macroeconómico, poniendo en jaque así al sistema crediticio en particular, considerando el fenómeno que hemos denominado de la concatenación de patrimonios lo que en concreto puede significar un sinnúmero de quiebras o insolvencia en cadena; y al mercado en general, pues de algún modo el quebrado producirá una distorsión de este mecanismo de circulación de la riqueza*". EFRAIN HUGO RICHARD, *Perspectiva del derecho de la insolvencia* (Córdoba, Academia Nacional de Derecho y Ciencias Sociales de Córdoba, 2010) 38; cf ADRIANA SANTOS RAMMÊ AND RAFAEL PETEFFI DA SILVA, 'Recuperação judicial: axiologia, objetivo e interesses externos à empresa' (2014) 13(1) *Prisma Jurídico* 293–94

[303] In Spanish law, there is no prohibition against professional entities, even if they are not classified as business enterprises, from filing for insolvency proceedings (*concurso de acreedores*) for the purpose of financial reorganization. Exceptions apply to certain economic agents who, despite being business entities, are not authorized to do so: 'VIII.4. EL PRESUPUESTO SUBJETIVO DEL PRECONCURSO

Dada la relativa novedad que supone en nuestro ordenamiento la diferenciación normativa del Derecho preconcursal, debemos recordar que históricamente en la legislación comparada han existido tres sistemas respecto al presupuesto subjetivo concursal: a) Legislaciones que prescribían el proceso concursal sólo para comerciantes, caso de los sistemas seguidores de la rama del Derecho francés, caso de la Legge Fallimentare italiana, al emplear el concepto de empresario; b) Legislaciones que prescribían dos sistemas concursales, uno para las personas comerciantes y otro para las civiles, caso de los países escandinavos;c) Legislaciones que unificaron el sistema concursal para comerciantes y no comerciantes: caso de las leyes de Reino Unido, Estados Unidos, Argentina, España, y la Insolvenzordnung alemana. Siendo ésta la principal corriente del derecho comparado, la unificación subjetiva de los concursos.La exigencia contenida en nuestro tradicional Derecho concursal de que para declarar la quiebra se tratara de la insolvencia de un deudor comerciante, y que se remontaba al art. 874 del Código de Comercio, el cual a su vez se limitaba a reproducir esencialmente su precedente en el Código de Sainz de Andino de 1829, desapareció de nuestro ya con la Ley Concursal de 2003 al señalar en su art. 1.1 que "la declaración de concurso procederá respecto de cualquier deudor, sea persona natural o jurídica".Actualmente, a nivel concursal se tiende a no diferenciar dentro de los sujetos pasivos de los concursos a los comerciantes o empresarios respecto de las otras personas físicas, permitiéndose, en definitiva, el concurso de todo sujeto con personalidad jurídica.

Ahora bien, el nuevo libro segundo TRLC arranca con dos artículos introductorios relativos a los presupuestos subjetivos y objetivos del preconcurso antes de entrar en la comunicación de la apertura de negociaciones,

capital companies, public or private financial institutions, credit cooperatives, consortia, pension funds, health plan operators, insurance companies, capitalization companies, and other similarly classified entities (Article 2, items I and II).[304;305] Regardless, whether the debtor is an

presentando novedades en cuanto al presupuesto subjetivo mismo del preconcurso.Así, el artículo 583 TRLC al regular el presupuesto subjetivo del preconcurso establece qué personas y entidades pueden comunicar la apertura de negociaciones con los acreedores o solicitar directamente la homologación de un plan de reestructuración, despegándose de la actual redacción la posibilidad de que la comunicación se haga para obtener adhesiones a una propuesta anticipada de convenio o para alcanzar un acuerdo de refinanciación.Asimismo, y como nota importante, debe destacarse el dato de que el umbral de homologación de un plan de reestructuración sin necesidad de haber previamente representado en el proceso judicial ha desaparecido con la actual regulación del preconcurso, en la medida en que se ha eliminado la posibilidad del convenio anticipado, como se establece en la Exposición de Motivos (apartado VI), consecuencia lógica de la articulación del derecho preconcursal.Conforme al nuevo artículo 583, cualquier persona natural o jurídica que lleve a cabo una actividad empresarial o profesional podrá efectuar la comunicación de apertura de negociaciones con los acreedores o solicitar directamente la homologación de un plan de reestructuración. Por tanto, y como vemos, introduce un matiz importante, ya que a diferencia del presupuesto subjetivo del concurso, la persona natural o jurídica ha de llevar a cabo una actividad empresarial o profesional, aspecto que no recogía el TRLC en su versión del año 2020, que suprimía la distinción entre el deudor persona física empresario o no en relación a los acuerdos extrajudiciales de pago.Asimismo, y por lo que respecta a la persona natural, si se entiende conforme al Derecho Civil por persona natural (o persona física), aquella susceptible de adquirir derechos y obligaciones, en el Derecho preconcursal esta persona puede ser la persona física que lleve a cabo una actividad empresarial o profesional.De este modo, sólo la persona natural o jurídica que lleva a cabo una actividad empresarial o profesional podrá ahora efectuar la comunicación de apertura de negociaciones con los acreedores o solicitar directamente la homologación de un plan de reestructuración.Más, seguidamente, el citado artículo 583 establece un listado de cerrado de entidades que, no obstante llevar a cabo actividades de carácter empresarial, no quedan comprendidas en este precepto y, por tanto, que no pueden acogerse al preconcurso, a saber:– Entidades de seguro y reaseguro.– Entidades de crédito o de inversión u organismos de inversión colectiva.– Entidades de contrapartida central.– Depositarios centrales de valores.– Otras entidades y entes financieros.– Microempresas, que se regirán exclusivamente por el libro tercero a través de un procedimiento especial único. En cambio, los autónomos que no sean microempresas pueden acudir a este procedimiento previsto en el art. 583.– Entidades que integran la organización territorial del Estado, los organismos públicos y demás entes de derecho público. Algo acorde a la propia previsión ya contenida en el art. 1.3 que tampoco permite declarar el concurso de tales entidades'. EDUARDO AZNAR GINER AND VICENTE ZUBIZARRETA URCELAY (dir.), *Reestructuraciones e insolvencia* (Valencia, Tirant lo Blanch, 2023) 533–34. Sobre recuperação judicial dos grupos de empresas, cf PEDRO REBELLO BORTOLINI, *Recuperação judicial dos grupos de empresas: aspectos teóricos e práticos da consolidação processual e substancial* (Indaiatuba, Ed Foco) 202

[304] On the scope of application under French law: 'b. Entités exclues 277 Exclusion des personnes morales de droit public La lettre même des articles L. 620-2, L. 631-2 et L. 640-2, exclut que les procédures collectives puissent être ouvertes "à l'égard d'une personne morale de droit public". Sont donc écartés du champ d'application des procédures du Livre VI non seulement l'État, les régions, les départements et les communes, mais encore les établissements publics administratifs ou à caractère industriel et commercial. 278 Groupements privés de la personnalité morale La personnalité morale est la condition primordiale de l'application de la procédure collective. Les groupements privés dotés de cet attribut juridique ne peuvent donc être soumis à une procédure du Livre VI du Code de commerce. Il en va de même d'une société qui perd sa personnalité parce qu'elle est absorbée par une autre'. PAUL LE CANNU AND DAVID ROBINE, *Droit des entreprises en difficulté* (Paris, Dalloz, 2020) 199–200

[305] 'In the United States, the (voluntary) proceeding is also initiated by the debtor, and distinct provisions and procedures apply depending on whether the debtor is a natural person or a legal entity. Exceptions are made for certain entities—such as banks, insurance companies, and securities or commodities brokerages—which are excluded from filing under the Bankruptcy Code. As CHARLES TABB explains: "One of the most fundamental issues of bankruptcy policy is what sort of bankruptcy relief, if any, should be available for a particular debtor. A second question in framing a bankruptcy law is who may trigger bankruptcy relief. A third basic issue is what showing is necessary to commence a bankruptcy case. Each of these gate-keeping questions goes to the core of a bankruptcy system, defining in large part what goals that system is supposed to (and will be able to) accomplish. The United States Code authorizes six different types of bankruptcy cases. The Code designates these cases by "chapter": chapter 7 (liquidation); chapter 9 (adjustment of debts of a municipality); chapter 11 (reorganization); chapter 12 (adjustment of debts of a family farmer or family fisherman with regular annual income); chapter 13 (adjustment of debts of an individual with regular income); and chapter 15 (ancillary and other cross-border cases).

entrepreneur or a business entity, judicial reorganization may be solicited by the debtor, the surviving spouse, legal heirs, the estate administrator, or a remaining partner (Article 48, §1).

The dispute pertains to the concept of an entrepreneur or business entity in the context of judicial reorganization. Article 966 of the Brazilian Civil Code defines an entrepreneur as 'an individual who professionally engages in an organized economic activity for the production or circulation of goods or services'. According to MARCELO BARBOSA SACRAMONE, the legal

Of these, chapter 7 and 13 cases are by far the most common, together accounting for 99% of all filings. To get a sense of this, consider the case statistics for calendar year 2019. In that year, a total of 774,940 cases were filed. Of those, approximately 62% were chapter 7 cases (483,988); 37% were filed under chapter 13 (283,413); chapter 11 filings comprised just 0.8% of the total (6,808); and the rest were negligible—chapter 12 (5 filings), chapter 9 (6 filings), and chapter 15 (130 filings). At 37%, the current chapter 13 filing rate is slightly higher than in 2004, the last full calendar year pre-BAPCPA, when chapter 13 cases accounted for 28% of all filings. That uptick suggests that Congress may have in small measure partially accomplished one of their goals in passing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, through which they sought to push more consumer debtors out of chapter 7 and into chapter 13. On the first fundamental question—what debtors are eligible for what sort of bankruptcy relief—the Code contains detailed rules in § 109 that govern debtor eligibility under each case chapter. The second core question is who may trigger bankruptcy relief. A bankruptcy case can be commenced either by the debtor or by the debtor's creditors. At one time (indeed, a long time ago), creditor commencement was the only possibility. Today, creditor commencement was the only possibility; today almost all cases are begun by debtors. A "voluntary" bankruptcy case is commenced by the debtor, § 301, or jointly by the debtor's spouse, § 302. An eligible debtor commences a case under a particular case chapter (e.g., chapter 7, 9, 11, 12, or 13) simply by filing a petition under that chapter. If filing the petition has profound effect—triggering an automatic stay against all sorts of collection actions, § 362(a), and creating a bankruptcy estate comprised of all the debtor's property, § 541(a). In a voluntary case, the filing of the petition not only commences the case, it also automatically constitutes the "order for relief." The entry of the order for relief is the operative date for many of the important consequences of bankruptcy. For example, in a chapter 7 case, a trustee is appointed after the entry of the order for relief, § 701, and only debts that arise before the order for relief are discharged. § 727(b).Commencing a voluntary case is not difficult. The bankruptcy petition must conform to Official Form B 101.1 In addition to paying the required filing fee, 28 U.S.C. § 1930(a), Rule 1006(b), the debtor also must disclose certain financial information in schedules that must be filed with the petition or soon thereafter: a list of creditors, a schedule of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts and leases, a statement of financial affairs, and more. Rule 1007. Regarding the third basic issue regarding the invocation of bankruptcy relief—what showing is necessary to trigger bankruptcy—the answer for voluntary cases is, perhaps surprisingly, almost nothing. Debtors do not have to state that they are insolvent, or indeed make any averment regarding their financial status, troubles, or need for relief. The relatively minimal screening in voluntary cases comes not at the point of commencement, but rather through the process of dismissal. The policy in the United States since the enactment of the Bankruptcy Act of 1898 has been one of open access to the bankruptcy system for debtors. Some inroads on that policy were made in the BAPCPA amendments in 2005, but the fundamental orientation remains one of ready access to bankruptcy relief*'*. CHARLES JORDAN TABB, *Law of bankruptcy* (St. Paul, West Academic Publishing 2020) 119–21; cf GEORGE M. TREISTER, J. RONALD TROST, LEON S. FORMAN, KENNETH N. KLEE, AND RICHARD B. LEVIN, *Fundamentals of Bankruptcy Law* (3rd edn, [s.l.], The American Law Institute – American Bar Association 1993); MARTIN A. FREY, WARREN L. MCCONNICO, AND PHYLLIS HURLEY FREY, *An introduction to bankruptcy law* (Saint Paul, West Publishing Company 1990). Sobre o direito de insolvência na Espanha, cf. ANTONIA MAGDALENO; KILLIAN BENEYTO, *Aspectos procesales de la práctica concursal*, Barcelona, Bosh, 2015; EDUARDO AZNAR GINER; VICENTE ZUBIZARRETA URCELAY (dir.), *Reestructuraciones e insolvencia*, Valencia, Tirant lo Blanch, 2023; JOSÉ LUIS FORTEA GORBE; JACINTO TALLENS SEGUÍ (dir.), *La reforma concursal de la Ley 16/2022 a debate: un nuevo paradigma en el tratamiento de la insolvencia*, Valencia, Tirant lo Blanch, 2023; e EDUARDO AZNAR GINER (coord.), *La contabilidad y los impuestos en el concurso de acreedores*, Valencia, Tirant lo Blanch, 2022.

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definition of an entrepreneur pertains to an individual involved in business activities,[306] whether operating as a natural person or as a legal corporation. According to SYLVIO MARCONDES,[307] SACRAMONE elucidates that professional endeavors are inherently profit-oriented and thus cannot be conducted solely for philanthropic purposes or for the complete reinvestment of gains into the organization, as is typical of associations, foundations, religious institutions, and political parties.[308]

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[306] MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 8. In Chile, the discussion is not particularly relevant for the purposes of judicial reorganization: 'El Procedimiento de Reorganización se aplica a las Empresas Deudoras, con el objeto que puedan proponer a sus acreedores distintas fórmulas de restructuración, tanto de sus pasivos como de sus activos, para el pago de sus obligaciones. Los acreedores analizarán en este procedimiento si la Empresa Deudora es viable; es decir, si su flujo operacional permite sostener sin problemas el desarrollo normal de los negocios; su plan de gastos y eventualmente inversiones; rentabilidad y, principalmente, aquella sustentabilidad necesaria para el pago de las deudas en los términos que se acuerde. El artículo 54 señala que este procedimiento se aplica a la Empresa Deudora, es decir, a toda persona jurídica privada, con o sin fines de lucro, y toda persona natural que, dentro de los veinticuatro meses anteriores al inicio del Procedimiento Concursal correspondiente, haya sido contribuyente de primera categoría[44]; por oposición al Procedimiento de Renegociación que se aplica a la Persona Deudora; es decir a aquella persona natural, que no se encuentra en la situación antes descrita, como lo es el empleado, la dueña de casa, el estudiante, etc.; para ellos el Capítulo V de la ley consagra procedimientos concursales especiales que analizaremos más adelante. Esta diferenciación de procedimientos constituye una de las novedades más importantes de la Ley N° 20.720, con lo cual se superan los errores que sobre el particular adolecía el Libro IV del Código de Comercio, que de acuerdo a lo que señalamos en la Introducción, no hacía ningún distingo entre deudores que objetivamente son diferentes. Como veremos más adelante, la reforma a la Ley N° 20.720 creó un Procedimiento Concursal de Reorganización Simplificado el que "se aplicará a Empresas Deudoras que califiquen como micro o pequeña empresa de acuerdo con el artículo segundo de la Ley N° 20.416 y el artículo 505 bis del Código del Trabajo". Este nuevo procedimiento constituye una regulación especial y fundamentalmente tiene por objeto velar porque la micro o pequeña empresa pueda acceder a un procedimiento más rápido y eficiente en términos de tramitación y costos.Continuando con el Procedimiento de Reorganización establecido para la Empresa Deudora "Responde al nuevo tratamiento sistémico de los denominados 'convenios'. El propósito de esta nueva legislación, incluye un cambio de vista estructural y de lectura, hacer prevalecer el régimen de salvataje institucional por sobre el esquema liquidatorio predominantemente, cambiando el eje desde la extinción empresarial a la reorganización eficiente"[45]. Como se señaló en la introducción, cuando el 28 de octubre del año 1982 se dictó la Ley N° 18.175 que reemplazó a la antigua Ley de Quiebras (Ley N° 4.558 de 1929), uno de sus fundamentos bases era establecer un procedimiento rápido de quiebra, bajo la administración de síndicos privados, privilegiando la pronta liquidación de activos inmovilizados por el gran número de empresas declaradas en quiebra con motivo de la crisis financiera y económica que sufrió el país al inicio de la década de los años ochenta, todo ello con el propósito de proceder a una pronta reasignación de recursos a la economía; sin embargo, al momento de la dictación de la Ley N° 20.720 la situación del país ha cambiado radicalmente, razón por la cual corresponde privilegiar la mantención de aquellas empresas que siendo viables, requieren una reestructuración de sus pasivos o activos, para mantener su giro operacional y capacidad de pago a sus acreedores, a través de un procedimiento rápido y transparente que analizaremos a continuación'. NELSON CONTRERAS ROSALES AND CRISTIÁN PALACIOS VERGARA, *Procedimientos concursales: Ley de Insolvencia y Reemprendimiento, Ley N° 20.720* (Santiago, Thomson Reuters 2023) 59–60. Antes da reforma legislativa no Chile, conferir: RICARDO SANDOVAL LÓPEZ, *Derecho comercial: la insolvencia de la empresa. Derecho concursal: quiebras, convenios y cesiones de bienes* (Santiago, Editorial Jurídica de Chile 2012)

[307] cf SYLVIO MARCONDES, *Problemas de direito mercantil* (São Paulo, Max Limonad, 1970) 141

[308] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 9. Sobre o tema no direito italiano, cf GIUSEPPE TERRANOVA, *Insolvenza, stato di crisi, sovraindebitamento* (Torino, Giappichelli Editore 2013); SALVATORE SATTA, *Diritto fallimentare* (Padova, CEDAM – Casa Editrice Dott. Antonio Milani, 1974); GUGLIELMO BEVIVINO, *Le "autonomie private" nel nuovo diritto dell'insolvenza* (Pisa, Pacini Giuridica, 2022); DIEGO MANENTE AND BARBARA BAESSATO (a cura di), *La disciplina delle crisi da sovraindebitamento* (Milano, Giuffrè Francis Lefebvre, 2022)

As previously noted, certain courts have adopted a broader interpretation, permitting other economic entities[309;310]—despite not being officially designated as entrepreneurs or business enterprises—to petition for judicial reorganization,[311] as exemplified by the case of FIGUEIRENSE FUTEBOL CLUBE. On 4 October 2024, the SUPERIOR COURT OF JUSTICE[312] (*Superior Tribunal de Justiça*, or STJ) issued a verdict that contradicted the lower courts,

[309] In this respect, refer to German insolvency law: 'Insolvency proceedings are not imaginable without a debtor. Since insolvency proceedings are basically enforcement proceedings, debtors are necessarily involved in three capacities. First, they are the persons who have the enforceable liabilities against their creditors; they – literally – are the ones who are in debt. Second, debtors hold the assets which are to be executed in the insolvency proceedings, the assets with which the debtor is liable for their debts. And third, debtors are subjects of the proceedings; they have procedural rights (e.g. to challenge decisions of the court) and are addressees of procedural obligations (e.g. to furnish information to the Insolvency Practitioner or the court). Strictly speaking, defining the legal term "debtor" is not necessary because it follows from the procedural role of who is the main subject of the insolvency proceedings: it is the person against whose estate the proceedings are conducted. It is for this reason that national insolvency laws typically do not contain definitions, yet rather answer to the question who is allowed to have the role of a debtor in insolvency proceedings. The first aspect to be treated here concerns the distinction between natural and legal persons. Although insolvency law in some jurisdictions stems from company law, it is supported by Recommendation 8 of the UNCITRAL Legislative Guide and nowadays generally accepted in national laws that also human beings may be debtors in insolvency proceedings. In the US, for example, §109(b) Bankruptcy Code simply states that for insolvency proceedings "a person" may be a debtor (and then excludes certain entities like railroad companies, insurance undertakings, and banks from this rule because they are subject to special statutes). The term "person" is defined in §101(41) Bankruptcy Code which expressly mentions individuals, partnerships, and corporations, excluding (with some exceptions) governmental units. In Germany, a slightly different approach has been chosen, albeit with comparable results: §§11, 12 Insolvenzordnung enumerate the entities eligible for insolvency proceedings, starting with a general rule according to which insolvency proceedings may be opened for the assets owned by any natural or legal person, and then mentioning special entities, especially those which under German law are companies but not legal persons. In English law, it follows indirectly from the heading preceding sec. 1 Insolvency Act 1986 ("company insolvency") and directly from sec. 386(1) Insolvency Act 1986 ("individual") that both natural and legal persons are concerned. The same is true for France where Art. L. 611-1 Code de Commerce refers to all persons registered in the trade register, and according to Art. L. 620-2 Code de Commerce regular insolvency law is applicable to individuals who are engaged in a commercial activity or artisanal trade, farming, or an independent professional activity. Example: D, a law firm organised as a partnership of solicitors, applies for insolvency proceedings. Partnerships are recognised in many jurisdictions as eligible debtors, e.g. Germany (§11(2) No. 1 Insolvenzordnung) and the USA (§101(41) Bankruptcy Code). In England and Wales, however, a special statutory instrument was necessary to reach this result (sec. 420 Insolvency Act 1986 with the Insolvent Partnerships Order 1994). The situation is different in France where an association is only eligible if it is legal person. Since a partnership is not a legal person, the lawyers and not the partnership are debtors in insolvency proceedings'. REINHARD BORK, *Corporate Insolvency Law: A Comparative Textbook* (Cambridge, Intersentia Ltd 2023) 21–22; cf KARSTEN SCHMIDT (org.), *Insolvenzordnung: InsO mit EuInsVO*, 20. Auflage, München, C.H. Beck, 2023. (Beck'sche Kurz-Kommentare, Band 27); and HOLGER FLEISCHER; SEBASTIAN MOCK (org.), *Große Gesellschaftsverträge aus Geschichte und Gegenwart*, Berlin/Boston, Walter de Gruyter GmbH, 2021. (Zeitschrift für Unternehmens- und Gesellschaftsrecht, Sonderheft 24).

