

**Sixth Intergovernmental Group of Experts on  
Consumer Law and Policy**

**Room XVII, Palais des Nations, Geneva**

**Translation of the New Chapter of the Brazilian Consumer Code on  
Prevention and Treatment of Consumer Over-Indebtedness**

**Contribution**

*Brazilian Institute of Consumer Law and Policy*

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# *Brazilian Institute of Consumer Law and Policy*

## *BRASILCON - Brazil*

### *TRANSLATION NEW CHAPTERS OF THE BRAZILIAN CONSUMER CODE ON PREVENTION AND TREATMENT OF CONSUMER OVER-INDEBTEDNESS*

#### **LAW 14.181, OF JULY 1, 2021<sup>1</sup>**

Amends [Law No. 8.078 of September 11, 1990](#) (Consumer Protection Code) and [Law No. 10.741 of October 1, 2003](#) (Statute of the Elderly) to improve the discipline of consumer credit and provide for the prevention and treatment of over-indebtedness.

THE PRESIDENT OF THE REPUBLIC

I hereby make known that the National Congress decrees and I sanction the following Law:

Art. 1 [Law n. 8.078, of September 11, 1990](#) (Consumer Defense Code), shall come into force with the following changes:

"Art. 4 .....

IX - fostering actions aimed at the financial and environmental education of consumers;

X - prevention and treatment of over-indebtedness as a means of avoiding the social exclusion of the consumer."

"Art. 5 .....

VI - the establishment of mechanisms for the prevention and extrajudicial and judicial treatment of over-indebtedness and the protection of consumers as individuals;

VII - establishment of centers of conciliation and mediation of conflicts arising from over-indebtedness."

"Art. 6 .....

XI - the guarantee of responsible credit practices, financial education and prevention and treatment of over-indebtedness situations, preserving the existential minimum ("mínimo existencial"), pursuant to regulation, through debt review and renegotiation, among other measures;

XII - the preservation of the existential minimum ("mínimo existencial"), pursuant to regulation, in the renegotiation of debts and the granting of credit;

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<sup>1</sup> First Translation of Lorenzo Nicoletti ,L.L.M. Candidate UFRGS-CDEA, revision Prof. Dr. Dr. h. c. Claudia Lima Marques, Full Professor at UFRGS-CDEA, Porto Alegre, Brazil, Board Member of IACL and Brasilcon. Published in *Revista de Direito do Consumidor*, ano 31, vol. 140 (mar./abr. 2022, p. 409-416. Original in Portuguese is accessible in [L14181 \(planalto.gov.br\)](#) .

XIII - information about the prices of products per unit of measurement, such as per kilo, per liter, per meter or another unit, as the case may be. " (NR)

"Art. 51. ....

XVII - condition or limit in any way access to the Judicial System

XVIII - establish grace periods in the event of default on monthly installments or prevent the full restoration of the consumer's rights and means of payment as from the clearance of the debts ('purga da mora') or agreement with creditors;

## CHAPTER VI-A

### PREVENTION AND TREATMENT OF OVER-INDEBTEDNESS'

'Art. 54-A. This chapter provides for the prevention of over-indebtedness of natural persons, responsible credit and financial education of consumers.

Paragraph 1 It is understood as over-indebtedness the manifest impossibility of the consumer, as a natural person, in good faith, to pay all his consumer debts, due and falling due, without compromising his/her existential minimum ("mínimo existencial"), under the terms of the regulations.

Paragraph 2 The debts referred to in § 1 of this article encompass any financial commitments assumed arising from consumer relations, including credit operations, installment purchases and services provided on an ongoing basis.

Paragraph 3 The provisions of this Chapter do not apply to consumers whose debts have been contracted by fraud or have arisen from contracts entered into maliciously with the purpose of not making payment or have arisen from the acquisition or contracting of high-value luxury products and services.

Art. 54-B. In the supply of credit and installment sales, in addition to the mandatory information provided in art. 52 of this Code and in the legislation applicable to the matter, the supplier or intermediary shall inform the consumer, previously and adequately, at the time of the offer, about:

I - the total effective cost and description of the elements that compose it;

II - the effective monthly interest rate, as well as the default interest rate and the total charges of any nature provided for late payment;

III - the amount of the installments and the term of validity of the offer, which must be of at least 2 (two) days;

IV - the name and address, including e-mail, of the supplier;

V - the consumer's right to early and gratuitous settlement of the debt, pursuant to Paragraph 2 of Article 52 of this Code and the regulations in force.

Paragraph 1 The information referred to in Article 52 of this Code and in the head of this article must be clearly summarized in the contract itself, in the invoice or in a separate instrument that is easily accessible to the consumer.

Paragraph 2 For the purposes of this Code, the total effective cost of a consumer credit transaction shall consist of an annual percentage rate and shall comprise all amounts charged to the consumer, without prejudice to the calculation standardized by the financial system regulatory authority.

