A SANTOS
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"Legal Opinion"

To: SEARA INDÚSTRIA E COMÉRCIO DE PRODUTOS AGROPECUÁRIOS LTDA and interested parties.

Subject: Evaluate the legal security of GRUPO SEARA´S Reorganization Process (Judicial Recovery) for the group, its clients and creditors.

I. Preliminary:

The legislator intended with the idealization of Law 11.101/ 2005 - Reorganization and Bankruptcy Law – to provide the possibility of preserving the company, business activity, employments and marketing relations, culminating in the valorization of the social function of the legal entity.

It is not a coincidence that the article 47 of such law states that "*Reorganization aims to enable the overcome of the debtor´s economic and financial crisis in order to allow the maintenance of the source of production, the employment of workers and the creditor´s interests, therefore promoting the preservation of the company, its social function and the stimulus to economic activity*".

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This because the company represents the main organizational structure that maintains the society´s manner of life in the market economy. Companies generate employments, goods and services, pay taxes that sustain the state, develop technology and promote, in every sense, the social good.

The Minister of the Superior Court of Justice, Nancy Andrighi[1], extols the economic and social importance of the company as well as of the principle aimed in this study, saying:

"Therefore, business organization ceases to be seen as a mere creature, made by the image and likeness of the entrepreneur, to be seen as a multiplex complex of interests. The business activity can not deviate from its social function, that is, it should not be exercised by the entrepreneur in his exclusive interest. Therefore, acts harmful to the interests of creditors, consumers and society are sanctioned. This because, as far as it can favor the plurality of agents which relate to it, business organization becomes a good in itself and must be preserved. (ANDRIGHI, 2009, p.491)."

[1] ANDRIGHI, Fátima Nancy. From Bankruptcy. In: LIMA, Osmar Brina Corrêa; LIMA, Sérgio Mourão Corrêa (Cood.). Comments on the new bankruptcy and reorganization law: Law 11.101, of February 9, 2005. 1st ed. Rio de Janeiro: Forense, 2009. p. 491.
ANDRIGHI, Fátima Nancy. Da Falência. In: LIMA, Osmar Brina Corrêa; LIMA, Sérgio Mourão Corrêa (Cood.). Comentários à nova lei de falência e recuperação de empresas: Lei 11.101, de 09 de fevereiro de 2005. 1ª ed. Rio de Janeiro: Forense, 2009. p. 491.

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This analysis is imperative to the present study, since this intention of the legislator is disciplined along the spelling of Law nº. 11.101/2005, specially in articles 6, 47, 49, 76, discussed below.

II. Legal Security of Reorganization to the Company and third parties involved:

Once the preliminary part is over, the legal issues that provide continuity of business activity and security to the community are analyzed.

Regarding the case under analysis, the company SEARA had its request for Reorganization processing - under nº. 0000745-65.2017.8.16.0162 - granted on 05/05/2017, according to the decision rendered by the Honorable Judge of Sertanópolis´s Civil Court, in which it was determined the suspension of all existing actions and executions against the company, under the terms of article 6 of Law nº. 11.101/2005.

With the determination of the reorganization processing, ordinarily, the following effects occur on the creditors of the company in Reorganization: (a) suspension of all actions or executions against the debtor for a period of 180 days; (b) suspension of the prescription´s course of the credits claims for a period of 180 days, and (c) coverage of all creditors to the Reorganization procedure, with the attribution to such creditors of

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the decision-making power on whether or not to approve the Reorganization Plan.

Also, by intelligence of article 76[2] of Law nº. 11.101/2005, from this act, the linkage of the Reorganization´s Judgment - called "Universal Judgment" - on the acts that involve the debtor´s assets occurs.

For that matter, the Superior Court of Justice has decided:

CC 144.740-SP-, Rel. Min. Marco Buzzi, j. On 15.9.2016 - Second Section - states that the understanding is pacified in the sense that the Reorganization´s judgment is responsable to promote execution acts that reach the reorganization assets. - See also CC 146.036 - REsp 1.630.702-RJ, 6.2.2017 - Also to verify whether or not fiduciary goods are indispensable to the continuity of the business activity, CC 146.631-MG, Rel. Nancy Andrighi, j. 14.12.16; 121.207 / BA, Villas Bôas Cueva, j. On 8.3.2017 - Also for fiscal execution, AgInt at AREsp 732.140 / SP, Rel. Ricardo Villas Bôas Cueva, j. 6.12.2016 - for tax execution, confirming that tax enforcement proceedings can not be continued, AgInt in REsp 1,607,090 / PR, Rel. Sérgio Kukina, j. On 12.16.2016 - also for credit in favor of consumers: REsp 1,598,130 / RJ, Villas Bôas Cueva, j. 7.3.2017 - in contrary, for a fiduciary assignment: AgIn in AREsp 957.628 / RS, Villas Bôas Cueva, j. 7.3.2017; AgInt no REsp 1.475.258 / MS, Paulo de Tarso Sanseverino, j. 7.3.2017.

