



## **SUMMATIVE (FORMAL) ASSESSMENT: MODULE 4B**

### **BRAZIL**

This is the **summative (formal) assessment** for **Module 4B** of this course and must be submitted by all candidates who **selected this module as one of their elective modules**.

**The mark awarded for this assessment will determine your final mark for Module 4B.** In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

## **INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in **Microsoft Word format**, using a standard A4 size page and an 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment4B]**. An example would be something along the following lines: 202122-336.assessment4B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
6. The final submission date for this assessment is **31 July 2022**. The assessment submission portal will close at **23:00 (11 pm) BST (GMT +1) on 31 July 2022**. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
7. Prior to being populated with your answers, this assessment consists of **9 pages**.

## **ANSWER ALL THE QUESTIONS**

### **QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

#### **Question 1.1 [1 mark]**

Indicate the **correct answer** regarding bankruptcy legislation in Brazil:

- (a) The Bankruptcy Law regulates the liquidation – but not the reorganisation – of any individual or legal entity with activities in Brazil.
- (b) The former Civil Procedure Code regulates the reorganisation of non-business individuals and legal entities.
- (c) The current Bankruptcy Law contains a section addressing cross-border bankruptcies.**
- (d) The Bankruptcy Law does not allow companies belonging to the same economic group to file for restructuring jointly.

#### **Question 1.2 [1 mark]**

Which of the following statements is **correct** with regards to the Brazilian judiciary?

- (a) Brazil has a single apex court: the Superior Court of Justice, which is in charge of constitutional issues.
- (b) Labour disputes take place at a specialised segment of the judiciary, composed of labour courts, courts of appeal and a superior court.**
- (c) Insolvency proceedings take place at the federal-level judiciary (as opposed to the state-level judiciary).
- (d) The nomination of an individual as a judge of a bankruptcy court is the result of an election by popular vote from residents within that particular judicial district.

#### **Question 1.3 [1 mark]**

Select the **false statement** concerning security rights within the Brazilian legal system:

- (a) A pledge is a lien that may be constituted over both movable and immovable assets.**
- (b) Despite being a lien over immovable property, mortgages may also be used to offer aircrafts and vessels as security.

- (c) The *antichresis* is a rarely used type of security, the purpose of which is to assign the income from an immovable property to the guaranteed party.
- (d) Fiduciary titles are increasingly used as a security due to the fact that this guarantee allows for the guaranteed party to take possession of the collateral and sell it outside a bankruptcy proceeding, as long as certain conditions are met.

**Question 1.4 [1 mark]**

Which of these parties **is allowed** to file for a judicial recovery case under the terms of the Bankruptcy Law?

- (a) A *sociedade de economia mista* (a company whose majority equity interest belongs to the Federal, State or local government).
- (b) An accounting firm.
- (c) An individual who carries on a business activity without the use of a legal entity.
- (d) An insurance company.

**Question 1.5 [1 mark]**

Concerning corporate liquidation, indicate the **incorrect** statement below:

- (a) The Bankruptcy Law provides the means for the debtor to file a voluntary liquidation proceeding.
- (b) None of the gateways for the involuntary liquidation of a debtor require the creditor to actually prove the balance sheet insolvency of the debtor.
- (c) A debtor has a 10-day period, after service of process, to present his defence against a creditor seeking its liquidation.
- (d) A decision from the bankruptcy court declaring the bankruptcy of a debtor is unappealable.

**Question 1.6 [1 mark]**

Which of the following claims has the **highest priority** under a bankruptcy proceeding?

- (a) Fees payable to the judicial administrator and its auxiliaries.
- (b) Tax-related fines.
- (c) Administrative expenses of the estate.
- (d) Unsecured claims.

