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**Contributions from the Brazilian Institute for Consumer Protection and  
Defence, BRASILCON, and the Institute of Humanist Capitalism**

**Submission by  
BRASILCON – Instituto Brasileiro de Política e Direito do Consumidor  
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## **CONTRIBUTIONS FROM THE BRAZILIAN INSTITUTE FOR CONSUMER PROTECTION AND DEFENSE, BRASILCON, AND THE INSTITUTE OF HUMANIST CAPITALISM.**

Dear members,

Brazil is experiencing an historic moment! Well, thirty years ago, the Brazilian Consumer Defense Code (CDC) was born, a code that protects Brazilian citizens as consumers and promotes balance between the different levels on the consumerist scale. We also received approval by the Chamber of Deputies of PL 3515/15, on May 11 and similarly the substitute numbered as PL 1805/21, in the Federal Senate, which deals with the prevention and treatment of overindebted consumers, on June 9, 2021.

The increase in cases of over-indebtedness among Brazilian consumers was observed and demonstrated by empirical research carried out, initially, by the Federal University of Rio Grande do Sul, led by Professor Dr. HC Claudia Lima Marques over the last 10 years. With the COVID19 pandemic, over-indebtedness has become a serious feature and with it an urgent need for legislation to try to avoid the social exclusion of thousands of consumers.

As such, this new Brazilian reality called for an improvement of the existing mechanisms of support for consumers in order to reduce conflicts especially in the field of over-indebtedness and because of the difficult times of pandemic in the country, as the worsening of the indebtedness situation has become more visible. According to projections and studies made by economists, since the beginning of the pandemic, the crisis has already affected almost 42 million Brazilians.

The Institute of Humanist Capitalism and the Order of Economists of Brazil calculated the macroeconomic gains when the PL came into force and practice would be between R\$200 billion and R\$555 billion per year! For a single Bill, it will bring an impressive macroeconomic effect, as it is private (and not public) money, which will be injected into the Brazilian economy by the over-indebted families themselves, having been rescued and paying their payment plans, with dignity and with their name redeemed among credit agencies.

The latest bulletin of the Consumer Indebtedness and Default Survey (Peic) revealed the percentage of families who reported having debts (post-dated checks, credit cards, overdrafts, store payments, payroll loans, personal loans, car and home repayments) has reached 67.3% in March, an increase of 0.6 percentage points, compared to February 2021, and 1.1 % compared to March 2020. With this fourth consecutive increase, indebtedness in the country has reached the second highest historical proportion, behind that of the percentage increase calculated in August 2020 (67.5%).

To bring over-indebted people back into the market and help the economy grow, the Brazilian Institute of Consumer Policy and Law (BRASILCON) promoted and engaged in a long campaign among the academic community. This was done on social networks and

with the support of the Judiciary, Public Ministry of Consumers, The Brazilian Bar Association, Public Defenders of the States and the Union, encouraging Congress to vote urgently on Bill No. 3515/15 that has been dragging its feet through the National Congress for five years. This bill sought to update the CDC (Consumer Defense Code) to include a chapter on the prevention and treatment of over-indebted citizens.

Models from the European Union and other countries with a tradition in consumer protection were adopted into the project. Because the treatment of over-indebted people started to be regulated only from the eighties (Denmark, France, Belgium, Luxembourg, Portugal, Germany, Albania, Austria, Estonia, The Netherlands, Finland, Norway and Sweden. Outside the European continent, Australia, New Zealand, The United Kingdom, Canada and The United States), these treatment procedures were called by different names: bankruptcy, insolvency, debt adjustment procedures, among others.

The proposal then presented in Brazil updated the existing norms with the purpose of preventing the over-indebtedness of the individual, promoting access to responsible credit and financial education for the consumer, in order to avoid their social exclusion and compromise their livelihood. The proposal regulated rights to information, advertising, intermediation and the offer of credit to consumers. It created the concept of consumer harassment, protecting elderly and illiterate consumers, establishing ground rules for credit advertising, prohibiting reference to "interest-free", "free" credit and the like. It instituted new rules for payroll-deductible loans and innovations in the procedural part, providing for conciliation with all creditors of the over-indebted consumer.

Thus, we had Law No. 14,181 enacted on July 1st, which updates the CDC to:

1) Preventing over-indebtedness of consumers through responsible credit practices, through new rules on: "the guarantee of responsible credit practices" (Art. 4°X, 6°, XI and 54-D of the CDC), with prior mandatory information and maintenance of the offer for 48 hours (Art. 54-B). It also includes regulations on advertising control "so as not to hide the burden and risks of taking out credit and selling on credit" and combating consumer harassment in credit, in particular to "elderly, illiterate, sick or vulnerable consumers which can be aggravated if the contract involves a premium" (art. 54-C). Furthermore it contains sanctions for non-compliance with this new paradigm of responsible credit, recommended by the OECD (Art. 54-D and its sole paragraph).