Paragraph 3 Without prejudice to the provisions of Article 37 of this Code, the offer of credit to the consumer and the offer for installment sales, or the monthly invoice, as the case may be, must indicate, at least, the total effective cost, the financing agent and the total sum payable, with and without financing.

'Art. 54-C. In the advertising or non-advertising offer of credit to the consumer, it is forbidden, expressly or implicitly to:

I - (VETOED);

II - indicate that the credit operation may be concluded without consulting credit protection services or assessing the consumer's financial situation;

III - conceal or make it difficult to understand the burden and risks of contracting credit or sales on credit terms;

IV - harassment or pressure the consumer to contract the supply of a product, service or credit, especially if the consumer is elderly, illiterate, ill or in a state of aggravated vulnerability or if the case of offers involving prizes.

V - Condition the fulfillment of the consumer's claims or the beginning of negotiations on the waiver or withdrawal of lawsuits, to the payment of attorney's fees or judicial bonds ('depósitos judiciais').

Sole paragraph. (VETOED).'

Art. 54-D. When offering credit, prior to contracting, the supplier or intermediary shall, among other conducts:

I - adequately inform and clarify the consumer, taking into consideration his/her age, about the nature and type of credit offered, all costs incurred, pursuant to the provisions of Articles 52 and 54-B of this Code, and the generic and specific consequences of default;

II - assess, in a responsible manner, the consumer's credit conditions, through the analysis of information available in credit protection databases, pursuant to the provisions of this Code and the legislation on data protection;

III - inform the identity of the funding agent and deliver to the consumer, guarantor and other co-obligors a copy of the credit agreement.

Single Paragraph. Failure to comply with any of the duties provided for in the main Section of this Article and in Articles 52 and 54-C of this Code may result in a court order to reduce interest, charges or any additional charges to the main obligation and to extend the payment term provided for in the original contract, depending on the seriousness of the supplier's conduct and the consumer's financial means, without prejudice to other sanctions and compensation for losses and damages, both pecuniary and moral, to the consumer.

'Art. 54-E. (VETOED).

Art. 54-F. The main contract for the supply of products or services and the ancillary credit agreements that guarantee its financing will be considered related, linked or interdependent, when the credit supplier:

I - resorts to the services of the product or service supplier for the preparation or conclusion of the credit agreement

II - offers the credit at the place of the business activity of the supplier of the financed product or service or where the main contract is executed.

Paragraph 1. The exercise of the right of withdrawal of a contract in the events set forth in this Code, in the main contract or in the credit agreement, implies the full right termination of the related contract.

Paragraph 2 In the cases of items I and II of the head of this article, if there is non-performance of any of the obligations and duties of the supplier of the product or service, the consumer may request the termination of the unfulfilled contract against the supplier of the credit.

Paragraph 3. The right provided for in § 2 of this article shall also apply to the consumer:

I - against the holder of a post-dated cheque issued for the purchase of a product or service on credit;

II - against the administrator or issuer of a credit card or similar when the credit card or similar and the product or service are provided by the same supplier or by entities belonging to the same economic group.

Paragraph 4 The invalidity or ineffectiveness of the main contract will imply, by operation of law, that of the credit contract related thereto, pursuant to the head of this article, with the proviso that the supplier of the credit has the right to obtain from the supplier of the product or service the return of the amounts delivered, including with respect to taxes.

Art. 54-G. Without prejudice to the provisions in article 39 of this Code and in the legislation applicable to the matter, the supplier of products or services involving credit is prohibited, among other conducts:

I - make or proceed with the collection or debit on account of any amount that has been disputed by the consumer in a purchase made with a credit card or similar, until the controversy is properly resolved, provided that the consumer has notified the card administrator at least ten (10) days in advance of the due date of the invoice, The maintenance of the value in the next invoice is forbidden and the consumer is assured the right to deduct from the total invoice the disputed value and make the payment of the unchallenged part, and the issuer may launch as a credit in confidence the amount identical to the disputed transaction that has been charged, while the verification of the dispute is not closed;

II - refusing or failing to provide the consumer, guarantor and other co-obligors with a copy of the draft of the main consumer agreement or credit agreement, on paper or another durable medium, available and accessible, and, after conclusion, with a copy of the agreement;

III - prevent or hinder, in the event of fraudulent use of the credit card or similar, the consumer from requesting and obtaining, where applicable, the cancellation or immediate blocking of the payment, or the refund of amounts unduly received.

Paragraph 1. Without prejudice to the duty to inform and clarify the consumer and the delivery of the draft contract, in the case of a loan whose settlement is made by payroll deduction (waive credit), the formalization and delivery of the copy of the contract or of the contracting instrument must occur after the supplier of the credit obtains from the paying source the indication on the existence of a deductible margin.

Paragraph 2. In Standard Form Contracts, the supplier must provide the consumer, in advance, with the information referred to in Article 52 and the head of Article 54-B of this Code, in addition to any other information that may be determined in the legislation in force, and is obliged to provide the consumer with a copy of the contract, after its conclusion.