**Question 1.7 [1 mark]**

A debtor under judicial recovery has the following creditors:

- 50 creditors in Class I (workers and labour-related claims)
- 3 creditors in Class II (creditors secured by *in rem* guarantees)
- 300 creditors in Class III (unsecured creditors)
- 200 creditors in class IV (claims held by micro and small enterprises)

The total amount of debt owing in each class is the following:

- BRL 1 million in Class I
- BRL 5 million in Class II
- BRL 50 million in class III
- BRL 30 million in Class IV

Assuming all creditors are present at the debtor's general meeting of creditors, **indicate the only true statement** regarding the approval of the plan:

- (a) The approval of the plan in Class I is solely dependent on its approval by creditors whose claims amount to a quantity in excess of BRL 0.5 million.
- (b) The approval of the plan in Class II is solely dependent on a majority by head count.
- (c) The approval of the plan in Class III depends on a double majority: by head count and by the total amount of claims.
- (d) The approval of the plan in Class IV is solely dependent on favourable votes by creditors whose claims exceed BRL 15 million.

**Question 1.8 [1 mark]**

Which of the following documents **needs to be** presented by the debtor at the moment of filing for judicial recovery?

- (a) A full nominal list of creditors.
- (b) Accounting statements for the last financial year for the current administrators of the company.
- (c) A judicial recovery plan.
- (d) A list with a brief description of the contracts entered into by the debtor in the last financial year.

**Question 1.9 [1 mark]**

Indicate the **only correct statement** below relating to the cramdown of a judicial recovery plan:

- (a) "Cramdown" is a doctrine that allows for creditors to present their own alternative reorganisation plan.
- (b) There are no statutory provisions on cramdown under the current Bankruptcy Law, it is a judicially-created doctrine.

(c) Among the criteria that must be met for a cramdown to be imposed, the plan needs to receive favourable votes from over half the total amount of claims in each of the classes of creditors that were present at the general meeting.

(d) A cramdown cannot be imposed if the judicial recovery plan entails the discriminatory treatment of creditors within the class that rejected it at the general meeting of creditors.

**Question 1.10 [1 mark]**

Select the **correct statement** from the options below regarding extrajudicial recoveries:

(a) Extrajudicial recoveries allow for a larger set of debtors to seek their reorganisation in comparison to the set of debtors that are allowed to file for judicial recovery.

(b) Extrajudicial recoveries do not allow the debtor to restructure labour claims.

(c) Extrajudicial recoveries represent a consensual solution to a financial crisis, as extrajudicial plans may not be imposed on dissenting creditors.

(d) Extrajudicial recoveries do not allow the debtor to dispose of its assets free of any encumbrances, unlike judicial recoveries.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 [maximum 2 marks] [1 mark]**

Cite **two (2) faulty actions** that could lead to the debtor's administration being removed during a judicial recovery case.

Pursuant to Article 64, faulty actions that could lead to a debtor in possession's power to manage a business being removed include:

1. The individual having been sentenced finally and conclusively for (i) a crime committed under a previous judicial recovery or bankruptcy or (ii) a crime against property, public welfare or economic order provided for by applicable law; and
2. The individual refusing to provide information requested by the judicial administrator or other members of the Creditors' Committee.

**Question 2.2 [maximum 3 marks] [3 marks]**

State the **three (3) manners or ways** by which the assets of the bankrupt estate may be sold by the judicial administrator during a liquidation procedure.

The three ways in which assets can be sold in a bankruptcy estate are:

1. By auction (either in-person, electronic or hybrid);
2. By a competitive procedure promoted by a specialised agent; or
3. By any other mode, as long as it is approved under the Bankruptcy Law.

Assets can be sold in another manner subject to court approval or approval by the general meeting of creditors.

**Question 2.3 [maximum 2 marks] [2 marks]**

State **two (2) acts** that may be rendered ineffective towards the bankrupt estate if carried out whilst the “suspect period” of a bankruptcy proceeding was in effect.

Two acts that may be rendered ineffective if carried out during the ‘suspect period’ are:

1. The debtor paying debts (by any means) that have not yet fallen due which extinguish the claim. Such payment may include advances on a given note payable; and
2. The debtor providing acts (i.e. services or donations) free of charge. The suspect period for such transactions is two years preceding the date of the decree of bankruptcy.

**Question 2.4 [maximum 3 marks] [3 mark]**

Identify **three (3) changes** introduced to the Brazilian insolvency legal system due to the enactment of Federal Law 14.112/2020.