2) Improve loyalty and good faith in the granting and collection of debts, through rules that impose: good faith practices of suppliers and credit intermediaries during contracting and in debt collection, for example, in the voluntary delivery of the copy of the contract to the consumer and guarantor. It also includes provisions to facilitate the blocking and carrying out of corrections in cases of non-collection and in cases of fraudulent use of credit cards (Art. 54-G). This further included the connection between the main consumption contract and credit accessory (Art. 54-F). It also includes reinforcing the right to withdraw from excessive, long-term credit in Art. 49 of the CDC and in the new Art. 54-F, §1.

3) Ensure the preservation of the existential minimum both in the renegotiation of debts, as in the granting of credit (Art. 6, XIII) for the individual or natural person (Art.5.VI).

Despite the presidential veto of a credit limit for credit payments debited from salary limited to a percentage of the salary (vetoed Art. 54-E), there remains the right to the existential minimum in all credit, which will be determined by regulation. The very definition of over-indebtedness emphasizes as the main element, not insolvency, but the commitment to the existential minimum, a constitutional notion about a monetary minimum required for the survival and dignity of the natural person / consumer, which is also incorporated into the CDC: "Art. 54-A § 1 Over-indebtedness is understood as the manifest impossibility of the natural person consumer, in good faith, to pay all their consumer debts, when falling due, without compromising their existential minimum, under the terms of the regulations."

4) Ensure a new right of the consumer in good faith to deal with over-indebtedness through the review and renegotiation of debt in the form of a block conciliation and a payment plan, without debt forgiveness. This is the so-called 'ruin exception', which is based on the attached duty of good faith to cooperate with the debtor in good faith in case of personal ruin (Art. 6, XI and XII, 104-A). It seeks to value the PROCONS and other public bodies of the SNDC, which may make such conciliations in blocks or agreements with the various bodies (Art. 104-C).

5) Establish mechanisms for the judicial treatment of over-indebtedness (Art. 5, VI) and the creation of centers for conciliation and mediation of conflicts arising from over-indebtedness (Art. 5, VII), in particular of a judge responsible for issues of super-indebtedness to impose a compulsory plan (Art. 104: B. Thus, if there is no voluntary conciliation, there is an appeal to the judge in a "proceeding for over-indebtedness to review and integrate the contracts and renegotiate the remaining debts" through a compulsory judicial payment plan, taking care to pay the principal, but only after the conciliatory plan.

Despite the vetoes to the rules on payroll-deductible loans, which we hope will be reversed by the wisdom of Parliament, the changes approved after 10 years of studies and struggles update the Consumer Defense Code according to the victory in ADIN 1591, known as the Banks' ADIN, and according to the best global practices (World Bank and OECD). While welcoming the sanction of Law 14.181.2021 and the support received for this approval, it should be noted that it moves the credit, banking and financial market towards a paradigm of responsible credit and reinforces the good faith that should guide the relations of consumption, valuing the CDC microsystem and the recovery of the Brazilian economy with more consumer dignity!

Our Consumer Law has grown, changed and, above all, modernized. With this perception of the new dynamics at play, the bill contained an understanding of the zeitgeist - the spirit of the time - and did not shy away from necessary adaptations: it retreated, advanced and addressed the over-indebtedness and financial education of Brazilian citizens.

BRASILCON has always been a legitimate guardian, a true fortress in the creation and dissemination of consumerist materials in Brazil. It is a reference in the matter and has effective national and international projection. As such, it brought a contribution to the IGE, as Brazil mirrored itself in capitalist countries with consolidated and healthy markets

such as the United States, Germany and France. We must now extend this achievement to other countries that have not yet considered this important agenda.

We are at your disposal to cooperate with international agendas, especially within Mercosur, as minutes No. 02/2021, of the XCVI Technical Committee Meeting No. 7 "Consumer Defense", held on March 26, 2021, in its annex V, brings the draft CT Resolution N° 7 N° 02/21 on consumer protection against over-indebtedness".

All considerations made by the aforementioned committee highlight (art. 1º) the importance of deepening the harmonization of legislation, in the area of consumer protection, within the scope of MERCOSUR. However, we want to promote actions for incorporation, also, in the legislation of other countries on the treatment of over-indebtedness. We consider it a relevant issue and an emergency subject, considering that millions of people do not have the minimum resources necessary for their own sustenance.

Let us move forward together!

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