[310] From a comparative perspective, see JULIAN R. FRANKS, KJELL G. NYBORG, AND WALTER N. TOROUS, 'A comparison of US, UK, and German insolvency codes' 1996 25(3) *Financial Management* 86–1011

[311] In the Methodist Group case, the court granted a preliminary injunction anticipating the effects of the stay period, despite the debtors not qualifying as business entities under the strict definition set forth in Brazilian Bankruptcy Law (Law No. 11.101/2005). Rather than adopting a literal reading of the statute—which would exclude civil associations from access to judicial reorganization—the court embraced a teleological and systemic interpretation, grounded in constitutional principles and the contemporary function of insolvency law. cf Tribunal de Justiça do Estado do Rio Grande do Sul. Processo n. 5035686-71.2021.8.21.0001. BRASIL. Tribunal de Justiça do Estado do Rio Grande do Sul. Tutela Cautelar Antecedente nº 5035686-71.2021.8.21.0001, Porto Alegre, 14 abr. 2021. Juiz: Gilberto Schäfer.

[312] Superior Court responsible for the interpretation and application of federal legislation in Brazil.

determining that foundations are unable to seek judicial reorganization. In Special Appeal No. 2.155.284/ MG,[313] Justice RICARDO VILLAS BÔAS CUEVA, serving as the reporting judge, determined that the FUNDAÇÃO COMUNITÁRIA TRICORDIANA DE EDUCAÇÃO was ineligible for the safeguards afforded by Law No. 11,101/2005.

The SUPERIOR COURT OF JUSTICE'S rationale for reversing the COURT OF APPEALS OF THE STATE OF MINAS GERAIS' decision comprised the following: the lack of explicit legal provision in Law No. 11,101/2005;[314] the assertion that a contra legem interpretation engenders legal ambiguity and institutional instability; and the conclusion that granting such a request would yield dual advantages—permitting the entity to concurrently benefit from its legal status (including tax immunity and exemption as delineated in Article 150, VI, 'c' of the Federal Constitution, Law No. 9,532/1997, and Provisional Measure No. 2,158-35/2001), while also availing itself of benefits exclusively reserved for business corporations undergoing judicial reorganization without incurring the associated obligations.

This discourse does not intend to refute the possibility that non-business economic entities could, in theory, be afforded access to reorganization processes, provided such access is clearly stipulated by law. The rationale corresponds with the comprehension of the SUPERIOR COURT OF JUSTICE.

The acknowledgment of legislative authority as the exclusive legitimate source for the formulation of legal rules—and adherence to the systemic coherence of business law—act as

[313] BRASIL. Superior Tribunal de Justiça. REsp n. 2.155.284/MG. Relator: Ministro Ricardo Villas Bôas Cueva. Terceira Turma. Julgado em: 1 out. 2024. Publicado em: DJe 4 out. 2024.

[314] In Colombia, the insolvency regime applies exclusively to business entities or individuals engaged in commercial activities, closely resembling the Brazilian model: 'En cuanto al ámbito de aplicación de la ley, la disposición vuelve a criterios tradicionales contenidos en el Código de Comercio y en el Decreto 350 de 1989, según los cuales los mecanismos concursales sólo se aplicarán a comerciantes o, en general, a sujetos que desarrollen una actividad empresarial. En este aspecto se insiste en que tratándose de personas naturales se requiere que tengan la condición de comerciantes, es decir, que ejecuten de manera profesional y habitual actos de comercio. Sin perjuicio de ello, que sigue siendo la regla general, es importante tener en cuenta que, según el artículo 532 del Código General del Proceso, las personas naturales no comerciantes que tengan la condición de controlantes de sociedades mercantiles o que formen parte de un grupo de empresas están excluidas del régimen de insolvencia previsto por él y pueden, por tanto, acceder al régimen establecido en la Ley 1116 de 2006. Se advierte que en este caso no es suficiente con que la persona natural sea accionista o socio de una compañía, o que haya avalado o garantizado las obligaciones de una empresa sujeta a este régimen concursal, sino que es necesario que tenga la condición de controlante. Ahora bien, la ley establece un trato distinto para las personas jurídicas pues no les exige la condición de comerciantes, sino que basta con que desarrollen una actividad empresarial. En este aspecto es posible que fundaciones, asociaciones o corporaciones accedan a un proceso de insolvencia, aun cuando no sean comerciantes, pues lo que importa es el desarrollo de una actividad empresarial'. JUAN JOSÉ RODRÍGUEZ ESPITIA, *Nuevo régimen de insolvencia* (Bogotá, Universidad Externado de Colombia 2019) 87–88

guiding principles for judges in their legal application, emphasizing 'the supremacy of legal rules, the predictability of legal outcomes, and reliance on legislation passed by Parliament'.[315]

Brazilian law allows for the initial submission of judicial reorganization petitions—on a provisional basis—via two procedural avenues: (i) the preventative negotiation process and (ii) the preliminary judicial reorganization petition. These are regulated by Articles 20-A to 20-D (preventive negotiation) and Article 6, §12 (preliminary restructuring request) of Law No. 11,101/2005.

The preventive negotiating approach is intended for debtors who are not currently insolvent but are experiencing impending or probable financial difficulties. If insolvency is already determined, traditional court reorganization is the more suitable remedy. To advance under this mechanism, the debtor must fulfill the stipulations of Articles 48 and 51 of Law No. 11,101/2005, in addition to those set forth by the Civil Procedure Code for provisional relief. Furthermore, the debtor is required to commence, prior to the preliminary request,[316] a mediation or conciliation process to negotiate debts and payment conditions with creditors.[317]

It is commonly recognized that not all courts in Brazil possess Judicial Dispute Resolution Centers (*Centros Judiciários de Solução de Conflitos e Cidadania*, or CEJUSC) equipped to perform timely and effective mediation in insolvency matters. In these circumstances, private arbitration and mediation institutions are anticipated to assume this responsibility.[318] Upon fulfillment of these conditions, the debtor may petition for immediate precautionary relief to halt enforcement efforts for a duration of up to 60 days.[319] Any arrangement formed requires judicial approval (Article 20-C).

The initial reorganization request, outlined in Article 6, §12, eliminates the necessity for prior mediation or conciliation to preempt—either partially or entirely—the consequences of a court reorganization submission. This method does not enforce the mandatory 60-day stay

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[315] cf JOÃO COSTA-NETO AND LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen Juris, 2023) 158–59. No caso 571 U.S. 415 (2014) - *Law v. Siegel, Chapter 7 Trustee.,* a Suprema Corte dos Estados Unidos concluiu que "um tribunal de falências não pode violar disposições estatutárias específicas". Para mais, cf. JOÃO COSTA-NETO; LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos*, Rio de Janeiro, Lumen Juris, 2023, p.137 a 160.

[316] The initiation may be evidenced by the submission of a letter to the creditors by the private chamber.

[317] Paragraph 2 of Article 20-B prohibits conciliation and mediation regarding the legal nature and classification of claims, as well as the criteria for voting at creditors' meetings.

[318] On mediation and conciliation in insolvency proceedings: a comparative perspective between Brazil and Portugal, see JUDICE MOREIRA et al, *Recuperação judicial e falência: métodos de solução de conflitos* (1st edn, São Paulo, Almedina, 2022)

[319] Pursuant to Paragraph 3 of Article 20-B, if a request for judicial or extrajudicial reorganization is filed, the 60-day suspension period shall be deducted from the 180-day stay period established under Article 6.

period specified in Article 6, §4[320]. This approach is commonly employed by firms seeking quick relief within the judicial reorganization framework, despite not having assembled all the documentation mandated by Article 51 of the Law. The urgency may stem from an impending threat, or an interruption of business operations caused by judicial seizures or other restraints that hinder the normal execution of corporate activities.

Upon the filing of the initial petition, and before assessing the merits of the reorganization request, the court may designate a qualified and reputable professional to perform a preliminary inspection to verify the debtor's operational status and the adequacy and completeness of the submitted documentation (Article 51-A).[321] The preliminary inspection

[320] Similarly, the Brazilian insolvency system has been influenced by US bankruptcy law, both in terms of the rationale behind reorganization procedures and through the implementation of certain legislative instruments like the stay period rule (also known as the automatic stay). [320] 'Start with the automatic stay. When a company files for bankruptcy, the automatic stay prevents parties from unilaterally exercising their control rights. Bankruptcy law also swaps investment-backed control rights' property-rule remedies for liability-rule remedies. In lieu of its foreclosure rights, oversecured creditors receive interest payments to the extent they are oversecured. The debtor must also compensate an undersecured creditor from any diminution in the value of its collateral. If the debtor cannot make those payments, the court must lift the automatic stay so the secured creditor can foreclose on the collateral. Similarly, if the debtor wishes to obtain DIP financing secured by superpriorty liens on its resources, it must adequately protect existing liens with cash or replacement liens. If it cannot, the court must reject the debtor's DIP financing proposal. The automatic stay allows parties to exercise some investment-backed control rights, to be sure. The automatic stay generally permits shareholders to exercise their control rights. Lenders can obtain control rights by providing a debtor with DIP financing. But even these rights are limited to the extent they interfere with the debtor's fiduciary obligation to maximize the value of its estate. Courts prevent shareholders from exercising control rights when exercising those rights would result in a "delay and real jeopardy to a debtor's reorganization." Similarly, doctrines that punish lenders for exerting too much control over the debtor, such as lender liability and equitable subordination, reign in lenders' worst impulses. The Bankruptcy Code also authorizes bankruptcy courts to lift the automatic stay if debtors violate counterparties' spillover control rights. Section 362(d)(1) of the Bankruptcy Code requires a bankruptcy court to lift the automatic stay "for cause, including the lack of adequate protection of an interest in property." "Cause" is an undefined, flexible concept. A court can lift the automatic stay so that the counterparty can enforce its spillover control rights. For instance, if the hotel violates the quality controls in the Best Western franchise agreement, the court can lift the automatic stay to permit Best Western International to terminate the franchise agreement JARED I. MAYER, Control Rights and Chapter 11's Expanding Scope, American Bankruptcy Law Journal, v. 98, 2024, pp.369-371. About this point: "The very nature of the bankruptcy process implies a business that is experiencing financial difficulties beyond its ability to manage such difficulties in the absence of legal protection. This almost invariably means that events are occurring rapidly. The bankruptcy process does not slow down the pace of events, although a stated objective of bankruptcy-found in the 'automatic stay' - is to give a business some breathing space from creditor pressure. Rather, a bankruptcy filing gives the filing party greater power to achieve a positive outcome, without the immediate creditor pressure that exists pre-petition. The pace of the bankruptcy, however, is breakneck. In what is effectively a zero-sum game (ie all participants are seeking recovery from a fixed set of assets and, to the extent someone else has a recovery, you may get less), speedy action is critical to a successful outcome for vendors and investors. While this is true for both foreign and US vendors and investors, traditionally the US vendors and investors have been more familiar and more comfortable with participating in the process. In our view, that must change. Foreign vendors and investors who are able to respond immediately to a bankruptcy filing are likely to be rewarded with greater protection of their rights and, ultimately, with a more favourable financial result". DAVID N. RAVIN; ROBERT E. NIES; ANDREW D. ELLIS, *A Prudent Approach to US Bankruptcy Law: Pay Attention, Plan and Proceed*, Insolvency & Restructuring International, v. 1, 2007, p. 13

[321] A similar provision exists in the United States of America: '(…) bankruptcy trustees can be appointed in chapter 11 cases, they are the exception rather than the rule. Even in cases of massive fraud – Enron, for example – trustees are rarely appointed. Instead, new management may take control, often before or just after the bankruptcy filing; Instead of a trustee, the court may appoint an "examiner" to investigate the pre-bankruptcy conduct of the debtor,

report must be produced by the designated professional within a maximum time of five days. The judicial reorganization request may be denied based on the report's findings and could lead to sanctions if the debtor is shown to have fraudulently utilized the judicial reorganization process.

The designated professional must not generate a generic report devoid of substantial justification concerning fraudulent use, even within the constrained deadline. The report must explicitly delineate the specific symptoms of fraud and elucidate the rationale for why the actions in question constitute illegal activity. Not all accounting irregularities constitute fraud; nonetheless, for judicial reorganization, each occurrence of fraud inherently implies an irregularity in the accounting records. A meticulous and assiduous approach is thus required.

Subsequently, when the preliminary petition fulfills all legal criteria, the court may choose to either reject or approve the motion for judicial reorganization. Should the request be denied and the debtor refrain from appealing, the matter will be concluded and preserved. Should the request be granted, the court's ruling yields the following legal consequences:[322] (i) a suspension of all litigation and enforcement actions against the debtor (*stay period*)[323] for 180

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or its insiders, without ousting the debtor from possession. Examiners were appointed in the Enron and Lehman Brothers cases, to prepare reports about "what happened." Often such reports are key to facilitating a plan: only with agreement on the background facts can the parties "move on" to discuss how to divide up the estate. But examiners are not free; their fees and the fees of their professionals add to the cost of the chapter 11 process.A bankruptcy court must convert or dismiss a chapter 11 case if a party in interest establishes "cause," unless unusual circumstances specifically identified by the court dictate otherwise.[11] The debtor has a unilateral right to convert to chapter 7, which sometimes can be usefully used as a threat to corral holdout creditors.' STEPHEN J. LUBBEN, *American business bankruptcy: a primer* (Cheltenham, Edward Elgar Publishing 2021) 98; Bankruptcy Code § 1104(a)(1); Bankruptcy Code § 1104(b); Bankruptcy Code § 1112(b)(1); Bankruptcy Code § 1112(a); Marrrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 374 (2007).

[322] cf MAX MAGNO FERREIRA MENDES, *Manutenção de contrato empresarial de longa duração na recuperação judicial* (São Paulo, Quartier Latin, 2023)

[323] The stay period not only suspends lawsuits and enforcement actions against the debtor but also prohibits any form of retention, attachment, levy, sequestration, search and seizure, or judicial or extrajudicial constraint over the debtor's assets. This protection applies to claims or obligations subject to judicial reorganization or bankruptcy proceedings, regardless of whether they originate from judicial or extrajudicial demands. Moreover, the 180-day stay period may be extended once only, and solely under exceptional circumstances, provided that the debtor has not contributed to the delay or impeded the progress of the proceedings. cf JOÃO COSTA-NETO AND LUCIANO RAMOS DE OLIVEIRA, *Regras e princípios empresariais: Análise da Lei de Recuperação Judicial à luz dos julgados do STJ e da Suprema Corte dos Estados Unidos* (Rio de Janeiro, Lumen Juris 2023) 157–58.

days from the date of the ruling;[324][325] (ii) an exemption from the obligation to provide clearance certificates for the debtor to persist in its business operations; and (iii) a cessation of the progression of limitation periods[326]. In the same verdict, the court will appoint a judicial administrator and mandate the debtor to provide monthly financial statements and accounts

[324] The stay period does not prevent the continuation of proceedings against third-party joint debtors or co-obligors, including those liable under negotiable instruments or by way of real or personal guarantees (as established by Precedent No. 581 of the Superior Court of Justice), nor does it suspend tax enforcement actions—subject, however, to judicial cooperation mechanisms to halt enforcement measures involving assets essential to the debtor's business activity, pursuant to Article 6, Paragraph 7-B of Law No. 11.101/2005—and it likewise does not stay actions brought by creditors who are owners of movable or immovable property, financial lessors, or owners or promissory sellers of real estate under contracts containing irrevocability or non-retractability clauses, although the sale or removal of assets deemed essential to the debtor's operations is expressly prohibited during the stay period, and arbitration proceedings are not subject to suspension either.

[325] 'Start with the automatic stay. When a company files for bankruptcy, the automatic stay prevents parties from unilaterally exercising their control rights. Bankruptcy law also swaps investment-backed control rights' property-rule remedies for liability-rule remedies. In lieu of its foreclosure rights, oversecured creditors receive interest payments to the extent they are oversecured. The debtor must also compensate an undersecured creditor from any diminution in the value of its collateral. If the debtor cannot make those payments, the court must lift the automatic stay so the secured creditor can foreclose on the collateral. Similarly, if the debtor wishes to obtain DIP financing secured by superpriorty liens on its resources, it must adequately protect existing liens with cash or replacement liens. If it cannot, the court must reject the debtor's DIP financing proposal. The automatic stay allows parties to exercise some investment-backed control rights, to be sure. The automatic stay generally permits shareholders to exercise their control rights. Lenders can obtain control rights by providing a debtor with DIP financing. But even these rights are limited to the extent they interfere with the debtor's fiduciary obligation to maximize the value of its estate. Courts prevent shareholders from exercising control rights when exercising those rights would result in a "delay and real jeopardy to a debtor's reorganization." Similarly, doctrines that punish lenders for exerting too much control over the debtor, such as lender liability and equitable subordination, reign in lenders' worst impulses. The Bankruptcy Code also authorizes bankruptcy courts to lift the automatic stay if debtors violate counterparties' spillover control rights. Section 362(d)(1) of the Bankruptcy Code requires a bankruptcy court to lift the automatic stay "for cause, including the lack of adequate protection of an interest in property." "Cause" is an undefined, flexible concept. A court can lift the automatic stay so that the counterparty can enforce its spillover control rights. For instance, if the hotel violates the quality controls in the Best Western franchise agreement, the court can lift the automatic stay to permit Best Western International to terminate the franchise agreement JARED I. MAYER, Control Rights and Chapter 11's Expanding Scope, American Bankruptcy Law Journal, v. 98, 2024, pp.369-371. Sobre o ponto: "The very nature of the bankruptcy process implies a business that is experiencing financial difficulties beyond its ability to manage such difficulties in the absence of legal protection. This almost invariably means that events are occurring rapidly. The bankruptcy process does not slow down the pace of events, although a stated objective of bankruptcy-found in the 'automatic stay' - is to give a business some breathing space from creditor pressure. Rather, a bankruptcy filing gives the filing party greater power to achieve a positive outcome, without the immediate creditor pressure that exists pre-petition. The pace of the bankruptcy, however, is breakneck. In what is effectively a zero-sum game (ie all participants are seeking recovery from a fixed set of assets and, to the extent someone else has a recovery, you may get less), speedy action is critical to a successful outcome for vendors and investors. While this is true for both foreign and US vendors and investors, traditionally the US vendors and investors have been more familiar and more comfortable with participating in the process. In our view, that must change. Foreign vendors and investors who are able to respond immediately to a bankruptcy filing are likely to be rewarded with greater protection of their rights and, ultimately, with a more favourable financial result". DAVID N. RAVIN; ROBERT E. NIES; ANDREW D. ELLIS, *A Prudent Approach to US Bankruptcy Law: Pay Attention, Plan and Proceed*, Insolvency & Restructuring International, v. 1, 2007, p. 13. cf WASHINGTON LUIZ DIAS PIMENTEL JR**.,** *O automatic stay e o stay period: um paralelo entre o regime norte-americano e brasileiro quanto aos mecanismos iniciais de proteção dos ativos da empresa em recuperação judicial*, In: *Recuperação judicial: análise comparada Brasil–Estados Unidos* (São Paulo, Almedina, 2020) 212–213.

[326] cf FERNANDO POMPEU LUCCAS**,** *A permissão de prorrogação do stay period proveniente da Lei 14.112/2020*, In: *Moderno direito concursal – análise plural das leis nº 11.101/05 e nº 14.112/20* (São Paulo, Quartier Latin, 2021) 123

during the reorganization phase, under the threat of dismissal of its current administrators. The Public Prosecutor's Office and the tax authorities will be formally notified.

The judge is required to issue a public notice (*edital*) for publication in the official gazette, which summarizes the debtor's request and the decision to admit the reorganization proceeding; enumerates the names of all creditors, along with updated amounts and classifications of each claim; and issues a warning concerning the deadlines for filing and verifying claims (*habilitação de créditos*). Upon the acceptance of the reorganization request, the debtor is prohibited from retracting the petition unless sanctioned by the general meeting of creditors.