Three changes introduced by Federal Law 14.112/2020 include:

1. The possibility of substituting the physical general meeting of creditors into equivalent methods, such as (i) the relevant number of creditors required to approve a plan signing binding terms confirming their agreement to a plan and therefore that the relevant quorum has been met; (ii) by an online voting system that mirrors a general meeting; and (iii) by any other mean deemed sufficiently safe by the court.
2. Permitting creditors to present an alternative judicial recovery plan where the plan voluntarily presented by the debtor is rejected by a general meeting of creditors; and
3. Creating a separate, incidental process that tax authorities can use to present their claims in a bankruptcy process instead of having to participate in the same way as other creditors.

**QUESTION 3 (essay-type questions) [15 marks in total]**

**Question 3.1 [maximum 5 marks] [4.5 marks]**

How is the judicial recovery for micro and small enterprises different from a regular judicial recovery?

The special regime introduced for judicial recovery of micro and small enterprises (**MSE**) in the Bankruptcy Law contains several differences to the regular judicial recovery process. Namely:

1. To be eligible to participate in the MSE scheme, the debtor must fall within the definition of an MSE. This means they must have gross revenues of less than BRL 360,000 per year (a micro enterprise) or of between BRL 360,000 and BRL 4,800,000 per year (a small enterprise). This differs to regular judicial recovery, which is available to all entrepreneurs, individuals or legal entities who perform business activities.
2. No judicial administrator is appointed to supervise the judicial recovery process. **[it is not mandatory]** This significantly reduces the costs of the rescue process therefore making it more readily available to MSEs. This differs to regular judicial recovery, where a judicial administrator is appointed and is responsible for overseeing the judicial

recovery procedure, ensuring its correct implementation and complying with a wide list of duties;

3. While an MSE will still need to comply with the filing requirements applicable in regular judicial recovery and put forward a recovery plan within 60 days of filing that filing, a judicial recovery for an MSE does not require a recovery plan to be approved at a general meeting of creditors. Instead, the plan will be granted unless creditors holding over half of the claims of each class object to the plan. These classes are the same as those applied in regular judicial recovery (labour claims, secured claims, unsecured claims and claims by other MSEs).
4. Finally, the recovery plan presented can only extend to a maximum of 36 monthly instalment payments of equal and successive amounts for repaying all claims captured by the MSE judicial recovery process (subject to any compromises agreed by the plan and as adjusted to include interest equivalent to the Taxa Selic). This time limit does not apply to normal judicial recovery plans. **[any grace period? Can the micro and small subusiness use the regular judicial recovery?]**

### **Question 3.2 [maximum 5 marks] [5 marks]**

What is a “claim for restitution” under a bankruptcy procedure? How does it work?

A claim for restitution in the bankruptcy procedure is a process provided for under the Bankruptcy Law whereby a third party (i.e. a person or entity other than the debtor, such as a creditor) has the right to seek that assets be recovered to the debtor’s bankruptcy estate.

The third party shall only typically have the right to recover the claimed assets where:

1. they belong to that party but were in the possession of the bankruptcy debtor; and
2. the assets belonged to the debtor but were sold to a third party within 15 days prior to the date a petition for bankruptcy was presented and they were sold on creditor. This will not apply if the recipient has already disposed of the asset by the time the claim is brought.

Claims for restitution are brought against the party that received the relevant asset from the debtor under a separate case record to that which is used for the bankruptcy proceedings. They will be on notice to the debtor, the committee or creditors, the creditors and the judicial administrator. This provides them with the option to oppose the restitution action if they wish.

If a claim is successful, restitution can be provided by returning the asset or by way of restitution in cash. Restitution in cash refers to either:

- a. the appraised value of the asset if the asset no longer exists at the time of the claim or, if the asset has been sold, the price at which it was sold;
- b. the amount paid to the debtor, in domestic currency (i.e. BRL), resulting from an advance on an export exchange contract (in accordance with paragraphs 3 and 4 of Article 75 of Federal Law 4.728.1965) if the transaction term does not exceed limits established by competent authorities relating to those transactions;
- c. if the contract between the recipient and the debtor is revoked or otherwise declared ineffective, amounts delivered to the debtor by the bona fide contracting party; and
- d. the amount of withheld taxes and amounts paid to collecting agents (which have not been transferred to the government).