## CHAPTER V

### CONCILIATION IN OVER-INDEBTEDNESS.

Art. 104-A. At the request of the over-indebted consumer, the judge may initiate debt renegotiation proceedings, with a view to holding a conciliation hearing, presided over by the judge or by a conciliator accredited in court, with the presence of all creditors of the debts provided for in art. 54-A of this Code, in which the consumer will submit a proposal for a payment plan with a maximum term of 5 (five) years, preserving the existential minimum (“mínimo existencial”), under the terms of the regulations, and the guarantees and forms of payment originally agreed.

Paragraph 1. Debts arising from contracts entered into maliciously without the intention of making payment, as well as debts arising from secured credit agreements, real estate financing and rural credit are excluded from the debt renegotiation process, even if arising from consumer relations.

Paragraph 2. The unjustified absence of any creditor, or of his attorney with full and special powers to transact, from the conciliation hearing referred to in the main section of this article shall cause the suspension of the enforceability of the debt and the interruption of default charges, as well as the mandatory submission to the debt payment plan if the amount owed to the absent creditor is certain and known to the consumer. The payment to such creditor shall be stipulated to occur only after payment to the creditors made present at the conciliation hearing.

Paragraph 3. In case of conciliation, with any creditor, the court decision ratifying the agreement shall describe the plan for payment of the debt and shall be enforceable and have the force of *res judicata*.

Paragraph 4. The payment plan referred to in Paragraph 3 of this Article shall include

I - measures to extend payment terms and reduce debt charges or supplier's remuneration, among others aimed at facilitating debt payment;

II - reference to the suspension or termination of legal actions in progress;

III - the date from which the consumer's exclusion from databases and defaulters' registers will be provided;

IV - the conditioning of its effects to the abstention, by the consumer, of conducts that may worsen his over-indebtedness situation.

Paragraph 5. The consumer's request referred to in the head of this article will not result in a declaration of civil insolvency and may only be repeated after a period of 2 (two) years has

elapsed, as from the settlement of the obligations provided for in the approved payment plan, without prejudice to any renegotiation.

Art. 104-B. If there is no successful conciliation in relation to any creditors, the judge, at the request of the consumer, will initiate proceedings for over-indebtedness for the review and integration of contracts and renegotiation of remaining debts through a compulsory judicial plan and will proceed to summons all creditors whose claims have not integrated the agreement that may have been concluded.

Paragraph 1 The documents and information provided in a hearing shall be considered in the over-indebtedness proceedings, if applicable.

Paragraph 2. Within fifteen (15) days, the creditors who have been served shall attach documents and the reasons for their refusal to agree to the voluntary plan or to renegotiate.

Paragraph 3. The judge may appoint an administrator, provided that this does not burden the parties, who, within thirty (30) days, after fulfilling the steps that may be necessary, shall submit a payment plan that contemplates measures for temporizing or mitigating the charges.

Paragraph 4. - The compulsory judicial plan shall assure the creditors of at least the amount of the principal due, monetarily restated by official price indices, and shall provide for full settlement of the debt, after the consensual payment plan under Article 104-A of this Code has been settled, in a maximum of five (5) years, the first installment of which shall be due in a maximum term of one hundred and eighty (180) days, as from its judicial ratification, and the remaining balance shall be due in equal successive monthly installments.

Article 104-C. The public agencies that are part of the National Consumer Defense System are concurrently and optionally in charge of the conciliatory and preventive phase of the debt renegotiation process, pursuant to article 104-A of this Code, as applicable, with the possibility of the process being regulated by specific agreements entered into between the aforementioned agencies and the creditor institutions or their associations.

Paragraph 1. In the event of administrative conciliation to prevent over-indebtedness of consumers as individuals, public bodies may promote, in individual complaints, a global conciliation hearing with all creditors and, in all cases, facilitate the preparation of a payment plan, preserving the social minimum, under the terms of the regulations, under the supervision of these bodies, without prejudice to other applicable financial re-education activities.

Paragraph 2 The agreement executed before the public consumer protection agencies, in the event of over-indebtedness of the consumer as a natural person, shall include the date as of which the exclusion of the consumer from data banks and defaulters' registers shall be provided, as well as the conditioning of its effects to the abstention of conducts that worsen the consumer's situation of over-indebtedness, especially that of contracting new debts.

Art. 2º Art. [96 of Law nº 10.741, of October 1st 2003](#) (Statute of the Elderly), shall come into force with the addition of the following § 3º:

"Art. 96. ....

Paragraph 3 The refusal of credit motivated by over-indebtedness of the elderly does not constitute a crime. (NR)

Article 3 -The validity of the credit legal acts and transactions constituted before this law comes into effect are subject to the provisions of the previous law, but the effects produced after this law comes into force are subject to its provisions.

Art. 4(VETOED).

Art. 5 This Law shall enter into force on the date of its publication.

Brasília, July 1, 2021; 200th of Independence and 133rd of the Republic.

JAIR MESSIAS BOLSONARO