4.1.2. BODIES INVOLVED IN JUDICIAL REORGANIZATION

Due to the expensive nature of judicial reconstruction processes, the legislation has created important entities to guarantee the correct execution of the judicial process—both to assist the functioning of deliberative bodies and to enable effective oversight and supervision.[327]

4.1.2.1. GENERAL MEETING OF CREDITORS

The General Meeting of Creditors serves as the collective deliberative assembly in judicial reorganization proceedings (Articles 35 to 46 of Law No. 11,101/2005), tasked with articulating the collective intent of creditors concerning the endorsement, rejection, or alteration of the debtor's proposed reorganization plan, along with other pertinent issues related to the proceedings (Article 35, items I and II of Law No. 11,101/2005).[328;329]

The meeting consists of four categories of creditors: (i) labor creditors; (ii) secured creditors; (iii) unsecured creditors and those with general or specific privileges; and (iv) microenterprises and small businesses.[330] The meeting may be summoned either by court mandate or upon the petition of creditors holding a minimum of 25% of the total claims within

[327] cf FÁBIO ULHOA COELHO, *Curso de direito comercial* (São Paulo, Revista dos Tribunais 2016) 365
[328] cf EDUARDO FOZ MANGE, *Assembleia-Geral de Credores na Recuperação Judicial* (Dissertação Mestrado em Direito) – Pontifícia Universidade Católica de São Paulo, São Paulo, 2010)
[329] cf OSANA MARIA DA ROCHA MENDONÇA AND MARIA FABIANA SEOANE DOMINGUEZ SANT'ANA, 'A assembleia geral de credores em xeque' in *Lei de recuperação judicial e falência: pontos relevantes e controversos da reforma* (vol 2, Indaiatuba, Editora Foco 2021, 19-30)
[330] About the sovereignty of the creditors' meeting, see: Superior Tribunal de Justiça. REsp n. 1.532.943/MT, relator Ministro Marco Aurélio Bellizze, Terceira Turma, julgado em 13/9/2016, DJe de 10/10/2016.

a specified class. The meeting notice must be disseminated no less than 15 days before the appointed date.[331]

Article 37 stipulates that the court administrator convenes the meeting and designates a secretary from the present creditors. FÁBIO ULHOA COELHO observes that the conference may be chaired by the creditor with the largest claim, particularly in instances where the dismissal of the judicial administrator is under consideration (Article 37, §1). The processes implemented during the meeting shall adhere to the same safeguards applicable to the chair of a general shareholders' meeting of a corporation, as stipulated in Law No. 6,404/1976.[332]

Participation in the meeting is restricted to creditors whose claims are subject to judicial reorganization, including labor creditors, secured creditors, unsecured creditors, and creditors from micro and small enterprises, contingent upon the existence of claims as of the date the reorganization petition was submitted, regardless of their due status (Article 49). Tax creditors and late claimants not listed in the court-sanctioned general list of creditors—excluding late-claiming labor creditors—are ineligible to participate in voting during deliberations.[333]

Article 43 of Law No. 11,101/2005 permits the involvement (without voting rights) of the debtor's partners or shareholders, along with affiliated, parent, or subsidiary companies, and any entities with a shareholder possessing over 10% of the debtor's capital, in addition to the judge and the Public Prosecutor.

The law stipulates that creditors who own more than half of the claims in each class (as determined by claim value) must be present at the first call to have a quorum for calling a creditors' meeting. Regardless of the amount represented,[334] the meeting may continue on the second call. Regarding the voting thresholds, the necessary quorum varies based on the issue being discussed. RICARDO NEGRÃO[335] created the following chart, which lists the relevant regulations:

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[331] 'For these reformers, whether a rule promotes bargaining was the critical question. Hence, they were naturally led to rules such as the one that required equal treatment for claims in the same class. It limited the extent to which those bargaining over plans could play one creditor off against another. A debtor could not promise better treatment for a creditor's claim under the plan in return for its support of the plan. Such rules prevented the simplest sorts of payoffs and bribes'. DOUGLAS G. BAIRD, *The unwritten law of corporate reorganizations* (Cambridge University Press 2022) 138

[332] cf FÁBIO ULHOA COELHO, *Curso de direito comercial* (São Paulo, Revista dos Tribunais, 2016) 366–67

[333] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 150

[334] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 153

[335] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021)154–55

Subject	Quorum for installation	Voting quorum
Decisions Pertaining to Conflicts of Interest of the Judicial Administrator (Article 37, §1)	Initial Meeting: Participation by creditors possessing over fifty percent of the total claims' value in each category is mandatory (Article 37, §2). Second Call: The conference may continue irrespective of the quantity or amount of claims represented (Article 37, §2).	A proposal is sanctioned if it garners affirmative votes from creditors holding above fifty percent of the total value of claims at the meeting (Article 42).
Authorization of a Substitute Approach for Asset Liquidation (Articles 46 and 145)	Initial Meeting: Participation by creditors possessing over fifty percent of the total claims' value in each category is mandatory (Article 37, §2). Second Call: The conference may continue irrespective of the quantity or amount of claims represented (Article 37, §2).	A proposal is sanctioned if it garners affirmative votes from creditors holding two-thirds of the total claim value present at the meeting (Article 46).
Establishment of the Creditors' Committee	Initial Meeting: Participation by creditors possessing over fifty percent of the total claims' value in each category is mandatory (Article 37, §2). Second Call: The conference may continue irrespective of the quantity or amount of claims represented (Article 37, §2).	The committee may be established by a resolution of the General Meeting of Creditors (Article 26), and any amendments shall adhere to the general voting procedure. The proposal will be sanctioned if it garners affirmative votes from creditors holding above fifty percent of the total claim value in the voting class present at the meeting (Article 42).
Establishment of the Creditors' Committee	Initial Meeting: Participation by creditors possessing over fifty percent of the total claims' value in each category is mandatory (Article 37, §2). Second Call: The conference may continue irrespective of the quantity or amount of claims represented (Article 37, §2).).	Voting in the selection of committee members is exclusively reserved for members of each appropriate class (Article 44). The determination is with the class itself (Article 26) and can be executed through a written request endorsed by creditors holding the majority of claims within that class, irrespective of the convening of a general meeting (Article 26, §2).
Other Matters	Initial Meeting: Participation by creditors possessing over fifty percent of the total claims' value in each category	A proposal is deemed authorized if it garners affirmative votes from creditors holding above fifty

	is mandatory (Article 37, §2). Second Call: The conference may continue irrespective of the quantity or amount of claims represented (Article 37, §2).	percent of the total value of claims at the meeting (Article 42).

Particular voting procedures are established for decisions made during the restructuring process by Brazil's Judicial Reorganization Law.[336] The following issues are subject to a proportionate voting system: (i) the creation of the Creditors' Committee; (ii) the debtor's request to halt the proceedings; and (iii) the selection of a qualified manager. On issues pertaining to the judicial restructuring plan, however, the law mixes voting norms particular to classes with proportional representation.[337] The 'double majority' rule is used to vote by both secured and unsecured creditors, ie by headcount and claim amount. On the other hand, creditors categorized as micro or small businesses only cast one vote per head.[338]

4.1.2.2. TRUSTEE

The judicial administrator is a court-appointed expert, assigned both technical and operational duties, and is essential for the correct and effective execution of reorganization processes.[339]

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[336] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 155–56.

[337] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 155–56

[338] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 155–56

[339] About the Trustee in United States: 'Bankruptcy law, as we have seen, should focus primarily on values, not rights. This point facilitates an examination of the trustee's basic avoiding powers (setting aside, until Chapter 6, the power to avoid preferential transfers, a power that arises out of distinct concerns). To one familiar with bankruptcy law, discussing avoiding powers at this point might seem odd. Avoiding powers seem to relate to the gathering of the estate. Section 541 allows the trustee to step into the shoes of the debtor in gathering property of the estate, and the avoiding powers (suggestively located in nearby sections) augment that activity by giving the trustee certain other powers to bring assets into the estate. There is an undeniable validity to this way of viewing the situation. Substantial and inevitable overlap exists between the question of what are the assets that bankruptcy is concerned with and the question of how liabilities are ordered in bankruptcy. Even so, I think it is fruitful to consider the trustee's basic avoiding powers as part of determining the relative ordering of liabilities. Thus, its location here—between a basic discussion of liabilities and a discussion of property of the estate—of assets. Two kinds of what are commonly considered avoiding powers can be distinguished. The first group, comprised of those powers that can be used to preserve the advantages associated with the collective nature of the bankruptcy proceeding, may best be thought of those that arrange rights among the creditors inter se. These avoiding powers, most notably the "strong arm" power of the trustee under section 544(a), are the subject of this chapter and Chapter 6. A second group of powers generally considered to be avoiding powers have nothing to do with implementing

As per Article 21, the judicial administrator must possess a respected professional background, ideally as an attorney, economist, business administrator, accountant, or a specialized legal entity. The judicial administrator is crucial in managing judicial restructuring and bankruptcy processes. The administrator, appointed by the appropriate court, is assigned a comprehensive array of responsibilities as delineated in Article 22 of Law No. 11,101/2005, under the oversight of the judge and, when required, the Creditors' Committee.

The judicial administrator functions as a court auxiliary, facilitating communication among creditors, the debtor, and other stakeholders. Preliminary responsibilities encompass notifying creditors about the initiation of proceedings and apprising them of the type, value, and categorization of their claims. The administrator is required to furnish pertinent information, extract and report on the debtor's financial records, convene creditor meetings, submit statements as mandated by law, and, with judicial approval, enlist expert professionals to aid in fulfilling their responsibilities, with compensation predetermined by the judge.[340]

In addition to these responsibilities, the court administrator must uphold electronic communication channels and facilitate access to case-related material, including systems for filing claims and submitting objections. Furthermore, the administrator is required to immediately address requests from other courts and public bodies and, when feasible, promote the resolution of conflicts through conciliation and mediation.

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the move from an individual to a collective regime. The prototype of such powers is fraudulent conveyance laws. Laws that strike down actions designed to hinder, delay, or defraud creditors, or transfers made by insolvent debtors for less than fair consideration, are not an offspring of nor particularly related to the bankruptcy process itself. Whereas the avoiding powers in the first group adjust the rights of creditors vis-à-vis other creditors, fraudulent conveyance law adjusts the rights of creditors vis-à-vis the debtor. That the second group of avoiding powers does not spring from a need to implement bankruptcy's collective proceeding becomes evident when one observes that the fraudulent conveyance principle not only resides in section 548 of the Bankruptcy Code but also operates outside of bankruptcy, as it has done for more than four hundred years.[1] It retains its force in bankruptcy, as do other nonbankruptcy rights, through section 544(b). Although no particular harm results from calling fraudulent conveyance law an avoiding power of the trustee in bankruptcy, one must recognize its distinct and less collectivist justification. We shall concentrate our examination here on the avoiding powers embodied in section 544, although we shall look, at the end of this chapter, at a related power directed at state-created priorities and bankruptcy statutory liens and embodied in part in section 545. Viewing bankruptcy as a collective device designed to solve a common pool problem makes salient an examination of the contours of these avoiding powers as well as their inherent limitations. A number of long-standing problems associated with the use of the avoiding powers embodied in sections 544 and 545 stem from the failure to identify the underlying purpose of each particular power and bankruptcy rules. Assume for the moment that courts, because of that failure, judges, legislators, and commentators have not focused on the types of behavior that a particular avoiding power is best suited to affect and, accordingly, have not appreciated the limits of each particular power. To understand that purpose and limitation, it is necessary to understand the basic role of the avoiding powers described in section 544'. THOMAS H. JACKSON, *The logic and limits of bankruptcy law* (Cambridge, Harvard University Press 1986)

[340] cf RICARDO DE MORAES CABEZÓN, 'As novas atribuições do administrador judicial na reforma do artigo 22 da lei de falências e recuperações judiciais' in *Lei de recuperação judicial e falência: pontos relevantes e controversos da reforma* (vol 2, Indaiatuba, Editora Foco 2021) 53–71; IRINI TSOUROUTSOGLOU, 'Lei nº 14.112/2020 – Alterações e impactos à função do Administrador Judicial' in *Moderno direito concursal – análise plural das leis n.º 11.101/05 e nº 14.112/20* (São Paulo, Quartier Latin, 2021) 229–58

In judicial reconstruction procedures, the administrator's duties extend to supervising the debtor's operations, including the production of monthly operating reports, and ensuring adherence to the sanctioned reorganization plan. The administrator may request liquidation if the debtor violates the plan and is responsible for overseeing its implementation and mediating negotiations between creditors and the debtor company.

The administrator is required to submit and disseminate periodic electronic reports, encompassing assessments of the plan's execution and alerts regarding any actions that may signify illegal activities, including substantial evidence of criminal conduct by the debtor's directors, fraud against creditor interests, or unwarranted depletion of company assets. These responsibilities are particularly pertinent as the debtor's existing management generally retains control of the business throughout the reorganization process.

Article 23 of Law No. 11,101/2005 mandates the prompt filing of obligatory reports and accounts to maintain ongoing confidence in the administrator's performance. If these responsibilities are not met within the stipulated legal limits, the judge shall mandate their submission within five (5) days, under the threat of contempt. Failure to comply leads to the administrator's dismissal and prompt substitution. Upon removal, the administrator shall receive pay commensurate with the work completed, except in instances of unjustifiable resignation, negligence, fault, willful misconduct, or violation of legal obligations, in which case no compensation shall be awarded. Likewise, administrators whose accounts are denied shall relinquish any entitlement to remuneration.

Article 24 of Law No. 11,101/2005 governs the remuneration of the administrator. The judge will establish the charge, considering the debtor's financial capacity, the case's complexity, and current market norms. Legally, the administrator's compensation cannot surpass 5%[341] of the total debt owing to creditors in the judicial reorganization,[342] and this sum must be disbursed by the debtor. Forty percent of this amount must be retained and can only be disbursed if the debtor has satisfied the requirements outlined in Articles 154 and 155 of the Law.

4.1.2.3. CREDITORS' COMMITTEE

[341] In proceedings involving micro or small enterprises, or rural producers (where the claim amount does not exceed R$ 4,800,000.00), the remuneration may not exceed 2% of the total value, pursuant to Article 24, §5 of Law No. 11.101/2005. In the judicial reorganization of FIGUEIRENSE FUTEBOL CLUBE (an association), however, the remuneration was set at 2.5% of the total amount owed to creditors. The entirety of FIGUEIRENSE FC'S insolvency-related debt amounts to R$ 142,142,09.

[342] In bankruptcy, the principle applies to the totality of the assets collected in the estate.

The Creditors' Committee is an optional entity in judicial reconstruction procedures with consultation and supervisory functions as stipulated in Articles 26–34[343] of Law No. 11,101/2005. The committee is crucial in supervising and assisting the court administrator's activities.[344]

The committee may be established by a resolution of any creditor class during the creditors' general meeting. As per Article 26, its composition is designed to include representatives from the following classes: (i) one representative from the labor creditor class, accompanied by two alternates; (ii) one representative from the class of secured or specially privileged creditors, also with two alternates; (iii) one representative from the unsecured or generally privileged creditor class, with two alternates; and (iv) one representative from the class of microenterprise and small business creditors, with two alternates,

The lack of a representative from any class does not nullify the committee's constitution, which may function with a diminished membership (Article 26, §1). At the request of creditors holding the majority of claims within a specific class, the judge may designate representatives and alternates for an unrepresented class or substitute those previously selected, even in the absence of a general meeting. The committee must appoint its chair from among its members.

All committee decisions shall be determined by majority vote, documented in a minute book, initialed by the court, and made accessible to the judicial administrator, creditors, and debtor. In the case of a deadlock, the judicial administrator shall adjudicate the stalemate; if there is a conflict of interest, the judge shall adjudicate the stalemate.

The committee is responsible for overseeing the actions of the judicial administrator and the administration of the debtor's operations. The report must be submitted every thirty (30) days concerning the debtor's status, review financial statements, and verify the appropriate advancement of the reorganization process, as explicitly designated by law. It must also notify the court of any anomalies, losses, or infringements on creditor rights.

The committee is authorized to provide comments on complaints, petition the court for the convening of general meetings, and oversee the execution of the judicial reorganization plan. A crucial responsibility is to seek court approval for the sale of fixed assets, the establishment of liens and other guarantees, and the assumption of debt necessary for ongoing

[343] In the absence of a Creditors' Committee, its duties shall be performed by the judicial administrator or, if the administrator is unable to act, by the judge (Article 28).

[344] cf ANDRÉ CHATEAUBRIAND MARTINS, 'Análise comparativa do papel do Comitê de Credores no Brasil e nos Estados Unidos' in André Chateaubriand Martins and Marcia Yagui (coords), *Recuperação Judicial: análise comparada Brasil-Estados Unidos* (São Paulo: Almedina, 2020) 75–96

business operations before the reorganization plan is approved—contingent upon the removal of the debtor (ie its managers) from office (Article 27, item II, letter ‘c’).

Committee members do not receive direct compensation from the debtor or the bankruptcy estate but may be compensated for expenses incurred in the execution of their responsibilities, contingent upon court authorization and the debtor's cash availability.

No individual may serve on the committee or as judicial administrator if, within the preceding five years, they had been dismissed from a comparable role, failed to provide accounts, or had their accounts rejected. Individuals closely related to the debtor, its directors, controlling shareholders, or legal representatives, including relatives up to the third degree, as well as those with intimate connections, animosities, or economic dependencies with these individuals, are also disqualified.

The expulsion of committee members or the judicial administrator may take place either ex officio by the judge or at the behest of any interested party, in instances of dereliction of duty, omission, negligence, or actions detrimental to the debtor or creditors. Furthermore, both the committee and the judicial administrator are accountable for damages inflicted against the estate, the debtor, or the creditors due to intentional misconduct or neglect. A dissenting committee member can evade accountability by explicitly documenting their disagreement in the meeting minutes.

Overall, it is clear that the judicial administrator and the Creditors’ Committee are vital to the efficacy of judicial reorganization operations in Brazil, functioning as fundamental pillars of oversight, transparency, and collaboration among all stakeholders.

4.2. VERIFICATION OF CLAIMS[345]

The comprehensive judicial reorganization procedure seeks to develop a feasible recovery plan for the debtor, which is subsequently deliberated and approved by the General Meeting of Creditors to address the debtor's financial crisis. To attain this objective, a vital preliminary step is the verification of assertions. This duty is the responsibility of the judicial administrator, who executes it according to the debtor's financial records and papers provided by creditors[346] within fifteen (15) days following the publication of the notice of initiation of the judicial reorganization. The verification process occurs between the decision to allow the

[345] This is a provision common to both bankruptcy and judicial reorganization proceedings.
[346] cf FÁBIO ULHOA COELHO, *Curso de direito comercial* (São Paulo, Revista dos Tribunais, 2016) 319

reorganization request and the final ruling that grants judicial reorganization. In cases of a disparity between the creditor's claimed amount and the administrator's computed amount, the court is responsible for adjudicating the issue.[347]

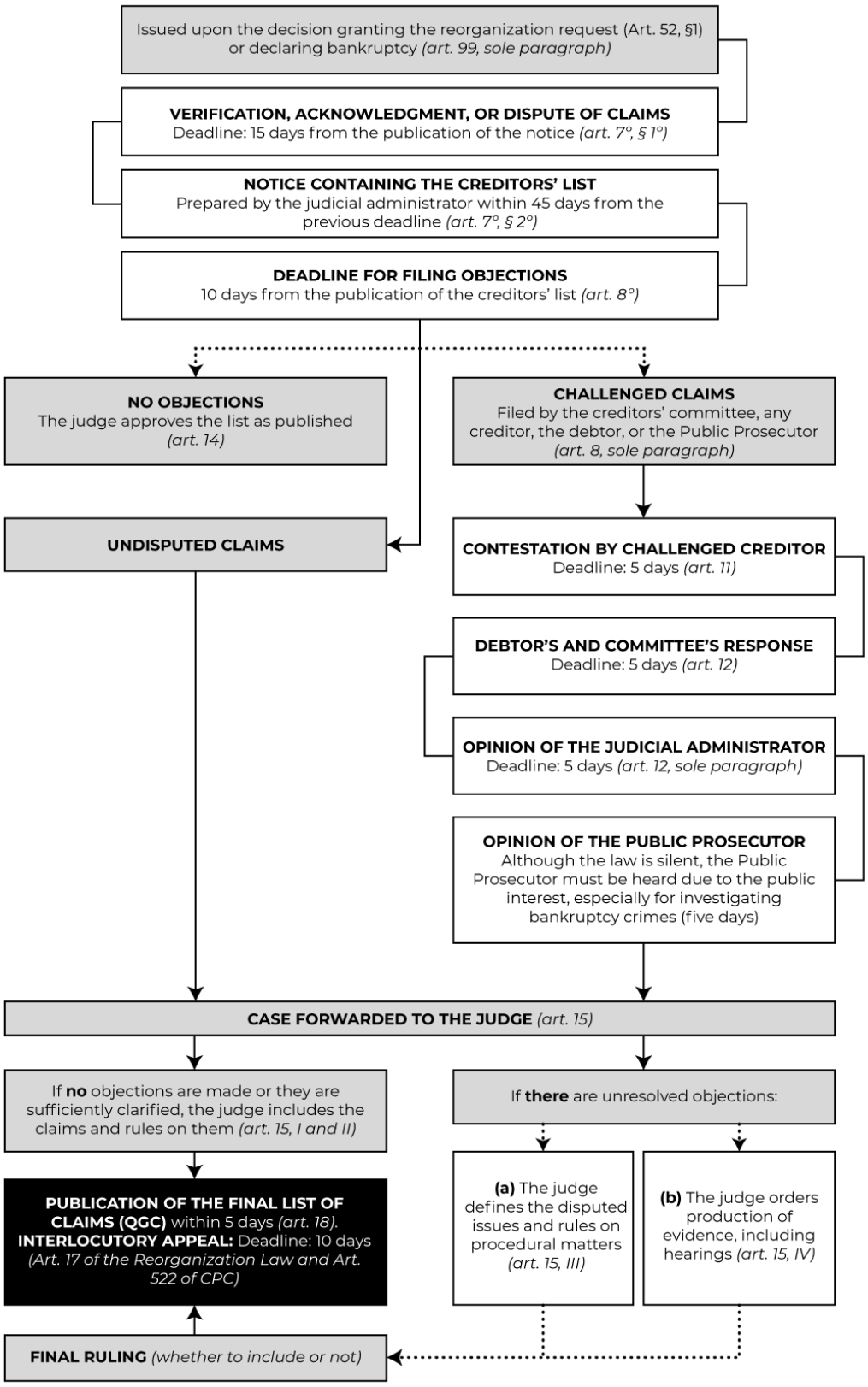
Verification relies on the preliminary list of creditors, either provided by the debtor (Article 51, item III) or compiled by the judicial administrator (Article 7, §2). This list provisionally identifies the genuine creditors eligible to attend the general meeting, as well as those entitled to oppose the credits enumerated by the administrator.[348]

The conclusive adjudication of claims is rendered by a judicial decree that validates all uncontested claims and addresses any objections—whether timely or tardy (*habilitações retardatárias*)—following a hearing of the concerned parties, including the administrator and the Public Prosecutor. This process culminates in the creation of the general list of creditors (*quadro-geral de credores*), which may encompass outstanding disputes solely to safeguard the uncontested segment of the claimed amount:[349]

[347] cf FÁBIO ULHOA COELHO, *Curso de direito comercial* (São Paulo, Revista dos Tribunais, 2016) 319; cf TJSP; Agravo de Instrumento 2073000-33.2022.8.26.0000; Relator (a):Maurício Pessoa; Órgão Julgador: 2ª Câmara Reservada de Direito Empresarial; Foro de São Roque - 1ª Vara Cível; Data do Julgamento: 01/09/2022; Data de Registro: 01/09/2022.