Amounts recovered to the bankruptcy estate in a claim for restitution must be paid out ahead of all other claims in the bankruptcy, including super-priority claims. This ensures that the realisations go directly to the party that brought the action and was the owner of the property.

**Question 3.3 [maximum 5 marks] [5 marks]**

Describe the process of proof of claims for a creditor, under a judicial recovery case, who (i) was not listed in the first list of creditors (presented by the debtor) and (ii) for a creditor who was not listed in the second list of creditors (presented by the judicial administrator).

The process for submitting a claim in a judicial recovery case broadly mirrors that which applies to bankruptcy proceedings. It is set out below:

1. The debtor drafts a public notice which contains a list of creditors (as determined by the debtor). This is the first list of creditors. The notice also requires creditors to submit their proof of claim to the judicial administrator within 15 days of the date of the notice. During this 'administrative phase', the creditor does not incur any costs.

A creditor who is not listed in the first list of creditors can contact the judicial administrator to inform them its claim is missing from the list prepared by the debtor and request that it be included in the second list (as referred to below). That request should be sent by email or otherwise in correspondence and must include specific information, such as the name of the creditor, their address and the amount of the debt. The creditor must also provide documents that evidence the debt claimed.

2. Once the judicial administrator has evaluated the claims contained in the first list and any other claims raised by creditors in the administrative phase, he must publish a second notice containing an updated list of creditors. This is the second list of creditors. Creditors then have 10 days from the date of publication to raise any objections to the list of creditors.

This 10-day period, known as the 'judicial phase' provides an opportunity for creditors not listed in the second list of creditors to challenge the determination not to include its claim. Unlike in the administrative phase, this is a judicial process which requires the creditor to make an application to court, which is allocated a separate case number. As this is a court process, if they are unsuccessful, the creditor may also be ordered to pay legal fees and judicial costs.

Upon hearing an application pertaining to a missing claim, the judge will make a determination based on the claim set out by the creditor and an opinion given by the judicial administrator on the admission of the claim. The creditor will therefore need to again present full information relating to the debt claimed (including the information and documents set out at 1 above). The determination by the judge is final but can be appealed.

If creditor first raises the missing claim at the judicial phase (i.e., they have not raised it with the judicial administrator during the administrative phase), they will be deemed to have made a 'late claim' and will not be entitled to vote in the judicial recovery procedure unless and until a judge has found in their favour.

3. After all challenges to the second list have been made, a final list of creditors will be published. This constitutes the final list of creditors in the judicial recovery process.

#### **QUESTION 4 (fact-based application-type question) [15 marks in total]**

Braz Bank is a Brazilian bank. The financial institution has had considerable success lending to distressed debtors. Nonetheless, a series of risks are associated with this activity. Just recently one of its borrowers, Brazil Empreendimentos Ltda (Empreendimentos), has defaulted on a loan.

**Using the facts above, answer the questions that follow.**

##### **Question 4.1 [maximum 5 marks] [4.5 marks]**

The loan Empreendimentos has defaulted on was valued at BRL 1,000,000 (one million reais). Due to Empreendimentos' default, an acceleration clause came into effect and caused the entire value of the contract to mature. Given that the loan agreement met all the criteria for making it an extrajudicial executive title under the Civil Procedure Code, Braz Bank's initial step was to protest the contract before a protest officer, making it public that Empreendimentos had defaulted on it. Despite this measure, Empreendimentos did not cure its breach and the loan remains unpaid.

Does Braz Bank have grounds for filing an involuntary bankruptcy proceeding against Empreendimentos? Is there any defence that may be presented by Empreendimentos in order to ensure that the court will not declare its bankruptcy under any circumstances?

Braz Bank has grounds for filing an involuntary bankruptcy proceeding against Empreendimentos, as the following conditions have been met:

1. It has standing to bring the bankruptcy proceeding. It is a creditor of Empreendimentos and it is assumed that Braz Bank is regularised in Brazil and can demonstrate this with a certificate from the Board of Trade.
2. Braz Bank has satisfied one of the criteria under Article 94 of the Bankruptcy Law for commencing bankruptcy proceedings. Specifically:
  - a. Empreendimentos has (without any apparent reason at law) failed to pay an amount due under its loan agreement on a due date. This default appears to have arisen both on the first default (of missing one payment under the loan) and on the subsequent failure to repay the full balance of the loan following the triggering of the acceleration clause contained in the loan.
  - b. The amount due is a liquidated sum (a *divida liquida*), being the balance of the loan.
  - c. The amount claimed exceeds 40 minimum wages.
  - d. The loan is an extrajudicial executive title and Braz Bank has duly protested the debt by sending it to a protest officer, who would in turn have sent an official notice to Empreendimentos informing it that it needs to pay or recognise the existence of the debt, otherwise Braz Bank may commence bankruptcy proceedings.