[348] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 83

[349] Adaptation of the flowchart prepared by RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 87


Issued upon the decision granting the reorganization request (Art. 52, §1) or declaring bankruptcy (art. 99, sole paragraph)
VERIFICATION, ACKNOWLEDGMENT, OR DISPUTE OF CLAIMS
Deadline: 15 days from the publication of the notice (art. 7º, § 1º)
NOTICE CONTAINING THE CREDITORS' LIST
Prepared by the judicial administrator within 45 days from the previous deadline (art. 7º, § 2º)
DEADLINE FOR FILING OBJECTIONS
10 days from the publication of the creditors' list (art. 8º)
NO OBJECTIONS
The judge approves the list as published (art. 14)
CHALLENGED CLAIMS
Filed by the creditors' committee, any creditor, the debtor, or the Public Prosecutor (art. 8, sole paragraph)
UNDISPUTED CLAIMS
CONTESTATION BY CHALLENGED CREDITOR
Deadline: 5 days (art. 11)
DEBTOR'S AND COMMITTEE'S RESPONSE
Deadline: 5 days (art. 12)
OPINION OF THE JUDICIAL ADMINISTRATOR
Deadline: 5 days (art. 12, sole paragraph)
OPINION OF THE PUBLIC PROSECUTOR
Although the law is silent, the Public Prosecutor must be heard due to the public interest, especially for investigating bankruptcy crimes (five days)
CASE FORWARDED TO THE JUDGE (art. 15)
If no objections are made or they are sufficiently clarified, the judge includes the claims and rules on them (art. 15, I and II)
If there are unresolved objections:
(a) The judge defines the disputed issues and rules on procedural matters (art. 15, III)
(b) The judge orders production of evidence, including hearings (art. 15, IV)
PUBLICATION OF THE FINAL LIST OF CLAIMS (QGC) within 5 days (art. 18).
INTERLOCUTORY APPEAL: Deadline: 10 days (Art. 17 of the Reorganization Law and Art. 522 of CPC)
FINAL RULING (whether to include or not)

Upon consolidation of the comprehensive creditor list, a meeting of creditors may be summoned, categorized by class, to discuss the restructuring plan proposed by the debtor.

4.3. JUDICIAL REORGANIZATION PLAN

The debtor must submit the judicial reorganization plan within a non-extendable timeframe of sixty (60) days following the publication of the court judgment approving the reorganization procedures,[350] under the threat of conversion to bankruptcy (art 73, II). The plan must encompass a comprehensive description and summary of the proposed recovery measures, substantiation of the plan's economic viability, and an economic and financial assessment evaluating the debtor's assets—prepared by a qualified professional or specialized firm (art 53).[351]

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[350] Creditors may submit their objections to the judicial reorganization plan to the court within 30 days from the publication of the list of creditors (Article 55).

[351] The reorganization plan may be modified during the creditors' meeting, provided that the debtor expressly agrees to the changes and that the modifications do not result in a reduction of rights exclusively affecting absent creditors. An alternative plan may also be proposed by the creditors, as long as the requirements set forth in Article 56, Paragraph 6, items I to VI of Law No. 11.101/2005 are met. In the United States of America, the judicial reorganization plan operates as follows: '§ 11.15 What a Plan Is and Why Confirmation Matters The ultimate goal of a chapter 11 case is to confirm a plan of reorganization. While the debtor's business normally will operate in the interim while the terms of plan are worked out, § 1108, Congress did not intend for the debtor to remain in chapter 11 in perpetuity. At some point either a plan must be confirmed, with the debtor or a successor then emerging from chapter 11, or the case should be dismissed or converted to a liquidation under chapter 7. If a plan is confirmed, the terms of the plan will serve as the blueprint for the debtor's financial obligations from that point forward. Upon confirmation, all prior claims and interests against the debtor are replaced by the provisions and obligations of the plan. §§ 1141. A confirmed plan of reorganization is a combination of (1) a contract between the debtor, creditors, and equity; (2) an investment in the reorganized debtor by creditors and equity holders; and (3) a decree by a federal court. It is a contract in the sense that the plan normally is assented to by all classes of creditors and interest holders, who agree to relinquish their prior claims or interests in exchange for the treatment offered by the plan and the like agreement of other classes. A plan is an investment in the sense that those creditors and interest holders decide to "invest" in the reorganized debtor or its successor by trading their pre-bankruptcy claims or interests for the claims or interests offered by the plan, after receiving adequate disclosure about the plan. Finally, a confirmed plan bears the imprimatur of a final judgment entered by the supervising federal court, and enjoys the protections, benefits, and binding force normally attendant to such a decree. (…) A reorganization plan is not a pure contract in the classic sense, however. One difference from a normal contract is that non-assenting parties are bound to the plan's terms. § 1141(a). However, those dissenting parties are protected. The plan must be approved by the majority in the rule that they are entitled to receive at least the liquidation value of their claim or interest. § 1129(a)(7). Also, the parties are not truly autonomous; the court will only confirm a plan if a number of statutory requirements in addition to party assent are satisfied. For example, the court must find that the plan is feasible, even if all classes accept the plan. § 1129(a)(11). Notwithstanding these important differences, a plan still is largely contractual in nature. It is a product of negotiations. The terms of a plan almost always are arrived at through negotiations with the various classes of creditors and equity security holders. The dynamics of plan negotiation can be complicated, especially in larger cases. In those cases, multiple committees may be appointed, and all will assert a voice in the bargaining process. The primary negotiating body for unsecured creditor agents is the official creditors' committee. § 1103(c)(3). If the unsecured creditors' committee agrees to the plan, a positive vote by the entire body of unsecured creditors is almost a certainty. However, if the creditors' committee opposes the plan, the unsecured creditors are likely to reject the plan'. CHARLES JORDAN TABB, *Law of bankruptcy* (St. Paul, West Academic Publishing 2020) 1095–96

The reorganizing plan pertains solely to matured labour-related claims or claims resulting from workplace accidents. The payment proposal for these credits must adhere to a maximum duration of one year, extendable to two years provided the plan satisfies the criteria set forth in Article 54 of Law No. 11,101/2005.[352]

4.3.1 JUDICIAL REORGANIZATION TOOLS [353]

The methods of judicial reform must be comprehensively detailed in the reorganization plan, along with a summary,[354] as mandated by Article 53, Item I, of Law No. 11,101/2005. The tools are enumerated in Article 50 of the same statute in an illustrative but not exhaustive fashion.

The provision of prolonged deadlines and specialized payment terms is a mechanism via which the debtor may solicit a debt reduction, partial debt forgiveness, exclusion of interest, and adjustment of the applicable monetary correction index on the claims.[355] Regarding monetary adjustment, MARCELO SACRAMONE argues that the absence of such correction in the judicial reorganization plan may result in unjust enrichment of the debtor under reorganization.[356] He asserts that monetary updating is essential, as it does not constitute an increase in value but merely preserves the purchasing power of the currency.[357]

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[352] Under French Law: '§ 2. Le contenu du projet de plan
977 Les éléments du plan – L'article L. 626-2 du Code de commerce dispose que le projet de plan détermine d'abord les perspectives de redressement en fonction des possibilités et des modalités d'activités, de l'état du marché et des moyens de financement disponibles. Il définit ensuite les modalités de règlement du passif et les garanties éventuelles que le débiteur doit souscrire pour en assurer l'exécution. Ce projet comporte également un volet social puisqu'il expose et justifie le niveau et les perspectives d'emploi ainsi que les conditions sociales envisagées pour la poursuite de l'activité. L'article L. 626-2 précise que lorsque le projet prévoit des licenciements pour motif économique, il rappelle les mesures déjà intervenues et définit les actions à entreprendre en vue de faciliter le reclassement et l'indemnisation des salariés dont l'emploi est menacé. Enfin, le projet de plan tient compte des travaux recensés par le bilan environnemental'. PAUL LE CANNU AND DAVID ROBINE, *Droit des entreprises en difficulté* (Paris, Dalloz, 2020) 608

[353] The main reorganization measures developed through judicial practice will be addressed.

[354] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 251

[355] It should be noted that monetary correction shall apply only up to the date of the filing for judicial reorganization (Article 9, item II), in accordance with the Superior Court of Justice (STJ): SUPERIOR TRIBUNAL DE JUSTIÇA. REsp n. 1.936.385/SP, relator Ministro Marco Aurélio Bellizze, Terceira Turma, julgado em 7/3/2023, DJe de 10/3/2023.

[356] cf JOÃO COSTA-NETO, 'The Sad Future of Unjustified Enrichment in Brazil: Criticising the Brazilian Civil Code Reform' (2024) 3 *Oxford University Comparative Law Forum* 1–21; e JOÃO COSTA-NETO AND E. C. NOBREGA NETO, *Enriquecimento sem causa por intervenção e disgorgement of profits* (Rio de Janeiro, Lumen Juris 2024)

[357] cf TJSP; Agravo de Instrumento 0235995-76.2012.8.26.0000; Relator (a): Enio Zuliani; Órgão Julgador: 1ª Câmara Reservada de Direito Empresarial; Foro de Mogi Mirim - 2ª. Vara Judicial; Data do Julgamento: 26/03/2013; Data de Registro: 02/04/2013.

The reorganization plan may include the exclusion of interest, which is up to the parties' discretion.[358] The issue is not without disagreement, though. According to MARCELO SACRAMONE, the parties may legitimately negotiate a deeper discount resulting from the omission of interest.[359] The exclusion of interest, on the other hand, is prohibited because it amounts to a twofold discount, according to the SÃO PAULO STATE COURT OF APPEALS' 1st Reserved Chamber for Business Law.[360]

Concerning monetary adjustment, MARCELO SACRAMONE contends that the lack of such rectification in the judicial reconstruction plan could lead to the debtor's unfair enrichment during reorganization. He contends that monetary updating is crucial, as it does not represent a value rise but rather maintains the currency's purchasing power. Furthermore, the author notes[361] that specific payment conditions may not rely on future and uncertain events that are exclusively at the debtor's control. This arises from the explicit ban established in Article 122 of the Brazilian Civil Code, which nullifies any condition that either renders a legal act entirely ineffective or subjects it to the unilateral discretion of one party.

Corporate restructuring instruments—such as spin-offs, mergers,[362] amalgamations,[363] corporate transformations,[364] the establishment of fully owned subsidiaries, or the transfer of shares or equity interests[365]—can serve as methods of reorganization.[366] These processes are especially pertinent for sports organizations that seek judicial restructuring.

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[358] cf TJSP; Agravo de Instrumento 2216380-90.2017.8.26.0000; Relator (a): Carlos Dias Motta; Órgão Julgador: 1ª Câmara Reservada de Direito Empresarial; Foro de Guarulhos - 6ª. Vara Cível; Data do Julgamento: 04/07/2018; Data de Registro: 10/07/2018.

[359] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 253

[360] cf TJSP; Agravo de Instrumento 2216380-90.2017.8.26.0000; Relator (a): Carlos Dias Motta; Órgão Julgador: 1ª Câmara Reservada de Direito Empresarial; Foro de Guarulhos - 6ª. Vara Cível; Data do Julgamento: 04/07/2018; Data de Registro: 10/07/2018.

[361] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência*, São Paulo, Saraiva Jur, 2023, p.253. Cf. REsp 1.830.550/SP, Relator Ministro ANTONIO CARLOS FERREIRA, QUARTA TURMA, j. em 23/4/2024, DJe de 30/4/2024. Cf. AgInt no REsp n. 1.940.442/AC, relator Ministro Raul Araújo, Quarta Turma, julgado em 4/11/2024, DJEN de 29/11/2024.

[362] cf CARLA MOSNA TOMAZELLA NICOLAU, *Proteção de acionistas e credores nas operações de incorporação envolvendo sociedades anônimas*. 2011 (Dissertação (Mestrado) – Universidade de São Paulo, São Paulo, 2011)

[363] With regard to affiliated or related companies (*sociedades coligadas*, cf ERASMO VALLADÃO, N. FRANÇA, AND MARCELO VIEIRA VON ADAMEK, 'O novo conceito de sociedade coligada na lei acionária brasileira' (2011) 159/160 *Revista de Direito Mercantil*

[364] cf RACHEL SZTAJN, 'Fusão, incorporação e cisão de sociedades: formas de reorganização da estrutura societária na Lei nº 9.457/97' in Roberto GUAZZELLI (org), *Reforma da Lei das Sociedades por Ações* (São Paulo, Pioneira, 1998)

[365] On the issue of voting restrictions in cases involving particular benefits in merger or share incorporation transactions—where different values are assigned to shares issued by the company involved in the transaction, depending on their type, class, or ownership—see Parecer de Orientação CVM n. 34/2006 <https://conteudo.cvm.gov.br/export/sites/cvm/legislacao/pareceres-orientacao/anexos/pare034.pdf>

[366] cf ARNALDO VIEIRA FERREIRA, *Reorganizações societárias como meios de recuperação judicial* (São Paulo, Quartier Latin, 2024)

Nonetheless, these corporate activities[367] must be explicitly and comprehensively detailed in the judicial restructuring plan, in accordance with Article 53, Item I, of Law No. 11,101/2005. The plan's generic descriptions are inadequate, hindering creditors' ability to properly evaluate the viability of the planned restructuring steps necessary for maintaining company continuity and fulfilling existing claims".[368] Moreover, it is imperative to acknowledge that, contingent upon the nature of the transaction, antitrust scrutiny by THE ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE *(Conselho Administrativo de Defesa Econômica*, or CADE),[369][370] Brazil's competition authority, may be necessary. This is especially pertinent in circumstances where the transaction may impede or damage free competition or lead to the consolidation of control over pertinent markets for products or services, in accordance with Article 90 of Law No. 12,529/2011.

An exemplary instance is the equity acquisition in OI S.A. by investment funds via the conversion of debt into shares, as per judicial reorganization proceedings No. 0090940-03.2023.8.19.0001 which is currently before the 7th Business Court of the Capital District of the State of Rio de Janeiro. The transaction received approval from CADE's General Superintendence (SG/CADE).

A spin-off entails the partial or whole transfer of a company's assets to one or more existing or newly established entities, as explicitly stipulated in Article 229 of Law No. 6,404/1976 (Brazilian Corporations Law).

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[367] Article 88 of Law No. 12,529/2011 sets forth the merger control rules and defines the concentration acts that must be reviewed by CADE, Brazil's antitrust authority.

[368] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 254

[369] Paragraph 3 of Article 88 of Law No. 12,529/2011 establishes that transactions subject to prior review under the merger control rules may not be consummated before receiving clearance by CADE, in accordance with the procedures set forth in this Article and in Chapter II, Title VI of the Law. Any violation results in the transaction being deemed null and void and may also give rise to a monetary fine ranging from BRL 60,000 to BRL 60,000,000, as determined by regulation, in addition to the potential initiation of administrative proceedings under Article 69 of the same statute. Paragraph 4 further provides that, pending final clearance, the competitive conditions between the parties involved must be maintained, under penalty of the same sanctions provided in Paragraph 3.

[370] In the United States: 'Another notable feature of the 1978 law was the merger of the reorganization chapters into a single chapter. This marriage combined features of old chapter X and Chapter XI. The new Chapter 11 left the debtor in possession, with a trustee to be appointed only for cause; gave the debtor in possession a limited exclusive period to file a reorganization plan; adopted a modified form of the absolute priority rule, to be applied only when a class dissents; limited the involvement of the SEC in reorganization cases, and otherwise attempted to streamline reorganization practice. The success of this reform is a matter of considerable debate". conclusion of the report was that public investors needed protection from insiders in reorganization cases'. CHARLES JORDAN TABB, *Law of bankruptcy* (St. Paul, West Academic Publishing 2020) 35. cf ALLEN F. COROTTO AND IRVING H. PICARD, 'Business reorganizations under the Bankruptcy Reform Act of 1978 — a new approach to investor protections and the role of the SEC' (1978) 28 *DePaul Law Review* 961

In instances of complete asset transfer, the entity relinquishing its assets is dissolved. Concerning responsibility, §1 of Article 229 of Law No. 6,404/1976 pertains to the succession of rights and obligations in the context of a spin-off. In a partial spin-off, the acquiring business inherits the rights and liabilities explicitly outlined in the spin-off agreement. If the spin-off leads to the dissolution of the original firm, the entities acquiring sections of the assets will be jointly accountable for any obligations not explicitly assigned in the spin-off agreement, in proportion to the net assets allotted to each.

A merger is a type of corporate reorganization wherein one or more companies are assimilated by another, and the acquiring firm assumes all rights and duties. The acquiring firm continues to exist, whilst the absorbed company is liquidated after fulfilling specific legal and corporate obligations, including the endorsement of the merger protocol and the compilation of valuation and merger reports.

Conversely, a consolidation entails the amalgamation of two or more corporations to create a new legal entity, resulting in the dissolution of all original firms. The newly established entity fully succeeds the defunct corporations, assuming all their rights and duties. In contrast to a merger, a consolidation involves universal succession, as none of the original corporations remain in existence. Consolidation necessitates adherence to specific legal protocols, including shareholder consent and the generation of valuation studies.

A corporate transformation denotes a modification in the legal structure of the business. It generally entails limited liability companies transforming into corporations (*sociedades anônimas*), mainly owing to the enhanced facilitation of securities issuance for capital acquisition, the conversion of debt into equity (as exemplified in the OI Group case), and the simplification of shareholder exits—eliminating the necessity for a partial dissolution via quota (prior to transformation) or share transfers.[371]

The establishment of a wholly owned subsidiary entails the foundation of a corporation (*sociedade anônima*) with a sole shareholder, which, in the context of judicial restructuring, is the debtor firm itself. This process generally involves the allocation of assets to the subsidiary's share capital (a drop-*down* transaction[372]).

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[371] It must comply with the legal provisions governing corporate relationships, as well as the bylaws and articles of association of the companies involved.

[372] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 255; cf Felipe Ramalho, *Comparação entre o drop down e as formas típicas de reorganização societária previstas na legislação brasileira* (São Paulo: Insper, 2018) 35. In the case of football clubs, the drop-down structure has been widely used outside the scope of judicial reorganization proceedings., cf.: DE SOUZA, Marcos Pires Santos. *Drop down para constituição de sociedade anônima do futebol (saf): tratamento contábil e tributário da versão do "patrimônio relacionado à atividade futebol*". Revista de Direito Contábil Fiscal, v. 6, n.

Alterations in corporate governance[373] and substitutions of executives—or the implementation of collaborative management frameworks—as methods of judicial restructuring do not inherently need financial remuneration to the debtor. Nonetheless, such approaches can transform company strategy and enhance governance standards.

A capital increase and the conversion of debt into equity may be executed simultaneously in a single transaction, namely, a capital increase via debt reduction (ie, converting debt into *equity*[374]). In this context, as Marcelo Sacramone highlights, a critical issue emerges regarding opposing creditors during discussions on debt-to-equity conversions. Sacramone contends that it is inappropriate to coerce debtors into becoming shareholders or equity holders involuntarily.[375]

A capital expansion, without the conversion of debt into equity, might effectively inject financial resources to facilitate creditor payments. By legal stipulation, current shareholders or partners possess preemptive rights, as a capital increase may lead to the proportional dilution of their equity interests.

Asset transfers, partial asset sales,[376] and lease agreements are often utilized in judicial reorganization processes. The asset transfer (*trespasse*) pertains to the sale or assignment of the entire business establishment.[377] The partial divestiture of assets entails the liquidation of

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11, p. 143-162, 2024; CASTRO, Rodrigo R. Monteiro de. *As 4 vias de constituição da Sociedade Anônima do Futebol (SAF)*. Available at: https://www.migalhas.com.br/coluna/meio-de-campo/350653/as-4-vias-de-constituicao-da-sociedade-anonima-do-futebol-saf; Grêmio Novorizontino did not implement a drop-down structure; instead, it opted to convert from an association into a Football Corporation (Sociedade Anônima do Futebol – SAF), initiating the procedure directly at the civil registry office for legal entities, with subsequent referral to the competent commercial registry. The operation was conducted by Caputo, Bastos e Serra Advogados. For further information, see <https://www.gremionovorizontino.com.br/2023/12/07/gremio-novorizontino-deixa-de-ser-associacao-e-se-transforma-em-saf/>

[373] cf EDUARDO FRADE RODRIGUES, *O Direito Societário e a Estruturação do Poder Econômico* (Dissertação de mestrado, Brasília, Universidade de Brasília, 2016); MASSIMO MOTTA**,** *Competition Policy: theory and practice*, (New York, Cambridge University Press 2004); OLAVO ZAGO CHINAGLIA**,** 'Poder de controle, influência significativa e influência relevante: breves anotações sobre a interface entre o direito societário e o direito da concorrência' in Rodrigo R. Monteiro de Castro and Luís N. de MOURA AZEVEDO (coords), *Poder de controle e outros temas de direito societário e mercado de capitais* (São Paulo, Quartier Latin, 2010) 411–20; EDUARDO SECCHI MUNHOZ**,** *Aquisição de controle na sociedade anônima* (São Paulo, Saraiva, 2013); FÁBIO KONDER COMPARATO AND CALIXTO SALOMÃO FILHO**,** *O poder de controle na sociedade anônima* (6th edn. rev. e atual., Rio de Janeiro, Forense, 2014); ALFREDO LAMY FILHO AND JOSÉ LUIZ BULHÕES PEDREIRA**,** *A lei das S.A.: pressupostos, elaboração* (2nd edn, vol 1, Rio de Janeiro, Renovar)

[374] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 258; RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 205

[375] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 258

[376] cf RENATO MOURE BORANGA, 'Processo de venda sob a seção 363 e o mecanismo de stalking horse e eficiência do mecanismo de venda de ativos estressados' in *Recuperação Judicial: análise comparada Brasil–Estados Unidos* (São Paulo, Almedina, 2020) 263–312.

[377] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021, 205)

certain assets to generate capital for the restructuring process.[378] The differentiation between the partial sale of assets and the sale of discrete production units has been extensively debated in Brazilian legal academia. The legal framework governing asset sales is delineated in Article 140 and the following articles of Law No. 11,101/2005. Article 140 stipulates a preference hierarchy for asset disposal: (i) sale of the company via the sale of its establishments in entirety; (ii) sale of the company through the sale of its branches or standalone production units; (iii) bulk sale of the assets within each establishment; and (iv) sale of individual assets.

Scholarly discourse has concentrated on the conceptual differentiation among 'establishment', 'branch', 'individually considered assets', and 'isolated production unit'.[379] In this analysis, the term 'isolated production unit' is defined as synonymously with 'branch'. This interpretation is corroborated by Item II of Article 140, which addresses the potential for selling 'its branches or isolated production units', indicating that a corporation may divest all branches or merely a single isolated unit—without the obligation to sell the entire institution. A debtor possessing many branches may opt to sell only one as a plan for judicial reorganization.

According to Article 142, asset sales may be conducted via (i) electronic, in-person, or hybrid public auction; (ii) competitive bidding executed by a reputable, specialized agent, with procedures comprehensively outlined in a report appended to the asset realization or reorganization plan; or (iii) any alternative method, contingent upon legal approval.

Brazilian case law has eased the statutory prerequisites for these modalities. Courts have sanctioned direct sales of the debtor's assets pursuant to Articles 144 (judicial authorization) and 145 (creditors' meeting consent and judicial confirmation). In Special Appeal No. 1.689.187/ RJ,[380] the Superior Court of Justice (STJ) determined that the sale of standalone production units outlined in an approved reorganization plan should typically adhere to the public auction process, pursuant to Articles 60 and 142. Alternative forms pursuant to Article 145 may be permitted solely in extreme circumstances, contingent upon the inclusion of detailed reasons in the plan presented to the creditors. The Court determined that the direct sale of the isolated production unit was appropriately justified, having fulfilled the necessary legal criteria to circumvent public auction.

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[378] cf Article 60 of Law No. 11,101/2005.

[379] cf RUY MELLO JUNQUEIRA NETO, *A unidade produtiva isolada – UPI. Conceito, tratamento legal e questões relacionadas* (São Paulo, Quartier Latin, 2021) 62–78; cf ALEXANDRE FERREIRA DE ASSUMPÇÃO ALVES; JOÃO PEDRO WERNECK, A alienação dos bens do devedor na falência: do contrato de união à realização do ativo na Lei nº 11.101/2005, Encontro Virtual, *Revista Brasileira de Direito Empresarial*, v. 9, n. 1, jan./jul. 2023, p. 43–64.

[380] Cf. SUPERIOR TRIBUNAL DE JUSTIÇA. REsp n. 1.689.187/RJ, relator Ministro Ricardo Villas Bôas Cueva, Terceira Turma, julgado em 5/5/2020, DJe de 11/5/2020.

Law No. 14,112/2020 modified Law No. 11,101/2005 by adding a lone paragraph to Article 60 as an incentive mechanism. This clause guarantees that asset sales are unencumbered and that the buyer will not inherit any obligations of the debtor, including those that are environmental, regulatory, administrative, criminal, anti-corruption, tax-related, or labor-related.

The debtor may lease the business establishment without relinquishing ownership, utilizing the revenue earned from the lease to facilitate the reorganization process and fulfill creditor claims.

The complete liquidation of the debtor's assets is an alternative strategy for alleviating financial difficulties. Marcelo Sacramone asserts that while this approach may be effective, judicial oversight is essential to guarantee that creditors who did not opt in or comply with the plan receive treatment that is, at the very least, commensurate with what they would obtain in bankruptcy proceedings.[381] This method is safeguarded by the principle that excludes successor duty for the purchaser, encompassing environmental, regulatory, administrative, criminal, anti-corruption, tax, and labor requirements.

Wage reductions, modification of work schedules, and decreased working hours may be employed to synchronize employment connections with the debtor's present financial condition. Nevertheless, these modifications require approval from the creditors' assembly and must adhere to individual labor contracts and collective bargaining agreements to be valid under Brazilian labor legislation.[382]

The resolution of debt via payment in kind (*dação em pagamento*) or debt novation, with or without security from the debtor or a third party, constitutes an additional option for the debtor. Payment in kind is governed by Article 356 of the Civil Code, permitting the creditor to accept a performance that differs from the initially stipulated obligation. Debt novation[383] occurs following a court ruling that permits judicial reorganization (Article 59), facilitating a comprehensive restructuring of debts, which includes the substitution of the major debtor.

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[381] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 261; cf JSP; Agravo de Instrumento 2169206-41.2024.8.26.0000; Relator (a): AZUMA NISHI; Órgão Julgador: 1ª Câmara Reservada de Direito Empresarial; Foro de Taubaté - 1ª Vara Cível; Data do Julgamento: 09/10/2024; Data de Registro: 10/10/2024

[382] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 261

[383] The concept and rules of novation set forth in Article 360 of the Civil Code apply, subject to the exception regarding the novation of claims against co-obligors and joint debtors, in accordance with the case law of the Superior Court of Justice (STJ). Cf. REsp n. 1.333.349/SP, relator Ministro Luis Felipe Salomão, Segunda Seção, julgado em 26/11/2014, DJe de 2/2/2015.

The issuing of securities, as articulated by MARCELO SACRAMONE,[384] includes any method of capital acquisition by firms via public offers. This encompasses instruments including debentures, shares, profit participation certificates, and subscription warrants.

The establishment of a creditors' company or a special purpose entity (SPE) serves as a recovery method with restricted practical utility. An SPE is established to assume control of the debtor's assets and sustain its commercial operations. Nonetheless, this method does not inherently require sufficient synergy among the creditors to warrant their transformation into shareholders for legislative purposes, especially considering the lack of legal protections that would exempt them from successor liability for the debtor's obligations. RICARDO NEGRÃO observes that a creditors' corporation is feasible only when a creditor, or a consortium of affiliated creditors whose operations correspond with those of the debtor, is prepared to absorb the assets to enhance their current activities or as a component of a non-compete strategy.[385]

4.3.2 DEMONSTRATION OF ECONOMIC FEASIBILITY AND ECONOMIC-FINANCIAL REPORT

Economic feasibility is a fundamental aspect of judicial reorganization proceedings, evident from the initial petition phase through the demonstration of the debtor's financial distress and the justification for the reorganization request as a method to mitigate or resolve the crisis.

As mandated by Article 51, item III, of Law No. 11,101/2005, this proof is not a mere formality, but a significant obligation placed upon the debtor. The objective is to convince the court and the creditors of the debtor's genuine ability to recuperate. This condition is based on the concepts of business preservation and the social role of enterprise, which form the foundation of reorganization processes intended for economically viable companies.

For the court to let the processes advance and for the creditors to evaluate the efficacy of the proposed plan, it is imperative that the petition is substantiated by adequately concrete and technical components. These must unequivocally demonstrate that the debtor is not simply postponing insolvency but is instead actively engaged in a feasible and pragmatic financial and operational reorganization, considering its prevailing financial, economic, and market circumstances.[386]

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[384] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 263

[385] cf RICARDO NEGRÃO, *Curso de direito comercial e de empresa: recuperação de empresas, falência e procedimentos concursais administrativos* (São Paulo, Saraiva Jur 2021) 203

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This proof must exceed a mere general expression of intent or ambiguous recovery measures. It must be based on objective criteria that can bolster the company's strategy to navigate the crisis. Consequently, it is customary to employ financial metrics like EBITDA (earnings before interest, taxes, depreciation, and amortization), expected cash flow, liquidity ratios, debt ratios, profitability indices, and market evaluations.[387] These instruments are assembled into a technical document created by a trained expert or specialized organization.

This document, known as the economic-financial report, is crucial for the paperwork needed to validate the viability of the recovery and is among the principal documents examined by creditors. The report is deemed essential due to a systematic analysis of Article 51, items I and II, as it constitutes a technical document that precisely represents the company's financial and accounting condition in an auditable format, detailing the crisis, suggested recovery strategies, and anticipated results.

The report generally encompasses a delineation of the business activity and market setting, an account of the history of the crisis, financial statements, financial and economic forecasts, suggested recovery measures, and an evaluation of viability.

The creditors can evaluate and cast their votes on the plan. Upon approval,[388] the matter advances to the stage when judicial restructuring may be authorized.

4.3.4. GRANTING OF JUDICIAL REORGANIZATION

The approval of judicial restructuring is a procedural action that occurs after the endorsement of the reorganization plan by the general assembly of creditors. This signifies the conclusion of an extensive procedure that commences with the court's approval of the reorganization petition and advances via the validation of claims, the amalgamation of the general creditors' list, and the presentation and consideration of the reorganization plan. Nonetheless, at this conclusive point, and despite the creditors' assembly's acceptance, the court's validation is still dependent on adherence to certain legal stipulations.

The initial condition, subsequent to the endorsement of the reorganization plan, is the debtor's submission of tax clearance certificates, in compliance with Articles 151, 191-A, 205,

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[387] cf MARCUS VINICIUS QUINTELLA CURY et al, *Finanças corporativas* (12th edn, Rio de Janeiro, FGV Editora 2018) 220 (Publicações FGV Management. Economia e finanças). To examine the restructuring framework in Austria, refer to ALEXANDER WILFINGER, 'Corporate restructuring in Austria: the implementation of Directive (EU) 2019/1023 on Restructuring and Insolvency' (2022) 1 *European Insolvency and Restructuring Journal*, 1–12.

[388] It is possible for the court to grant approval (*cram down*).

and 206 of the National Tax Code.[389] The submission of these certificates is a legal requirement for the validation of the reorganization plan. Upon the debtor's compliance with this criterion, the court will undertake a review of the legality of the discussion that sanctioned the plan (legality control).

If the general meeting of creditors rejects the reorganization plan, the court may nonetheless validate it via a process termed *cram down,*[390] contingent upon the fulfillment of the following cumulative criteria: (i) affirmative votes from creditors representing over fifty percent of the total claims held by creditors present at the meeting, irrespective of their classification; (ii) endorsement by three (3) creditor classes, or if there are solely three (3) classes with voting creditors, approval by a minimum of two (2) of them; and in scenarios with only two (2) voting classes, endorsement by at least one (1) class is adequate; and (iii) within the class that opposed the plan, at least one-third (1/3) of the creditors voted in favor.

Upon the court's approval of judicial reorganization, the debtor's obligations are legally novated, signifying that the terms agreed and sanctioned in the plan supersede the original contractual commitments. Nonetheless, as observed by FÁBIO ULHOA COELHO, such novations, revisions, and renegotiations are contingent, taking effect 'only if the reorganization plan is executed and successful'.[391] Consequently, should there be a failure to adhere to the plan resulting in liquidation, creditors will have their original claims and guarantees restored according to the basic contractual terms, less any payments previously received (art. 61, §2º).[392]

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[389] To this end, the debtor may opt for the installment payment plan provided under Law No. 13,043/2014 for federal taxes. In the Federal District, the installment of local taxes is governed by Complementary Law No. 1,030/2024.

[390] For a comparative analysis of the institute in Brazil and the United States, see RENATA MARTINS DE OLIVEIRA AMADO, 'Cram down no direito norte-americano e no direito brasileiro' in *Recuperação Judicial: análise comparada Brasil–Estados Unidos* (São Paulo, Almedina, 2020) 185–210

[391] cf FÁBIO ULHOA COELHO, *Curso de direito comercial* (São Paulo, Revista dos Tribunais, 2016) 392

[392] Regarding the effects of the reorganization plan under Chapter 11 of the U.S. Bankruptcy Code: '§ 11.36 The Effects of Confirmation
Confirmation of a chapter 11 plan has a profound legal effect. The confirmed plan is the operative legal document that dictates the financial structure and obligations of the reorganized debtor, replacing the pre-confirmation regime. The operative effects of confirmation are governed by § 1141. Under that provision, confirmation has four primary legal effects: The terms of the plan are binding on the debtor, all creditors, equity holders, or general partners of the debtor, as well as on any entity issuing securities or acquiring property under the plan. This binding effect applies whether or not the affected party is impaired under the plan or voted in favor of the plan. § 1141(a). All property of the estate is vested in the debtor, except as otherwise provided in the plan or confirmation order. § 1141(b). Property dealt with by the plan is free and clear of all claims and interests, except as provided in the discharge rules and except as provided in the plan or confirmation order. § 1141(c). The debtor is discharged from any pre-confirmation debt, and all rights and interests of equity security holders or general partners provided for by the plan are terminated. The discharge is effective whether or not the creditor filed a proof of claim, had its claim allowed, or voted in favor of the plan. § 1141(d)(1). This discharge rule does not apply to individual debtors, who are not released until all payments under the plan have been made. § 1141(d)(5)(A). Other exceptions to this broad discharge are provided for (i) nondischargeable § 523 debts for an individual debtor, § 1141(d)(2); (ii) corporate debts owing to a domestic governmental unit under sections 523(a)(1)(A) or (B), to persons as a result

The approval of judicial reform signifies the conclusion of the deliberative phase and the initiation of the plan's implementation.

4.3.5. EXECUTION OF THE PLAN

The execution phase is essential for the debtor's rehabilitation, as any violation of the reorganization plan may result in the conversion of the process to liquidation.

Upon the court's endorsement of the plan, the debtor commences a two-year phase of judicial oversight, during which it maintains its designation as a corporation in reorganization (*recuperanda*) until it satisfies the responsibilities outlined in the plan (Article 61).[393] Upon complete fulfillment of these obligations, the court will render a decision formally concluding the judicial reorganization proceedings, as stipulated in Article 63, items I to V, which necessitate the following: (i) payment of outstanding fees owed to the court-appointed trustee, contingent upon the submission of a final accounting; (ii) evaluation and settlement of any remaining court costs; (iii) provision of a comprehensive report by the court-appointed trustee, within fifteen (15) days, detailing the debtor's adherence to the reorganization plan; (iv) dissolution of the creditors' committee and discharge of the trustee from responsibilities; and

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of an action filed under subchapter III of chapter 37 or any similar State statute, or for a tax or customs duty for which the debtor made a fraudulent return or attempted to evade tax or customs, § 1141(d)(6); (iii) the case of a liquidating plan, if the debtor would not have received a discharge under § 727(a), § 1141(d)(3); and (iv) a written waiver of discharge executed by the debtor after the entry of the order for relief in the bankruptcy case, § 1141(d)(4)'. CHARLES JORDAN TABB, *Law of bankruptcy* (St. Paul, West Academic Publishing 2020) 1189

[393] cf MIRELLE BITTENCOURT LOTUFO AND LIV MACHADO, 'A recuperação judicial como postergação da falência: a necessária análise da viabilidade econômico-financeira' in *Moderno direito concursal – análise plural das leis n.º 11.101/05 e nº 14.112/20* (São Paulo, Quartier Latin, 2021) 186–87. For insights into the performance of the Indian courts, see ADITI NAYAK PRASANTH V. REGY, 'Performance of company law Tribunals in India' in Susan Thomas (ed*), Insolvency and Bankruptcy Reforms in India* (Singapore, Springer Nature Singapore Pte Ltd 2022) 59: 'There is one school of thought that claims that most of the important matters regarding the performance of courts are not measurable. Spigelman (2006) says: …there are significant areas of public decision-making, and the law is one of them, in which there is no measurable indicator of quality, even at the level of defect rates or numbers of complaints. There is simply no escaping qualitative assessment for purposes of evaluation. What this means is that decision-making processes which are based only on quantitative measurement are so defective as to be irrational. However, he does not object to the publication of statistics about matters such as delays and costs, 'which are both capable of assessment in quantitative terms and which provide information that is useful to the courts and the publication of which serves to enhance the accountability of the courts'. His objection is against attempts to measure the quality of judicial decision-making. Such objections are not universal. For instance, the US judicial system has set up standards that seek to measure, among other things, matters relating to judicial quality, such as equality, fairness and integrity.7 There is also a substantial academic literature on the how and why of court performance measurement, not only in law reviews but also in economics journals. The economics literature measures court performance for very different reasons as compared to the legal literature. Interestingly enough, the measures used in these two literatures turn out not to differ all that much. In the sections below, we discuss both perspectives'.

(v) notification to the Commercial Registry and the Brazilian Federal Revenue Service for requisite administrative actions.

The conclusion of judicial reorganization after the two-year period does not inherently signify that all claims have been fulfilled within that duration. Instead, it signifies the conclusion of direct judicial supervision, with subsequent compliance reliant on the scrutiny of individual creditors.[394]

Upon the completion of the two-year period, the debt novation is rendered final and unconditional.[395] Consequently, any future default by the debtor will permit creditors to seek execution of the plan as a legally binding instrument (Article 59, §1). Creditors may commence independent bankruptcy procedures pursuant to Article 94, item III, subsection "g" without the necessity of exhausting alternative enforcement measures beforehand.[396]

4.3.6. CONVERSION TO BANKRUPTCY

In judicial reorganization processes, the transition from reorganization to bankruptcy may take place at different phases and is considered an extraordinary remedy with punitive implications due to its legal repercussions. The legal basis for this conversion is delineated in Articles 73 and 94 of Law No. 11,101/2005. The factors include (i) failure to provide the reorganization plan within the statutory timeframe, (ii) disapproval of the reconstruction plan, (iii) nonadherence to the sanctioned plan, and (iv) consideration by the general assembly of creditors.

The general meeting of creditors must determine that the debtor's financial, economic, or asset-related crisis is sufficiently grave[397] to render the continuation of the reorganization process unjustifiable, in accordance with the quorum requirements specified in Article 42, when deciding to convert the proceeding into bankruptcy. The second scenario, as outlined in the caput of Article 53, mandates that the debtor submit the reorganization plan within sixty (60) days following the publication of the decision approving the initiation of reorganization proceedings. Noncompliance with this deadline will lead to bankruptcy conversion.[398]

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[394] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 334

[395] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 334

[396] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 334

[397] cf FÁBIO ULHOA COELHO, *Curso de direito comercial* (São Paulo, Revista dos Tribunais, 2016) 397

[398] Some Brazilian courts have applied the rule without any form of qualification or flexibilization: cf TJMG - Agravo de Instrumento-Cv 1.0000.22.249364-5/001, Relator(a): Des.(a) Rinaldo Kennedy Silva , 16ª Câmara Cível Especializada, julgamento em 27/09/2023, publicação da súmula em 28/09/2023.

The proposal is rejected when the creditors' general meeting does not achieve quorum as stipulated in Article 45, or when the cram down process, as outlined in Article 58, §1, is not implemented. The simple inability to achieve the necessary quorums does not inherently lead

to bankruptcy, as Article 56, §4[399;400] allows creditors to suggest an alternative plan. If no alternative is provided, the proceeding will be turned into bankruptcy.[401]

[399] Regarding who may propose the reorganization plan under French law: '971 Compétence pour élaborer le projet de plan
Dans le cadre de la procédure de sauvegarde, les dirigeants de la personne morale débitrice ou l'entrepreneur individuel ont entre les mains les clés du plan de sauvegarde. Ce sont eux en effet qui, avec l'aide de l'administrateur, vont concevoir la manière dont ils vont continuer leur activité dans le cadre du plan. Sans leur concours actif, point de sauvegarde : le débiteur doit assumer le plan ou le rejeter, c'est-à-dire laisser libre cours à une autre solution. Ainsi, l'article L. 626-2 dispose que le débiteur, avec le concours de l'administrateur, propose un plan dans le cadre de la sauvegarde. Cette présentation des choses est toutefois un peu trompeuse : le rôle de l'administrateur, lorsqu'il en a été désigné un, est en effet essentiel, même en présence d'un débiteur compétent et bien conseillé. Ses pouvoirs et devoirs propres lui assurent une influence certaine, tant à l'égard des créanciers que devant le tribunal. Dans l'hypothèse d'un redressement judiciaire, les places sont inversées : le projet de plan est établi par l'administrateur avec le concours du débiteur. S'il n'y a pas d'administrateur, le débiteur retrouve la main. Il est éventuellement assisté par un expert nommé par le tribunal. Des dérogations à la compétence du couple débiteur-administrateur existent toutefois. Ainsi, depuis la réforme de 2014, en cas de mise en place de comités, chaque d'entre eux peut présenter un projet concurrent de celui de l'administrateur ou du débiteur[1]. Par ailleurs, l'ordonnance n° 2017-1519 du 2 novembre 2017, a pour article clef le droit français avec les dispositions du règlement européen du 20 mai 2015, introduit un article L. 692-5 au sein du Code de commerce disposant que
' le praticien de l'insolvabilité de la procédure d'insolvabilité principale peut proposer dans la procédure d'insolvabilité secondaire un projet de plan de sauvegarde ou de redressement élaboré selon les dispositions de l'article L. 626-2'". PAUL LE CANNU AND DAVID ROBINE, *Droit des entreprises en difficulté* (Paris, Dalloz, 2020) 605–606.