The information provided does not confirm whether Empreendimentos faces any other execution proceedings relating to a liquidated sum, which it has failed to pay, or whether any other elements of Empreendimentos' conduct triggers grounds for bringing bankruptcy proceedings. These could be other grounds for commencing a bankruptcy proceeding.

3. After Braz Bank serves the bankruptcy proceedings on Empreendimentos, Empreendimentos has 10 days to present any defence. Article 96 of the Bankruptcy Law lists certain facts that can be relied upon to defend a bankruptcy proceeding. The ones that may be relevant in this case are:
  - a. Nullity of the obligation to repay. Empreendimentos may wish to take legal advice on the validity of the acceleration clause in the loan agreement and whether Braz Bank complied with any necessary steps set out in the loan agreement prior to protesting the debt and issuing a bankruptcy proceedings, e.g. the giving of any default notices.
  - b. Any defect in the protest to the protection officer or the loan instrument itself. Again, Empreendimentos may wish to take legal advice in this regard. [debtor could also make a deposit of the amount due.]

**Question 4.2 [maximum 5 marks] [5 marks]**

Suppose, additionally, that the referred loan agreement between Braz Bank and Empreendimentos was also secured by a mortgage over land valued at BRL 350,000 (three hundred-and-fifty thousand reais). Before Braz Bank took any additional measure against Empreendimentos, the debtor voluntarily filed for a judicial recovery proceeding, the processing of which was accepted by the court. The list of creditors presented by the debtor upon filing for judicial recovery showed the following four (4) creditors in Class II (creditors secured by *in rem* guarantees):

- Braz Bank SA: BRL 350,000;
- Banco Enterprises SA: BRL 125,000;
- Brasil Autoparts SA: BRL 100,000;
- Oil Brasil SA: BRL 100,000.

The complete list of creditors (also portraying Classes I, III and IV) has just been published in the official press. A few rumors have come to Braz Bank's attention concerning the fact that Brasil Autoparts SA and Oil Brasil SA are likely to reject the recovery plan that Empreendimentos has been working on. Should the rumors show themselves to be accurate, is Empreendimentos still capable of having its recovery plan approved at a general meeting of creditors? Would there be grounds for a cramdown?

For the judicial recovery plan to be approved pursuant to Article 45 of the Bankruptcy Law, each class of creditors must approve it. Different thresholds of approval apply for each class.

For the approval threshold to be met in Class II, a majority of creditors assessed by head count and by value of their claims must approve it. Therefore, if Brasil Autoparts SA and Oil Brasil SA do not consent to the plan, the requirement for a majority in head count would not be present as only 2/4 creditors would be vote in favour of approval. Accordingly, Class II creditors would not be deemed to approve the plan.

This would mean that all classes have not approved the plan and therefore it could not be adopted (Article 45, Bankruptcy Law), unless the court applies Article 58 of the Bankruptcy Law to cramdown a class of creditors.

Exercising cramdown allows the court to reduce the thresholds of creditor consent required to obtain sufficient approval to adopt the plan. In order to exercise cramdown the following conditions must have been met at the meeting of creditors pursuant to Article 58:

1. Over half of creditors representing at least half of all creditors (i.e. assessed by quantum of the debt as opposed to number of creditors) voted in favour of the plan. This assessment is made in respect of the body of creditors as whole and not through separate classes. Here, Brasil Autoparts SA and Oil Brasil SA each have a debt of BRL 100,000, bringing the total to 200,000. Assuming Branco Enterprises votes in favour of adopting the recovery plan, it and Braz Bank's debt will amount to BRL 475,000. There is clearly a majority when considering these claims. However, all creditor claims are accounted for (across all classes). Therefore in order to be eligible for cramdown, there must still be a majority after all other claims in Classes I, III and IV have been valued. We do not have that information but note that creditors with a combined debt of at least 275,000 would have to reject the plan based on the information we do have.
2. As we know the list of creditors includes creditors in all four classes, at least three classes will need to have voted in favour of the plan. We do not know the position of the creditors in Class I, III and IV to confirm this.
3. In the rejecting class (here, anticipated to be Class II), at least one-third of creditors (measured by applying the same criteria set out at Article 45) must have approved the plan. Again, assuming Branco Enterprises votes in favour of the plan, this requirement will be satisfied as 2/4 creditors (over one-third) will have approved the plan and those creditors have far over a one-third of the debts due to the creditors in the Class as a whole.
4. The plan must not entail different treatment of creditors in the same class. This means that each of the Class II creditors must be subject to the same treatment, such as the same level of haircut on their debt.

To summarise, Empreendimentos will therefore be eligible for a cramdown, therefore making the recovery plan possible, if (i) there is sufficient creditor support (or lack of opposition) in Classes I, III and IV to ensure that over half of creditors by value approve the plan, (ii) Classes I, III and IV approve the plan and (iv) the plan treats all of creditors in the same class consistently.

**Question 4.3 [maximum 5 marks] [5 marks]**

Suppose Braz Bank's loan agreement with Empreendimentos was not secured by a mortgage but rather by a fiduciary title over land valued at BRL 600,000 (six hundred thousand reais). The referred piece of land corresponds to the site where Empreendimentos' main factory is located. Empreendimentos' judicial recovery proceeding has just begun: the Court issued the decision allowing for the processing of the judicial recovery two (2) days ago. How soon can Braz Bank take possession of the land and sell it outside the recovery proceeding? Could Empreendimentos argue anything in defence of maintaining its possession over the land?

Upon the judge accepting the processing of the judicial recovery in respect of Empreendimentos, a stay will be ordered preventing creditors taking action against it. That stay is subject to certain exceptions.

As a creditor with fiduciary title to the relevant asset (i.e. the land), Braz Bank will be excluded from the scope of the recovery plan proceeding. This means that its claim cannot be adjusted by the plan. Generally, a creditor with security by way of fiduciary title is also not precluded from taking possession the secured assets and selling them outside of the recovery plan.

However, Braz Bank's security is fiduciary title over land upon which hosts Empreendimentos' main factory. It therefore appears to be essential to Empreendimentos' business. Accordingly, despite having fiduciary title, pursuant to Article 49(3) of the Bankruptcy Act, the stay referred to above will operate to prevent Braz Bank from taking possession for the full duration of that stay.

The stay automatically applies for 180 days from the date it is ordered (which will be the date the judicial recovery is accepted) and can be extended for a further 180-day period. There is ongoing debate around whether the court will permit further extensions beyond 360 days in situations where there is no fault on the part of the debtor, despite the time limits now being clearly established in statute. This is based on the Bankruptcy Court's previous willingness to grant extensions prior to the implementation of Federal Law 14.112/2020.

Braz Bank therefore cannot seek to take possession of the land for at least 180 days. Even after the stay expires, Braz Bank cannot automatically take possession and sell the land (see decisions of the Superior Court of Justice such as STJ AgRg on CC 127.629, decided on April 23 2014 and STJ AhRh on CC 125.893) unless it obtains the consent of the Bankruptcy Court to do so.

Empreendimentos can oppose such an application by Braz Bank on the basis the land charged as collateral is fundamental for implementation of the turnaround contemplated by the recovery plan. Based on the information provided, this appears to be the case. Therefore, unless Braz Bank can establish that wrongdoing on the part of the debtor, or that the recovery plan has failed, it is unlikely to be able to take possession of the land for the two-year duration of the recovery plan.

This answer assumes that the fiduciary title guarantee has been properly registered and, as it is in respect of real property, annotated with the Real Estate Registry. If this has not been done Braz Bank' claim would be treated as unsecured and therefore caught by the stay on proceedings set out at the start of this answer.

**\* End of Assessment \***

**TOTAL MARKS 48 OUT OF 50**

**EXCELLENT WORK!**