[400] cf MARCELO BARBOSA SACRAMONE, *Comentários à lei de recuperação de empresas e falência* (São Paulo, Saraiva Jur 2023) 383. In the United States, it is possible to submit an alternative reorganization plan, but the debtor is granted an exclusivity period during which only it may propose a plan: '§ 11.16 Exclusivity One of the most critical aspects of the balance of power in a chapter 11 reorganization concerns who has the right to file a plan of reorganization. Will the debtor have the exclusive right to file a plan, or will other interested parties, such as creditors, have the right to file rival plans? Confirmation of a plan is the ultimate goal of a chapter 11 case. A confirmed plan is the formal document that defines the legal rights of all stakeholders in the reorganization. Only those entities with the right to propose a plan and seek confirmation of that plan possess the specific power to shape the ultimate outcome of the case. Parties who do not have the right to file a plan may be able to exert a negative influence, by threatening to veto any plan proposed, and may comment on and bargain over the plans proposed by others, but cannot directly achieve the ends they desire. Thus, defining who may file a plan impacts strongly on the tenor of plan bargaining dynamics. The exclusivity issue was another point of contention that was implicated in the merger of chapters X, XI, and XIII into a single reorganization chapter in 1978. Under chapter X, any party in interest could file a plan. Bankruptcy Act § 169. This rule logically followed from the requirement that an independent trustee be appointed in every case; it would not make much sense to appoint a trustee but not allow the trustee to propose a plan. In chapter XI, by contrast, where the debtor remained in possession, the debtor commonly retained the exclusive right to file a plan; creditors were permanently excluded. Bankruptcy Act § 323. In choosing the best rule on who should have the right to file a plan when it merged the reorganization chapters in 1978, Congress had to weigh competing concerns. If the debtor is given the general exclusive right to propose a plan, as in old chapter XI, the debtor will have significant leverage to coerce creditors into accepting its terms on a "take-it-or-leave-it" basis.374 Since creditors are not paid interest on their claims during the pendency of the case, § 502(b)(2), the debtor can "wait out" the creditors, who effectively lose money each day the case drags on. All that creditors can do to counter the debtor's delaying tactic is to move for the appointment of a trustee, § 1104(a); seek to convert the case to chapter 7 or to dismiss the case, § 1112(b); or vote against any plan the debtor proposes. §§ 1126, 1129(a)(8). Allowing the debtor to have permanent exclusivity thus could cause creditor problems. However, Congress was concerned that the opposite rule, in which the debtor is given no exclusive right to file a plan, also would create significant difficulties.375 In short, a "free for all" in filing plans would not be the palliative for all evils. One concern is that debtors would be reluctant to file chapter 11 in the first place if they knew that creditors could file hostile plans, and thus might forego an opportunity to reorganize and save the business until it was too late. Furthermore, even if the debtor did overcome that initial reluctance and file chapter 11, the absence of exclusivity might contribute to a breakdown of negotiations. Instead of sitting down at the bargaining table and trying to work things out, different groups might simply go off and file their own plan. Consensus might never be realized. Congress compromised, and sought to capture the best of both worlds. The

Failure to comply with the reorganization plan must be notified within the two-year timeframe following the court's ruling that approves judicial restructuring (in accordance with Articles 61 and 73). If a breach is substantiated, the court will mandate the conversion to bankruptcy and implement the consequences outlined in Article 61, §2.

5. SPORTS ASSOCIATIONS AND REORGANIZATION PATHWAYS: CRITIQUES AND SOLUTIONS

5.1. LIMITS FOR SPORTS ASSOCIATIONS TO ACCESS JUDICIAL REORGANIZATION IN BRAZIL

This study analyzed materials from comparative and Brazilian law to harmonize the new legal framework established by Law No. 14,193/2021,[402] specifically concerning the eligibility of sports associations to file for judicial reorganization under Law No. 11,101/2005.

The conclusion is that, for judicial reorganization under Article 25 of Law No. 14,193/2021, the term 'club' is confined solely to Football Corporations (*Sociedade Anônima do Futebol,* or SAFs) and sports associations that have either converted into or established a business corporation in accordance with Article 27, § 9 of the Pelé Law and Article 971, sole paragraph, of the Civil Code—or that anticipate such actions as part of their reorganization strategy.

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solution was to give the debtor limited exclusivity. The balance struck in § 1121 is to give the debtor an initial exclusive period of 120 days to file a plan (and 180 days to obtain acceptance of that plan, § 1121(c)(3)), but thereafter to permit any party in interest to file a plan, § 1121(b), (c)(2). In the interests of flexibility, the court is given the power, on a showing of cause, to extend (or shorten) the debtor's exclusivity period. § 1121(d)(1). Under this compromise, which gives the debtor the first chance to put an acceptable plan together, the debtor hopefully will not be deterred from filing for needed chapter 11 relief, and at the outset all parties will be forced to sit down together at the bargaining table. However, the debtor is not given the power to stall creditors into submission. In the rare case in which a trustee is appointed, the exclusive period will be terminated, § 1121(c)(1), which is logical because one of the primary duties of a trustee is to formulate a plan. § 1106(a)(5)'. CHARLES JORDAN TABB, *Law of bankruptcy* (St. Paul, West Academic Publishing 2020) 1097–1098.

[401] When issuing a decision, the judge must assess the legality of the creditors' meeting, including whether there was any abuse of voting rights that led to the conversion into bankruptcy. On this matter, the Superior Court of Justice (STJ) has already rendered decisions: SUPERIOR TRIBUNAL DE JUSTIÇA.REsp n. 1.880.358/SP, relator Ministro Antonio Carlos Ferreira, Quarta Turma, julgado em 27/2/2024, DJe de 29/2/2024. For further reference on the abuse of rights within the scope of European insolvency law, see: HORST EIDENMÜLLER**,** 'Abuse of law in the context of European insolvency law' (2009) 6(1) *European Company and Financial Law Review*, v. 1–28

[402] Regarding the legislative process of Law No. 14,193/2021, cf RODRIGO R. MONTEIRO DE CASTRO et al, *A Sociedade Anônima do Futebol: exposição e comentários ao Projeto de Lei 5.082/16* (São Paulo, Quartier Latin, 2016).

Operating a sports association without undergoing transformation or establishing a corporate company under the Civil Code, such as a Football Corporation, is incompatible with the restructuring structure outlined in Law No. 11,101/2005. Unless legislative amendments are implemented to establish a specific reorganization process for sports associations, the systemic interpretation of Article 25 of Law No. 14,193/2021, in conjunction with Article 27, § 9 of the Pelé Law and Article 971 of the Civil Code, provides a more effective method for integrating such clubs into judicial reorganization proceedings, maintaining the fundamental principles of enterprise preservation and the social function of property.

This does not suggest that a sports association is precluded from seeking judicial restructuring.[403] The objective is to ascertain the most coherent and legally consistent interpretation of Article 25 of Law No. 14,193/2021 within the overarching framework of Law No. 11,101/2005, which was first established to facilitate the rehabilitation of commercial entities and entrepreneurs. From a comparative law standpoint—especially in nations like Portugal, Spain, and Italy—the establishment of commercial entities for the management of sports clubs does not inherently guarantee financial prosperity, notwithstanding legal requirements for enhanced accounting and governance protocols.

Moreover, neglecting the historical economic and financial crises of sports associations—crises that remain unresolved despite various legislative reforms (e.g., the Zico Law, the Pelé Law, Law No. 14,193/2021, and the General Sports Law)—and allowing these entities, which have not implemented stringent accounting, fiscal responsibility, and governance standards, to restructure debts through judicial reorganization without repercussions, would not only disadvantage creditors but also undermine public confidence in the integrity of Brazil's sporting sector, which has been persistently afflicted by financial instability.

Law No. 11,101/2005 instituted a series of incremental restructuring processes, whereby debtors are anticipated to engage in recovery strategies designed to address economic and

[403] As summarized by Spanish legal scholarship, there are legal systems in comparative law that allow for reorganization proceedings to be initiated by other types of economic agents: 'Dada la relativa novedad que supone en nuestro ordenamiento la diferenciación normativa del Derecho preconcursal, debemos recordar que históricamente en la legislación comparada han existido tres sistemas respecto al presupuesto subjetivo concursal: a) Legislaciones que prescribían el proceso concursal sólo para comerciantes, caso de los sistemas seguidores de la rama del Derecho francés, caso de la Legge Fallimentare italiana, al emplear el concepto de empresario; b) Legislaciones que prescribían dos sistemas concursales, uno para las personas comerciantes y otro para las civiles, caso de los países escandinavos; c) Legislaciones que unificaron el sistema concursal para comerciantes y no comerciantes: caso de las leyes de Reino Unido, Estados Unidos, Argentina, España, y la Insolvenzordnung alemana. Siendo ésta la principal corriente del derecho comparado, la unificación subjetiva de los concursos'. EDUARDO AZNAR GINER AND VICENTE ZUBIZARRETA URCELAY (dir), *Reestructuraciones e insolvencia* (Valencia, Tirant lo Blanch, 2023) 533

financial turmoil. During each phase of judicial reorganization, the debtor may be directed onto one of two separate pathways based on its behaviour: (i) the reorganization road or (ii) the bankruptcy pathway.

5.2. PROCEDURAL AND SUBSTANTIVE CHALLENGES IN THE INSOLVENCY TREATMENT OF SPORTS ASSOCIATIONS

As previously discussed, during the postulatory and deliberative phases, creditors may vote at the general meeting to transition the reorganization into bankruptcy if they ascertain that the debtor's economic, financial, or asset-related crisis is excessively severe to warrant the continuation of the reorganization process. It is important to emphasize that bankruptcy proceedings do not apply to pure[404] sports associations. This establishes the first significant legal deadlock: If bankruptcy is not legally viable, what alternative course of action exists?

In a hypothetical scenario when a pure sports association exceeds this initial obstacle and is given entry into judicial reorganization, it subsequently advances to the deliberative phase. This step includes credit verification, the compilation of the general creditors' list, and the filing of the reorganization plan for creditor approval at the general meeting, as seen in the diagram of this study. During this deliberative phase, the presentation of a reorganization plan is essential for the debtor's recovery. Failure to submit the plan, or submission beyond the 60-day statutory deadline, establishes grounds for conversion to bankruptcy pursuant to Article 53 of Law No. 11,101/2005. This raises a second legal dilemma: Should bankruptcy proceedings be applicable to sports associations? Is the late submission of the plan allowable? Should a creditor-submitted alternative plan be approved in the absence of a debtor-submitted plan?[405]

If a sports association presents a reorganization plan that is rejected by the general meeting, and no cram down or alternative plan is offered, should the proceedings be turned into bankruptcy? Should professional management be designated in such circumstances? This results in the third stalemate.

The fourth stalemate occurs when a sports association successfully navigates the complete reorganization process—progressing through all procedural stages—culminating in a court ruling that approves judicial reorganization, thereby commencing the plan

[404] Without the presence of a business corporation or a Football Corporation (SAF) as the petitioner or as the vehicle for the reorganization.

[405] cf GUSTAVO LACERDA FRANCO, 'Apresentação de plano de recuperação judicial alternativo pelos credores na reforma da LRF: uma boa ideia mal implementada' in *Lei de recuperação judicial e falência: pontos relevantes e controversos da reforma* (vol 2, Indaiatuba, Editora Foco 2021) 1–18

implementation phase. Should the reorganization plan be violated during the two-year oversight term, the option for bankruptcy becomes accessible to business organizations. This serves as a penalty for debtors who do not meet their responsibilities under the plan. What occurs when the debtor is a sports organization? Should creditors be required to endure many violations only to subsequently initiate individual enforcement actions after the two-year timeframe has expired?

These obstacles are numerous and intricate. The absence of systemic coherence between Law No. 11,101/2005 and the legal characteristics and regulatory structure of civil associations undermines the fundamental objectives of the reorganization regime and does not deter actions that contravene the norms of insolvency law. Although bankruptcy is not an option for sports associations, the reorganization avenue is available; nonetheless, it lacks procedural modifications or enforcement measures to facilitate a fair and efficient process for participants.

Further considerations pertain to the methods of judicial restructuring. While Article 50 of Law No. 11,101/2005 presents a non-exhaustive enumeration of restructuring instruments, this statute must not be construed in a disjointed fashion. Numerous essential recovery techniques commonly employed in corporate reorganization processes are incongruent with the legal characteristics of sports clubs, including the following:

i) Transfer of equity interests or shares
ii) Change in corporate control
iii) Capital increase[406]
iv) Issuance of bonds
v) Debt-to-equity conversion[407]
vi) Complete sale of the debtor[408]

Other methods may indeed be adequate to fulfill the commitments established with creditors in a judicial reorganization plan, such as lease agreements and asset sales, among others. To formulate viable strategies for the company's rehabilitation, the selection and execution of these steps rest solely with the debtor[409] or the creditors in the event of an alternative plan or modifications to the original plan.

[406] There is no formation of share capital in a non-profit association.
[407] Same observation as in the previous note.
[408] It does not guarantee to non-submitted or non-adhering creditors conditions that are at least equivalent to those they would have in bankruptcy. A civil association is not subject to bankruptcy proceedings.
[409] For further reference on debtor and creditor conduct in debt restructuring, see SARA COMIN, 'Strategic behaviours and priority rules in debt restructuring' (2022) 7 *European Insolvency and Restructuring Journal* 1–19

It is essential to recognize that criminal charges delineated inside bankruptcy proceedings are inapplicable to the current case, nor can the resultant penalties from conviction (Article 181, items I, II, and III) be enforced, as Brazilian law forbids analogy *in malam partem*. Moreover, in a hypothetical situation where bankruptcy proceedings are permitted for sports associations, a principled stalemate may occur, accompanied by a possible contradiction of legal rules. Article 75, §2, of Law No. 11,101/2005 articulates that 'bankruptcy serves as a mechanism for safeguarding the economic and social advantages associated with business operations, by facilitating the prompt liquidation of the debtor and the rapid reallocation of assets for productive utilization within the economy'.[410]

[410] Regarding the fresh start doctrine in the United States of America: 'Thus far the discussion has focused on the notion of bankruptcy as a collection device for claimants of an insolvent debtor, whether the debtor be a corporation, a partnership, or an individual. Another key policy in bankruptcy law applies only to debtors that are individuals. That policy, commonly seen as one of discharge, has nothing to do with the rights of claimants inter se or with the notion that bankruptcy exists to solve a common pool problem. It, instead, measures the rights of those claimants against those of a debtor who is an individual and ascertains what assets the individual should be able to keep out of the hands of his creditors. Discharge thus represents a substantive bankruptcy policy designed to upset nonbankruptcy entitlements. At least some of the time the rights of creditors outside of bankruptcy are irrelevant; that nonbankruptcy situation and its relative value are ignored in this context. Discharge, moreover, is far from a trivial policy. Indeed, the principal advantage bankruptcy offers a debtor is that an individual lies in the benefits associated with discharge. Unless he has violated some norm of behavior specified in the bankruptcy laws, an individual who resorts to bankruptcy can obtain a discharge from most of his existing debts in exchange for surrendering either his existing nonexempt assets or, more recently, a portion of his future earnings.[1] Discharge not only releases the debtor from past financial obligations but also protects him from some of the adverse consequences that might otherwise result from that release.[2] For these reasons discharge is viewed as granting the debtor a financial fresh start. The availability of discharge raises a series of questions that the notion of bankruptcy as a response to a common pool problem will not answer. For example, why does the "honest but unfortunate debtor"[3] enjoy a right of discharge at all? Why cannot an individual, confident in his knowledge of his own best interests, expressly waive the right when he seeks to obtain credit? Why does discharge, while allowing an individual to keep human capital and its proceeds as well as certain other assets, generally require him to surrender other forms of his wealth? Why, if we assume the appropriateness of a financial fresh start, is an individual freed of only some and not all adverse consequences of exercising his right to discharge? Why, finally, is discharge denied to an individual who had defrauded his creditors, but not to others, such as murderers or arsonists, who are morally reprehensible in other ways? This chapter will attempt to provide a framework for the analysis of these and related questions. The next chapter will apply that framework to aspects of discharge policy and exempt property. Because discharge policy historically has been embodied in bankruptcy law, we sometimes lose sight of the distinction between the law of discharge and the law relating to the creditor-oriented collection function of bankruptcy. As the first nine chapters have emphasized, most of bankruptcy law is concerned not with defining a debtor's right of discharge but with providing a compulsory and collective forum for satisfying the claims of creditors.[4] Discharge, which is available only to individuals,[5] could be granted without a collective proceeding,[6] just as a collective proceeding for parceling out existing assets could be provided without discharge. The fresh-start policy is thus substantively unrelated to the creditor-oriented distributional rules that give bankruptcy law its general shape and complexity. Nonetheless, the link between the two in bankruptcy law is not surprising. If an individual were allowed to demand discharge as long as he agreed to surrender certain assets, he would be likely to avail himself of that right only when his liabilities exceeded the value of those assets. In those instances, collection rules based on a principle of first-come, first-served would function poorly. The creditors, faced with a common pool problem, presumably would want to coordinate their actions to ensure not only that all would share in the assets but also that their efforts to collect would not decrease the aggregate value of those assets. Because bankruptcy's collective process achieves such a coordinated sharing, it serves an appropriate function once the decision to discharge debts has been made.[7] Nevertheless, the justifications for discharge do not relate to the concerns of the creditors. Even though it makes sense to locate an individual's financial fresh start in a statute largely concerned with collection procedures, the social and economic concerns that lie behind the fresh-start

Is it really possible to say that the preservation and productive optimization of assets has been accomplished when a sports association goes through liquidation, and its assets, including intangible assets, are given to a rival sports organization that purchases them through bankruptcy proceedings? For example, if VASCO DA GAMA were to purchase CLUBE DE REGATAS DO FLAMENGO'S training facility, brand, trademarks, and other assets, would supporters, sponsors, and the general public still encourage and support the team's athletic endeavours, or the other way around? Could a competing club buy these assets, pay off the bankrupt estate's creditors, and then decide not to use them? Such matters will inevitably come to the courtroom.

Furthermore, would Article 61 et seq. of the Civil Code or Law No. 11,101/2005's provisions govern the distribution of assets? The general norm is applicable in the absence of a particular legal framework. However, it raises concerns about the lack of equal treatment in comparison to other civil associations, such as religious or cultural entities, if one acknowledges the submission of a non-corporate sports association to bankruptcy procedures.[411] The ideal legislative reform would have included a particular procedure framework for sports associations in Law No. 11,101/2005, or through separate legislation. This framework would have included eligibility requirements, suitable recovery procedures, and sanctions that were in line with the law.

The fragile financial condition of many football clubs, frequently aggravated by long-standing patterns of poor governance, budgetary imbalance and decisions shaped by sporting pressures and supporters' expectations, has recurrently driven these entities into profound crises. In response, clubs have increasingly turned to judicial reorganization as a means to

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policy are distinct. It is important to recognize that the present contours of the fresh-start policy are not immutable. Our bankruptcy statutes have always taken discharge to mean, essentially, that an individual's human capital (as manifested in future earnings) as well as his future inheritances and gifts are freed of liabilities he incurred in the past. Yet a financial fresh start could be conceived in other ways.[8] It is not self-evident that bankruptcy discharge should primarily protect an individual's human capital instead of his other assets. Like a corporation, whose going-concern value can be determined by capitalizing the return on its assets, so too can an individual's present economic value be roughly calculated by extrapolating from his expected use of existing forms of wealth, the most valuable of which is often his human capital. The line between an individual's present and future assets (or between tangible or financial assets on the one hand and human capital on the other) is therefore by no means clear. Human capital and exempt property[9] have traditionally been protected by different legal regimes, making the reach of bankruptcy's fresh-start policy even more ambiguous. Although human capital and exempt to work, nor can they reach his exempt property without his consent—bankruptcy law approaches the two species of assets differently. Bankruptcy law itself puts human capital, as it manifests itself in earnings, beyond the reach of creditors.[10] Yet it generally leaves to nonbankruptcy means that bankruptcy's fresh-start policy is largely limited to the protection of human capital. Our analysis should continue then, by justifying bankruptcy's discharge policy and playing out the consequences of the fact that it is largely limited to human capital'. THOMAS H. JACKSON, *The logic and limits of bankruptcy law* (Cambridge, Harvard University Press 1986) 225–28

[411] In opposition to the present analysis: cf BRUNA BUMACHAR, 'Comentário ao art. 25 de Lei n. 14.193/2021' in *Comentários à Lei da Sociedade Anônima do Futebol: Lei nº 14.193/2021* (São Paulo, Quartier Latin, 2021) 240–541

restructure liabilities and attract investment. This, however, is not a neutral procedure: it produces significant legal and institutional consequences, particularly when evidence of reckless management leads to the removal of elected directors and their replacement by court-appointed professionals.

Under Law 11.101/2005, Article 64 authorises the judicial removal of administrators where such conduct is identified, in order to safeguard creditors' interests and protect the feasibility of the plan. Article 65 further allows the appointment of a professional manager, guided by business practices and objective targets, subject to the approval of the creditors' meeting. While these mechanisms are defensible in a corporate context, their application to football associations generates acute tension. The substitution of elected officials with external professionals represents a severe rupture with the associative model. Leaders chosen by the membership—often by an overwhelming majority—are displaced, undermining political legitimacy and, in practice, disregarding the sovereign will of the members. In politically active clubs, such measures may even be interpreted as a kind of institutional "coup", provoking resistance from councillors, organised supporter groups and entrenched political factions.

The difficulties are compounded by the peculiar nature of football management. Administering a club requires expertise not only in law, finance and accounting, but above all in the sporting domain, which demands an understanding of the transfer market, competition rules and the capacity to adjust strategy to maintain competitiveness. These skills are rarely available to court-appointed managers, nor is the creditors' meeting an appropriate forum to deliberate on sporting matters such as the recruitment of players, technical staff or the management of youth academies. In practice, the appointment of a judicial manager may even compromise continuity, especially if the individual lacks legitimacy within the football community or is perceived as aligned with rival interests.

Accordingly, where acts falling under Article 64 are established, the measure most consistent with the associative character of football clubs is not the imposition of an external manager, but rather the removal of administrators as prescribed by law, followed by elections convened under the association's statutes. Only through this route can the necessary balance be preserved between the legal demands of reorganization and the institutional integrity of the associative model.

In order to mitigate the risks arising from financial distress, Article 25, sole paragraph, of Law No. 14,193/2021 provides for the possibility of transferring players' contracts to a Football Corporation (Sociedade Anônima do Futebol – SAF) at the time of its incorporation.

However, there is no express provision for situations in which the club files for judicial reorganization without opting for the creation of a SAF.

The absence of such a corporate structure gives rise to significant legal and economic fragilities, particularly with regard to contracts concluded with players, technical staff, and service providers. This gap may lead to mass terminations, an increase in liabilities, loss of operational capacity, and the consequent impossibility of continuing sporting activities — which runs directly counter to the objectives of judicial reorganization. In this sense, the constitution of a SAF emerges as a strategic and legally provided mechanism to ensure the preservation of sporting activities and the safeguarding of contracts essential to the very existence of the club.

In this context, the automatic termination of contracts in the event of a judicial reorganization filing, even if contractually provided for, produces effects that are adverse to the purpose of reorganization. Such a measure dismantles the club's operations, increases its liabilities, renders its core activity unfeasible, and jeopardizes any chance of economic and sporting recovery. In football clubs, the very continuity of the activity depends directly on the maintenance of players' contracts and of those with essential service providers — including coaching staff, logistics, medical and physiological departments, and sports management — without which neither competition nor revenue generation is possible. Preserving these contracts is, therefore, not merely advisable, but indispensable for the success of the reorganization.

From the sporting perspective, the automatic termination of players' contracts may hinder the club's participation in official competitions, given the risk of insufficient squad size. Such a situation constitutes an infringement of Article 203 of the Brazilian Code of Sports Justice (CBJD), which penalises the unjustified withdrawal from a match with fines, loss of points, and, in the event of recurrence, exclusion from the competition.

This withdrawal from competitions also entails severe economic repercussions, as it undermines the club's ability to generate revenue, particularly from broadcasting rights, sponsorships, and ticketing, thereby impeding compliance with the reorganization plan and worsening the financial crisis.

The automatic termination of Special Employment Contracts for Professional Football Players (Contrato Especial de Trabalho Desportivo – CETD) could also trigger the payment of the compensatory sports clause. Pursuant to Article 86, §3, of the General Sports Law (Law No. 14,597/2023), such compensation shall range from the total amount of monthly salaries due until the end of the contract to up to 400 times the monthly salary at the moment of termination.

This would significantly increase the club's labour liabilities and hinder its capacity to overcome financial distress.

Moreover, the termination of employment contracts results in the simultaneous extinction of players' sporting ties, allowing them to transfer freely to other clubs, including direct competitors in the same league, thereby undermining competitive integrity and balance.

On the civil law side, clubs often conclude image rights agreements parallel to employment contracts. Such agreements commonly provide for compensation in the event of early termination attributable to the club, thereby further increasing the civil liabilities. In addition, mass termination of contracts frustrates the possibility of generating revenue from player transfers to other clubs, both domestic and international, further aggravating financial fragility.

The legal relationship between the sporting entity and the professional football player is one of employment, formalised by means of the CETD, as prescribed by Article 28 of Law No. 9,615/1998 (Pelé Law) and Article 86 of Law No. 14,597/2023 (General Sports Law). This relationship is hybrid in nature: it is simultaneously labour and sporting. The sporting tie, of ancillary nature, arises from the registration of the CETD with the national governing body of sport. Termination of the employment bond automatically entails the termination of the sporting bond[412].

With the abolition of the *passe* system, employment contracts began to incorporate indemnity clauses aimed at ensuring contractual stability and compliance, in line with the principles of FIFA's international transfer system[413]. In Brazil, two specific clauses are mandatory: (i) the compensatory sports clause, owed to the player in the event of termination attributable to the club; and (ii) the compensatory sports clause, owed to the club if termination without just cause is attributable to the player[414].

Against this backdrop, it becomes evident that the absence of a SAF structure at the moment a football club files for judicial reorganization significantly amplifies legal uncertainty. The lack of specific legislative guidance, particularly under Law No. 11,101/2005, leaves unaddressed crucial aspects such as the preservation of players' contracts, the engagement of technical staff, and the continuation of sporting activities as the central axis of reorganization.

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[412] GABRIEL CAPUTO BASTOS SERRA; LUCIANO RAMOS DE OLIVEIRA, 'Judicial reorganization of football clubs: the encounter between corporate law and sporting reality' in *Football and Procedure* (São Paulo, Quartier Latin, forthcoming)

[413] LUIZ FERNANDO ALEIXO MARCONDES, *Direitos econômicos de jogadores de futebol: lex sportiva e lex publica. Alternativa jurídica às restrições de compra e venda de direitos sobre o jogador* (Curitiba, Juruá 2016) 69–70.

[414] ÁLVARO MELO FILHO; LUIZ FELIPE SANTORO, *Direito do futebol: marcos jurídicos e linhas mestras* (São Paulo, Quartier Latim 2019) 170–174.

This gap not only undermines the effectiveness of judicial reorganization but also weakens creditors' protection, exposing both clubs and their stakeholders to an unstable and unpredictable legal environment.

This fragility becomes even more evident when examining the accounting dimension of these contractual mechanisms. The treatment of compensatory and indemnity clauses in financial reporting reveals the extent to which such instruments, despite their legal and economic relevance, cannot be considered stable or enforceable sources of revenue in the context of judicial reorganization.

The *cláusula indenizatória desportiva* (indemnity sports clause) arises from Article 28 of the Pelé Law (Law No. 9,615/1998) and Article 86 of the General Sports Law (Law No. 14,597/2023). It is triggered when the player, without just cause, terminates the Special Employment Contract for Professional Football Players (*Contrato Especial de Trabalho Desportivo – CETD*). In such cases, the athlete, or more commonly the new club interested in acquiring the player, must pay compensation to the original club. The ratio legis is to protect contractual stability, discourage opportunistic breaches, and ensure that clubs are financially compensated for the premature loss of their players.

From an accounting perspective, however, this indemnity presents peculiarities. In line with CPC 25 (Provisions, Contingent Liabilities and Contingent Assets) [415] and ITG 2003 (Professional Sports Entities)[416], the indemnity is not recognised as revenue while the contract is in force, since it depends on the occurrence of an uncertain future event. The club cannot anticipate this income, even if the clause is objectively quantified in the contract, because recognition requires the crystallisation of the right. Only upon the actual termination of the contract does the amount become liquid and enforceable. At that point, it is registered as operational revenue from sporting activities, typically under "indemnities and transfers of athletes," with the corresponding entry in cash or receivables, depending on the agreed payment schedule.

This accounting reality reveals a structural problem when considering indemnity clauses as potential means of recovery in judicial reorganization. Article 47 of Law No. 11,101/2005 defines the purpose of judicial reorganization as the preservation of economic activity, jobs, and creditors' rights. Articles 49 and 50 regulate the scope of creditors subject to reorganization

[415] CPC 25 – Comitê de Pronunciamentos Contábeis, *Provisions, Contingent Liabilities and Contingent Assets* (São Paulo, CPC 2009), items 10 and 33.
[416] CFC – Conselho Federal de Contabilidade, *ITG 2003 – Professional Sports Entities* (Brasília, CFC 2013), item 19.

and the legal instruments available for restructuring, such as debt rescheduling, asset sales, and corporate reorganizations. What they require, above all, is predictability and enforceability. Creditors must be presented with a recovery plan based on concrete, verifiable and enforceable means of satisfaction.

Indemnity clauses, by contrast, are purely contingent. They rely on uncertain, third-party-driven events: the unilateral decision of the athlete to terminate his contract or the willingness of another club to finance the termination. Such events fall outside the debtor's control and cannot be forecast with reasonable certainty. Unlike broadcasting rights, sponsorship contracts, ticketing, or membership programs — which are enforceable under civil law, recurrent and measurable — indemnity clauses are speculative. They materialise only in exceptional circumstances and cannot be projected as stable sources of cash flow. For this reason, their inclusion as a core component of a judicial reorganization plan would compromise both the plan's credibility and its compliance with the principle of legal certainty.

The inadequacy of indemnity clauses as recovery mechanisms becomes even more evident when considering the broader normative framework of Brazilian sports law. Article 31, §5, of the Pelé Law establishes that the termination of the employment contract automatically entails the termination of the sporting bond, allowing the player to freely transfer to another club. Article 86 of the General Sports Law sets parameters for the *cláusula compensatória desportiva* (owed by the club to the player) and indirectly reinforces the contractual fragility of clubs that rely on the continuity of employment ties. The SAF Law (Law No. 14,193/2021), in its Article 3, allows clubs to contribute to the capital of the Football Corporation by transferring assets, including athletes' economic rights, while Article 25 ensures that contracts are not automatically terminated in the event of judicial reorganization. However, this protection is limited to clubs that constitute or intend to constitute a SAF. Associations that remain in their original legal form and seek judicial reorganization under Law No. 11,101/2005 remain exposed to the absence of specific legal provisions governing the continuity or valuation of indemnity clauses.

From a creditor's perspective, the reliance on indemnity clauses as a recovery strategy would be untenable. Creditors seek stability, transparency, and legal enforceability. To ground repayment expectations on revenues that may or may not arise depending on athletes' decisions or transfer market dynamics is to substitute certainty with speculation. Furthermore, the opportunistic nature of such revenues may distort the competitive balance of the sport: clubs in crisis could become excessively reliant on player trading or contract ruptures, undermining long-term sustainability and sporting integrity.

A comparative glance reinforces this conclusion. In European jurisdictions, such as Italy and France, insolvency procedures applied to football clubs often led to conflicts with sporting regulators when clubs sought to rely on uncertain revenues from transfers or indemnities. UEFA's Financial Fair Play regime, for instance, only recognises revenues that are contractually enforceable, precisely to avoid overvaluation of contingent assets. Germany's licensing system likewise requires clubs to present realistic and predictable budgets, excluding contingent indemnities as core financial resources[417]. Against this comparative backdrop, Brazilian law's silence on the role of indemnity clauses in reorganization is striking, leaving clubs and creditors dependent on discretionary interpretations by courts or on FIFA's ad hoc decisions, as seen in the Vasco precedent.

In conclusion, indemnity clauses represent part of the financial reality of professional football, but their contingent and speculative nature prevents them from being treated as reliable recovery mechanisms within judicial reorganization. They may be registered as revenue when realised, but they cannot form the backbone of a reorganization plan without undermining the legal certainty demanded by Article 47 of Law No. 11,101/2005. Any legislative reform aiming to adapt insolvency law to the sporting sector must explicitly address this issue, clarifying that indemnity clauses may complement, but never substitute, predictable and enforceable revenue streams in the financial rehabilitation of football clubs.

As previously discussed, the absence of a clear statutory framework for the treatment of football clubs that seek judicial reorganization without adopting the Football Corporation (SAF) model exposes both the clubs and their creditors to considerable legal uncertainty. Law No. 14,193/2021 provides mechanisms for contract migration into the SAF structure but remains silent on scenarios in which the reorganization is pursued under Law No. 11,101/2005 by traditional associations. This normative vacuum generates systemic risks: contracts with players and technical staff may be terminated en masse, liabilities may increase exponentially, and operational continuity may be compromised.

The VASCO DA GAMA case, decided by FIFA in May 2025, illustrates the practical dimension of this problem. For the first time, an international sporting authority expressly recognised the effects of Brazilian judicial reorganization in suspending a disciplinary sanction

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[417] UEFA, *UEFA Club Licensing and Financial Sustainability Regulations* (Edition 2022, in force from June 2022) arts 74–75, Annex I.6 and Annex J; Deutsche Fußball Liga (DFL), *Lizenzierungsordnung der DFL Deutsche Fußball Liga GmbH* (DFL, 2023) arts 8–12; ESPN, 'Italian FA changes rules in attempt to avoid repeat of Parma bankruptcy' ESPN (online, 9 February 2023) https://www.espn.com/soccer/story/_/id/37409346/italian-fa-changes-rules-attempt-avoid-repeat-parma-bankruptcy
accessed 31 August 2025.

— the *transfer ban*. This episode connects directly with the central thesis of this work: the fragility of the legal environment for football clubs in crisis and the urgent need for harmonisation between domestic insolvency law and global sports governance.

The *transfer ban* is one of FIFA's most severe disciplinary measures, imposed on clubs that fail to comply with financial obligations acknowledged in decisions by the Dispute Resolution Chamber or the Players' Status Committee. Its objective is coercive: to compel the debtor to pay by restricting its ability to register new players.

From a legal perspective, the ban operates similarly to an enforcement measure. By paralysing the club's sporting activity, it indirectly compels immediate payment, circumventing any collective insolvency process. This is precisely where the conflict arises: the automatic stay (*stay period*) in Brazilian judicial reorganization prohibits isolated enforcement actions and centralises all creditor claims under judicial supervision. The simultaneous enforcement of a transfer ban thus collides with the very rationale of insolvency law, creating a scenario of double jeopardy for the debtor: compliance with FIFA rules would breach domestic law, while reliance on domestic law would expose the club to sporting sanctions.

Vasco, one of Brazil's most traditional clubs, entered judicial reorganization in 2023 with a debt exceeding hundreds of millions of reais. In parallel, FIFA imposed a transfer ban for outstanding obligations. The legal team argued that compliance with the ban would undermine the reorganization plan, since it would demand out-of-plan payments and compromise squad renewal, jeopardising sporting performance and, consequently, revenue generation.

In May 2025, FIFA suspended the sanction. The decision was celebrated as a legal milestone. As highlighted by BIANCA REIS, legal director of VASCO'S SAF, "This is an important precedent, which may be utilised in future situations, further strengthening our position. Moreover, it provides us tranquility to continue complying with Brazilian law, without the need for constant disputes or appeals"[418]. The statement underscores the relief provided by the alignment of international sporting governance with domestic judicial protection.

The significance of this decision extends beyond VASCO: (i) for clubs – establishes that judicial reorganization may shield against unilateral sporting sanctions, providing predictability and ensuring that recovery plans are not sabotaged by external enforcement; (ii) for creditors – it reassures that creditor negotiations will remain centralised and equitable, preventing select creditors from receiving preferential treatment through FIFA-imposed enforcement; and (iii)

[418] BIANCA REIS, as quoted in 'Vasco celebrates legal certainty in FIFA decision on transfer ban: "an important precedent"' in *Globo Esporte* (Rio de Janeiro, 28 May 2025).

for legal sovereignty – it demonstrates FIFA's willingness, albeit exceptional, to respect the autonomy of national insolvency frameworks, mitigating conflicts of jurisdiction between sports law and domestic law.

The VASCO precedent illustrates that the protection of contracts and the preservation of sporting activity during judicial reorganization cannot rest on isolated discretionary decisions by FIFA or on case-specific interpretations. The normative framework reveals both progress and omissions. Article 3 of the SAF Law permits the segregation of football-related activities into a Football Corporation (drop down). Article 25, in turn, recognises the club as a legitimate party to request judicial or extrajudicial reorganization (caput) and guarantees that bilateral and professional players' contracts are not automatically terminated by the filing of such proceedings, with the possibility of transfer to the SAF upon its incorporation (sole paragraph).

Yet, this safeguard is restricted to scenarios where a SAF is created or intended. When clubs remain as associations and file directly under Law No. 11,101/2005, the situation is markedly different. Article 47 of that law states the purpose of reorganization as the preservation of economic activity, jobs, and creditors' rights, while Articles 49 and 50 set the scope of claims and restructuring measures. None of these provisions, however, explicitly regulate the continuity of athletes' contracts or other obligations inherent to sporting entities.

Complementary legislation underscores the centrality of these contracts: Article 28 of the Pelé Law (Law No. 9,615/1998) defines the Special Employment Contract for Professional Athletes as the legal basis of the employment relationship, and Article 31, §5, provides that upon termination of the employment contract, the sporting bond also ceases, allowing free transfer of the player. Similarly, Article 86 of the General Sports Law (Law No. 14,597/2023) regulates the compensatory sports clause, fixing minimum and maximum thresholds for compensation in the event of contractual termination.

Taken together, these provisions reveal a contradiction. While the SAF Law creates a specific mechanism to protect contracts and ensure continuity during corporate transition, Law No. 11,101/2005 remains silent on how such contracts should be treated when the club seeks judicial reorganization without adopting the SAF structure. This legislative silence generates legal uncertainty for clubs, creditors, and athletes alike, leaving fundamental aspects of reorganization dependent on discretionary interpretation or ad hoc accommodation by FIFA and domestic courts. The VASCO case, therefore, should be read not as a definitive solution but as evidence of an urgent need for legislative reform that harmonises Brazilian insolvency law with the specificities of professional sport, ensuring predictability, stability, and fairness in the restructuring of football clubs.

5.3. PROCEDURAL AND SUBSTANTIVE CHALLENGES IN THE INSOLVENCY TREATMENT OF SPORTS ASSOCIATIONS

According to Law No. 11,101/2005, nonprofit civil associations in Brazil are not subject to bankruptcy procedures as they do not do business. In the reconstruction process, this law, including its bankruptcy mechanism, is also used as a punishing weapon. Dissolving the association in accordance with Article 61 et seq. of the Civil Code of 2002[419] or, in the event of insolvency, following the steps specified for civil insolvency under the defunct Civil Procedure Code of 1973 (Articles 748 and following) would be the proper course of action. Even though it is rarely used in practice, the 1973 Code of Civil Procedure's civil insolvency procedure is still the applicable legal framework for civil entities under Brazilian law, even though it does not involve collective creditor proceedings and does not offer the same incentives as Law No. 11,101/2005, such as the judicial reorganization mechanisms.

A logical interpretation of Article 971, lone paragraph, of the Civil Code, in combination with Article 25 of Law No. 14,193/2021 and Article 27, § 9, of the Pelé Law, is the best course of action. Law No. 14,193/2021 added Article 971, lone paragraph, which allows rural producers to register in the Commercial Registry. In a similar vein, organizations that regularly and professionally play football are also subject to this registration requirement; following registration, these organizations will be considered commercial entities for all purposes of law. This interpretation makes a distinction between amateur associations, whose legal registration takes place through the Civil Registry of Legal Entities (as per Article 114, item I, of Law No. 6,015/1973), and associations that regularly and professionally play football and are registered with the Commercial Registry (per Article 1, item II, and Article 32, item II, letter ’e’ of Law No. 8,934/1994).

Professional sports organizations may choose to incorporate under one of the corporate forms covered by Articles 1,039 to 1,092 of the Civil Code, as stated in Article 27, § 9, of the Pelé Law. When this clause is interpreted in light of Article 971, solitary paragraph, of the Civil

[419] Under Brazilian law, specifically Article 61 of the Civil Code, when an association is dissolved, any remaining net assets—after deducting any proportional interests referenced in Article 56—must be allocated to a non-profit entity named in the bylaws. If the bylaws are silent, then they must be allocated to a public institution with similar purposes as decided by the members. Moreover, the law allows for the restitution of members’ contributions prior to such allocation if expressly provided in the bylaws or resolved by the members, and in the absence of a suitable institution in the association’s jurisdiction, the remaining assets must revert to the respective governmental treasury, whether municipal, state, or federal.

Code, it is clear that a sports organization that decides to adopt a corporate structure needs to register with the Commercial Registry to formally establish its status. The association will only be regarded as a commercial entity for all purposes—including eligibility under Article 1 of Law No. 11,101/2005, which regulates bankruptcy, out-of-court reorganization, and judicial reorganization—after this formalization.

It is clear that permitting non-corporate sports associations to enter this legal regime leads to structural and procedural imbalances that compromise the system's functionality and goal when viewed through the lens of the procedural circuits outlined in Law No. 11,101/2005, especially the reorganization and bankruptcy circuits.

According to Law No. 11,101/2005, a debtor may pursue one of two options during the proceedings: liquidation through the bankruptcy process (including self-declared bankruptcy[420]) or restructuring by judicial recovery. This binary logic is broken by excluding

[420] Regarding a similar legal mechanism in the United States of America: 'With exceptions noted above, §4a provides that "any person" may file a voluntary petition, and a 1910 revision of this section omitted the qualifying phrase "who owes debts." But former Official Form No. 1 required the voluntary petition to allege that the petitioner "owes debts." Hence a petition could not be maintained by a voluntary association incapable of incurring debts. In re Manufacturing Lumbermen's Underwriters, 18 F. Supp. 114 (W.D. Mo. 1936). And a petition was dismissed where it alleged but a single debt which was excepted from the bankruptcy discharge. Blackstock v. Blackstock, 265 F. 249 (8th Cir. 1920). While new Official Form No. 1 does not require an allegation that the voluntary petitioner owes debts, it continues the requirement of an allegation (taken from §48) that he "is entitled to the benefits of" the act and a petitioner with no debts to discharge may be held not to meet that requirement. No allegation or proof of insolvency is required. In re Fox West Coast Theatres, 88 F.2d 212 (9th Cir.), cert. denied, 301 U.S. 710 (1937). Nor need the debtor own any property, McKeever v. Local Finance Co., 80 F.2d 449 (5th Cir. 1935), even though he has but a single dischargeable debt. In re Schwanninger, 144 F. 555 (E.D. Wis. 1906). But where the propertyless debtor owes a nondischargeable debt, In re Maples, 105 F. 919 (D. Mont. 1901), or is not eligible for a bankruptcy discharge, In re Nash, 249 F. 375 (S.D.W. Va. 1918), the petition may be dismissed because there is no function for the bankruptcy court to perform. Aside from these limitations, the bankruptcy courts have on occasion dismissed voluntary petitions on a determination that they were filed to perpetrate a fraud on stockholders or creditors. See Zeitinger v. Hargadine-McKittrick Dry Goods Co., 244 F. 719 (8th Cir.), cert. denied, 245 U.S. 667 (1917). Cf. In re Fox West Coast Theatres, supra. The filing of a voluntary petition operates as an automatic adjudication of bankruptcy (§18f), and as an automatic stay of most efforts to collect claims against the bankrupt. Bankruptcy Rules 401, 601. Creditors may take part of the proceedings when they receive the ten-day mailed notice of the first creditors' meeting (§58a(3); Bankruptcy Rule 203); which is held not less than nor more than thirty days after adjudication (§55; Bankruptcy Rule 204). They may then move to vacate the adjudication, although they will ordinarily have no ground for such a motion unless the debtor is ineligible for voluntary bankruptcy. They may also move to transfer the case if the petition is not filed in a court of proper venue (§2a(1); Bankruptcy Rule 116(a)), or for the convenience of the parties (§32; Bankruptcy Rule 116(b)(1)). See Note 71, Harv. L. Rev. 729 (1958). Of major concern to many voluntary bankrupts is the filing fee of $50 which must accompany the petition (§§40c(1), 48c, 52a). Pursuant to Bankruptcy Rule 107, a voluntary bankrupt who files a verified petition stating that he cannot otherwise pay the filing fee may obtain a court order allowing installment payments over a four- to six-month period, but the proceeding may be dismissed for failure to meet any installment, Rule 120(b), and no discharge will be granted until all installments are paid. §§14(b)(2) and 14(c)(8); Rule 404(d). If the bankrupt can persuade his attorney or someone else to advance the amount of the filing fee to him, that person has a first priority claim for reimbursement out of the estate, §64a(1); Lewis v. Fitzgerald, 295 F.2d 877 (10th Cir. 1961), cert. denied, 369 U.S. 828 (1962). Boddie v. Connecticut, 401 U.S. 371 (1971), held it to be a denial of due process for a state to refuse access to its divorce courts to those who could not afford a $60 filing fee. The Court first noted that "marriage involves interests of basic importance in our society," 401 U.S. at 377, and that the state had monopolized the divorce procedure so that one seeking a divorce could not,

like a plaintiff in other civil litigation, achieve the desired result by out-of-court settlement. It then concluded that the state had no sufficiently important countervailing interest which would justify depriving "persons forced to settle their claims of right and duty through the judicial process" of a "meaningful opportunity to be heard." 401 U.S. at 377. To some this ruling seemed applicable to the federal government, which has monopolized the granting of a bankruptcy discharge and denied access to the bankruptcy courts to one who cannot pay the $50 filing fee. But not to the Supreme Court. In United States v. Kras, 409 U.S. 434 (1973), the Court distinguished Boddie. "Kras' alleged interest in the elimination of his debt burden, and in obtaining his desired new start in life, although important . . . [did] not rise to the same constitutional level" as divorce. 409 U.S. at 445. Moreover, Kras was not obliged to resort to bankruptcy for relief. "However unrealistic the remedy may be in a particular situation, a debtor in theory, and often in actuality, may adjust his debts by negotiated agreement with his creditors. At times the happy passage of the applicable limitation period, or other acceptable creditor arrangement will provide the answer." 409 U.S. at 446. Nor was there an unconstitutional discrimination between bankruptcy and other civil litigation in the federal courts for which 28 U.S.C. §1915(a) authorizes in forma pauperis proceedings. Since bankruptcy does not involve "fundamental" rights, the government need not show a "compelling governmental interest" but only a "rational justification" for the distinction. Kras could file a petition which would stay creditors' actions, and obtain permission to pay the filing fee over a six-month period, which came to only $1.92 a week, "less than the price of a movie and little more than the cost of a pack or two of cigarettes. . . . [I]f he really needs and desires that discharge, this much available revenue should be within his mèle-bodied reach. . . ." 409 U.S. at 449. Section 2-302(a) of the new act recommended by the Bankruptcy Commission would authorize an in forma pauperis bankruptcy petition.Section 7a(8) and Bankruptcy Rule 108 also require the debtor to file with his voluntary petition schedules containing lists of his property and of his debts with the names and addresses of creditors, if known. Substantial sanctions attend these requirements. Debts not scheduled in time for proof and allowance are not covered by the bankruptcy discharge unless the creditor had notice of the proceeding (§17a(3)), and concealment of assets or the like so as to inaccuracy are ground for denial in formal proceedings under §14c(3), §152 as well as complete forfeiture of the bankruptcy discharge. See In re Black, 6 Collier 243 at 955 (1935). In addition to raising the filing fee, the debtor must also arrange for payment of his attorney. While an attorney who accepts a retainer contract before filing the petition may then prove on the contract and participate with other creditors in the bankruptcy distribution, Klein v. Rancho Montana De Oro, Inc., 263 F.2d 764 (9th Cir. 1959), any payment or transfer to the attorney, or any agreement therefor, may be examined by the court and reduced to an amount found to be reasonable pursuant to §60d and Bankruptcy Rule 220. Moreover, Bankruptcy Rule 107 provides that, where filing fees are paid in installments, they must be paid in full before the bankrupt pays anything to his attorney. Section 64a(1) also includes among the first priority administrative expenses "reasonable attorney's fees, for the professional services actually rendered . . . to the bankrupt in voluntary and involuntary cases." The section does not limit the nature of the services for which allowances may be made. But there are made for services in attending creditors' meetings and acquainting creditors and the trustee with the debtor's affairs, In re Portland Furniture, Inc., 67 F.2d 578 (2d Cir. 1933), cert. denied, 291 U.S. 671 (1934), for services in procuring prompt appointment of a trustee, In re Allied Owners Corps., 79 F.2d 187 (2d Cir. 1935), aff'd, 297 U.S. 434 (1936), and for opposing transfer to another district and defending an order restraining a pending receiver's sale, In re Lurstor Corp., 196 F.2d 975 (7th Cir. 1952). But lingering notions that the services must be "in aid of the administration of the estate," Conrad v. Pender, 289 U.S. 472, 476 (1933), have on occasion been thought to preclude allowances for attending creditors' meetings, In re Allied Owners Corp., supra, for aiding the trustee in resisting a petition to set aside the bankruptcy adjudication, In re Owl Drug Co., 16 F. Supp. 139 (D. Nev. 1936), aff'd, 90 F.2d 823 (9th Cir. 1937), or for defending the bankrupt in criminal proceedings initiated after the petition was filed. In re Rohlnick, 294 F. 817 (2d. Cir. 1923). Most serious, from the debtor's viewpoint, is the preponderant view that no allowance can be made for services in obtaining the debtor's discharge, *Lewis v. Fitzgerald*, 295 F.2d 877 (10th Cir. 1961), cert. denied, 369 U.S. 828 (1962); *In re Rothmans*, 263 F.2d 51, 106 A.L.R. 1408 (9th Cir. 1959), and the unanimous view that no allowance can be made for services involved in preparing exemptions, In re Taylor, 250 F. 127 (D. Wyo. 1922); In re Rohlnick, 224 F. 287 (S.D. Ca. 1915); In re O'Hara, 166 F. 384 (D. Mass. 1908); In re Castleberry, 143 F. 1021 (N.D. Ca. 1906). See also In re Eastwood, 239 F. Supp. 847 (D. Ore. 1965). The §64a(1) allowance may also cover prebankruptcy services, but here again the search for benefit to the estates has limited the allowance to services in preparing the voluntary petition and schedules, *Klein v. Rancho Montana De Oro, Inc.*, 263 F.2d 764 (9th Cir. 1959); *In re Allied Owners Corp.*, supra; *In re Owl Drug Co.*, supra; *In re Duran Mercantile Co.*, 199 F. 961 (D.N.M. 1912); *In re Kross*, 96 F. 816 (S.D.N.Y. 1899), and in reducing tax claims. *In re Duran Mercantile Co.*, supra.'. VERN COUNTRYMAN, *Cases and materials on debtor and creditor* (2nd edn, Boston/Toronto, Little, Brown and Company 1974) 269–74

sports associations from the bankruptcy process, depriving the reorganization system of its main sanction for debtors who either do not fulfill their legal responsibilities or are unsuccessful in getting their recovery plan approved.

As a result, a single, imperfect circuit is created, undermining the judicial reorganization regime's internal coherence and reducing incentives for prudent management and good faith procedural behavior. Therefore, the only sports associations that can fully navigate the reorganization circuits established by Law No. 11,101/2005 are those that either create or convert into a corporate entity in accordance with Article 27, § 9, of the Pelé Law and properly register with the Commercial Registry as specified in Article 971, sole paragraph, of the Civil Code. Sports associations in financial difficulties must first adopt—or be included in the reorganization plan—a corporate legal form to be admitted into the reconstruction regime, unless a legislative amendment is made that creates a special process for them.

A first interpretative solution would be to consider sports associations, even when not organised as companies, as genuine economic agents[421][422]. These are not merely recreational or cultural entities, but organisations that generate substantial financial flows, employ workers under a special employment regime, exploit image rights and intellectual property, and influence entire economic chains. In this sense, it seems legitimate to apply Law No. 11,101/2005 in its entirety, including the bankruptcy procedure, on the grounds that professional sporting activity constitutes the exercise of business for the functional purposes of insolvency law. Such a reading would eliminate the current asymmetry and restore the binary coherence between reorganisation and bankruptcy, which is fundamental to the concursal logic of the system.

Nevertheless, recognising the bankruptcy of sports associations raises sensitive practical and institutional issues. The liquidation of century-old brands, identity symbols, and intangible assets linked to supporters could compromise the social value of sport and generate irreversible competitive distortions. Comparative experience shows that, in several countries, the straightforward application of bankruptcy procedures has led to the dissolution of historic clubs,

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[421] From the perspective of economic agents, one might argue that Article 13 of the SAF Law (Law No. 14,193/2021) has superseded the definition contained in Article 1 of Law No. 11,101/2005. This supposed overcoming, however, is merely apparent. The same SAF Law confers entrepreneurial status only upon registration with the Commercial Registry, as required by Article 971, sole paragraph, of the Civil Code — a provision introduced by the SAF Law itself. Accordingly, without the proper registration, no effective supersession occurs, and the traditional eligibility threshold for insolvency proceedings under Law No. 11,101/2005 remains intact. Cf. MARCO ANTONIO KARAM SILVEIRA, 'Empresa jurídica e empresa econômica e a sistematização jurídica das situações de empresa na realidade brasileira' (2022) 17(2) *Cadernos do Programa de Pós-Graduação em Direito* 193, 193–214.

[422] RACHEL SZTAJN, *A Teoria Jurídica da Empresa: Atividade empresária e mercado* (2nd edn, Atlas 2010) 72

automatic relegations, loss of identity, and institutional fragmentation. This calls for caution in adopting such a maximalist solution, which, while legally defensible, may collide with constitutional values related to sport and culture.

If this path is not followed, the most appropriate alternative would be a legislative reform specifically designed to adapt the circuits of Law No. 11,101/2005 to the reality of sports associations. Such an effort should include clear eligibility rules, recovery tools tailored to the sporting context, mechanisms to preserve athletes' contracts, and safeguards against abuse. It would be necessary to establish instruments that balance creditor protection with the continuity of sporting activities, recognising that the social function of the club extends beyond economics, encompassing cultural identity and community cohesion.

Such legislative reform would also represent an opportunity to align the Brazilian framework with international best practices. European regulators such as UEFA, the French DNCG, and the German DFL have developed supervisory mechanisms that combine accounting, budgetary, and regulatory rigour precisely to prevent abrupt crises and systemic disputes. A Brazilian reform that adapted judicial reorganisation circuits to the specificities of sport could incorporate elements of financial compliance, preventive oversight, and governance incentives, thereby promoting a more predictable environment for creditors, investors, and supporters. In this way, the current legal vacuum would be replaced by a sustainable model for handling the financial crises of football clubs.

6. FOOTBALL CORPORATIONS, SPORTS ASSOCIATIONS, AND THE CENTRALIZED ENFORCEMENT REGIME (RCE)

The Football Corporation Law (*Lei da Sociedade Anônima do Futebol*, or SAF), also known as Law No. 14,193/2021, established a new legal framework for professional football teams in Brazil. In addition to facilitating the adoption of efficient legal mechanisms for debt restructuring, like the Centralized Enforcement Regime (*Regime Centralizado de Execuções*, or RCE)[423], this innovation seeks to give clubs a more contemporary governance model, increased fundraising capacity, and greater financial responsibility.

The original club or legal entity may submit to a collective enforcement mechanism under the RCE, which entails the concentration of enforcement proceedings, revenues, and

[423] cf FERNANDO AUGUSTO DE VITA BORGES SALES**,** *A sociedade anônima do futebol: a regulamentação do clube-empresa* (São Paulo, Ed. Mizuno, 2022)

amounts collected—under the terms of Article 10[424]—before a centralizing court, according to Article 14 of Law No. 14,193/2021. Afterwards, the money is disbursed to creditors in a systematic and coordinated manner. Different from the judicial reorganization process described in Law No. 11,101/2005, this mechanism is a financial and economic reorganization tool that was initially created for Football Corporations (SAFs). As a result, a unique system of collective enforcement was created.

This system's justification is to enable the SAF, or the original legal entity, to handle its liabilities in a systematic way, preventing haphazard court seizures or contradictory rulings that might compromise the legal goal of resolving the crisis by combining enforcement actions.

A debt repayment plan and a clear commitment to budgetary management are among the requirements of the process outlined in Law No. 14,193/2021.

The RCE raises the same legal question as Law No. 11,101/2005, namely whether sports associations may use this reorganization method, even if it is not the main topic of this study.[425]

The Brazilian courts have yet to resolve this matter. For instance, in contrast to the strategy used in the case of SANTOS FUTEBOL CLUBE,[426] SPORT CLUB CORINTHIANS PAULISTA has asked to benefit from the centralized enforcement regime; this request is still pending confirmation before the São Paulo State Court of Appeals (*Tribunal de Justiça do Estado de São Paulo*).

CONCLUSION

Before Law No. 14,193/2021 was passed, the inclusion of sports associations in the judicial reform framework had brought up several legal issues about their status under Law No. 11,101/2005, especially in relation to Article 1.

In addition to examining the question of legal standing, this study aimed to evaluate the general compatibility of judicial reorganization proceedings with non-corporatized sports associations, or 'pure' sports associations, from five main perspectives: (i) the Brazilian legal

[424] Under Article 10 of Law No. 14,193/2021, the original club or legal entity remains liable for obligations incurred prior to the incorporation of the Football Corporation (SAF), and such liabilities must be settled using its own revenues as well as specific resources transferred by the SAF—when it is established exclusively—namely: (i) 20% of the SAF's monthly operating income, as set forth in the creditors' approved payment plan pursuant to Article 13(I) of the Law, and (ii) 50% of any dividends, interest on equity, or other remuneration received by the original entity in its capacity as a shareholder.

[425] cf RODRIGO R. MONTEIRO DE CASTRO, *Comentários à Lei da Sociedade Anônima do Futebol: Lei nº 14.193/2021* (São Paulo, Quartier Latin, 2021) 166–68

[426] CORINTHIANS relies on SAF Law and Santos precedent to support RCE in court. LANCE!, March 21, 2025.

definition of ‘enterprise’; (ii) comparative legal approaches to treating football clubs as business entities; (iii) the evolution of Brazilian insolvency law over time; (iv) the structure of judicial reorganization proceedings; and (v) the suitability of sports associations to the recovery pathways (*circuitos recuperacionais*) established under Law No. 11,101/2005.

To do this, it was first essential to describe the Brazilian legal definition of ‘enterprise’ and the court reorganization process. This was followed by an examination of how well sports associations fit into the recovery framework.

The study first showed that the professional practice of organized economic activity with the goal of producing or distributing goods or services—that is, a profit-making objective—is the foundation of the Brazilian idea of enterprise. This served as the foundation for the presentation of Brazilian football's history, development into a professional and commercial sport, and legislative treatment. The comparative legislation analysis revealed how imposing a corporate model on football teams does not always result in better financial governance.

It was noted that many clubs in Brazil operate professionally and systematically, but they are not legally recognized as economic businesses because of their entirely associative legal structure. This fact led to the main question of this dissertation: Can civil sports associations that have not transformed into one of the legally recognized business entities—either before or through a reorganization plan—be fully subject to the judicial reorganization and bankruptcy regime outlined in Law No. 11,101/2005? With the passage of Law No. 14,193/2021 (the Football Corporation Law), particularly Article 25, football clubs in general as well as Football Corporations (SAFs) were given the ability to petition for judicial restructuring due to their corporate status.

It was demonstrated that Article 971, sole paragraph (added by Law No. 14,193/2021), states that associations that participate in ‘habitual and professional football activities’ will be regarded as business entities for all legal purposes upon registering as rural producers with the Public Registry of Business Entities (*Registro Público de Empresas Mercantis*), which is equivalent to adopting a business form. To guarantee that only professional clubs are treated under the judicial reorganization regime, the study made a distinction between professional clubs, which register with the Public Registry of Business Entities, and amateur clubs, which continue to register with the Registry of Legal Entities (*Registro Civil de Pessoas Jurídicas*).

According to the Pelé Law's optional clause in Article 27, § 9, a club must choose one of the business entity forms specified in the Civil Code to be eligible for business treatment if it chooses not to incorporate as a SAF.

The recovery and bankruptcy framework of Law No. 11,101/2005 can be fully and logically applied after the definition of ‘club’ under Article 25 of Law No. 14,193/2021 is established, maintaining the systemic integrity of the reorganization process. In contrast, since pure sports associations are exempt from bankruptcy procedures, a unique insolvency regime would need to be established.

The balance of the Brazilian insolvency system would be threatened, and incentives for significant and long-lasting restructuring would be diminished, if Brazilian sports associations were allowed to access the judicial reorganization regime despite the long-standing economic and financial crises that have dogged them since the beginning of football. This is because they are exempt from bankruptcy and must adopt a corporate form. Thus, this study served as the analytical basis for illustrating the pressing necessity to match football clubs' legal status with the regulations intended for financially distressed businesses.

This research has shown that Article 1 of Law No. 11,101/2005 was not superseded by Article 13 of the SAF Law. The adoption of a corporate form remains the threshold condition for a club to access the judicial reorganization framework. The associative model, by itself, does not meet the requirements of the insolvency regime, and therefore its compatibility is only apparent. What the SAF Law achieved was to provide football clubs with an optional corporate structure, not to exempt them from the fundamental principle that insolvency law applies to business entities.

The existing recovery mechanisms must be carefully adapted when applied to sports associations that remain in their original legal form. Pure associations may attempt to operate within the circuits of Law No. 11,101/2005, but without the possibility of bankruptcy their participation is incomplete and inconsistent with the systemic logic of the law. To ensure the integrity of the insolvency system, clubs that seek judicial reorganization must either transform into a corporate entity—whether through a SAF or another business company recognised by the Civil Code—or else accept that they are bound by the full concursal logic, including the bankruptcy procedure, even if imperfectly.

Ultimately, the most coherent and sustainable solution lies in legislative reform. A tailored regime for sports associations in financial distress should provide clear eligibility requirements, procedural safeguards, and recovery tools that preserve the continuity of sporting activities while protecting creditors. Such a reform would align the Brazilian framework with comparative experiences and prevent the systemic imbalances that arise when non-corporatized clubs attempt to access judicial reorganization without adequate legal adaptation. In this way, creditor protection, financial discipline, and the social and cultural value of football can be reconciled.

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