[2] Article 76. The bankruptcy court is indivisible and competent to hear all actions on assets, interests and businesses of the bankrupt, except for labor and tax actions and those not regulated in this Law in which the bankrupt figure as active author or litigation.

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At this point, it is worth mentioning the legislador´s concern - and also of the Magistrate, as expected - to guarantee the company´s "peace" for a minimum period of 180 (one hundred and eighty) days, pursuant to article 6 of the Law nº. 11.101/2005, in consequence of the suspension of execution acts promoted by the most impatiante creditors.

There is a "minimum period of 180 days", since the jurisprudence correctly corrected the misconception provided in the original wording of the Law in question, which still provides for the impossibility of extending the aforementioned term.

In this sense, the Superior Court of Justice decided in a ruling rendered on 03/28/2017, in which stands out the vote of the Minister Paulo de Tarso Sanseverino, followed unanimously:

APPEAL Nº. 900.041 - RJ (2016 / 0092399-8) RAPPORTEUR: MINISTER PAULO DE TARSO SANSEVERINO APPELLANT: BANCO GUANABARA S / A LAWYERS: HÉLIO JOSÉ CAVALCANTI BARROS - RJ082524 LUCIENE DIAS DA SILVA - RJ099173 THIAGO VIANA CESAR RIBEIRO - RJ189802 AGRAVADO : FACTORY BOECHAT LTDA ATTORNEY: RODRIGO JOSÉ DA ROCHA JORGE AND OTHERS (S) - RJ093354 APPEAL IN JUDICIAL RECOVERY. ART. 6º, § 4º, OF THE LAW 11.101 / 2005. SUSPENSION OF THE ACTIONS AND EXECUTIONS AGAINST THE DEBTOR. 180 DAYS PERIOD. EXTENSION. POSSIBILITY. SUBSTANTIATING FACTOR-PROBATORY ELEMENTS OF THE CAUSE. REVIEW. IMPOSSIBILITY. SUMMARY 07/STJ. APPEAL UNPROVIDED. It does not deserve shelter the appeal claim. The local court settled the controversy in question with the following approach: "The rule of paragraph 4, however, must be interpreted with evaluation since it aims to prevent the debtor from

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*exceeding the deadline for presentation and approval of the reorganization plan, further damaging its creditors. On the other hand**, the extension of the term of the suspension is a measure accepted by the Court, which has been making the deadline more flexible, under penalty of frustrating the very scope of the judicial reorganization**.The court with jurisdiction to decide on the extension or not in any case is the reorganization jurisction. The magistrate did not glimpse, in the case, any act of negligence on the part of the company and, in the light of the need, granted the extension of the period of suspension. In addition, admit a hypothesis to the contrary , that is, the non-extension of the term, would cause the impossibility of recovery of the company, **hence the damages caused by the individual executions would put at risk the fulfillment of the obligations assumed and, therefore, the forcible way of bankruptcy**. [...] As the honorable magistrate of the feat pointed out, "Not only is this possible, But it is also advisable to extend the deadline of 180 days to the company that diligently obeyed the commands imposed by the legislation and that is not, directly or indirectly, contributing to the delay in the approval of the plan that presented. Therefore, GRANTED the extension of the suspension period provided for in article 6, paragraph 4 of the CPC, for another 180 days. (...) In view of the foregoing, I dismiss the appeal on special appeal. Notify.. Brasília (DF), March 28, 2017. Minister PAULO DE TARSO SANSEVERINO Rapporteur.*

In this context, a brief comment should be made to the creditor holding the position of fiduciary owner - either by contract with security of fiduciary alienation or fiduciary assignment -, which, by literal reading of the Law, is not subject to the effects of judicial reorganization (Article 49, paragraph 3 of Law 11.101 / 05).

It happens that the Superior Court of Justice recently pacified the understanding that, in certain cases, there is a peculiarity that recommends excepting the rule, determining the prohibition of the sale or withdrawal of assets considered essential to the activity of

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the company under judicial reorganization, even after the stay period, and also in relation to the goods object of fiduciary property.

The understanding of the Superior Court establishes that, if on the one hand the contract is not subject to the effects of judicial reorganization, on the other, the sale or withdrawal of the debtor's essencial goods to the development of its activities from his establishment can not be allowed.

In the face of the case-law development on the Reorganization Law, the legal security provided to the company in Judicial Reorganization remains crystal clear in order to (i) avoid execution acts for an extendable period of 180 days, (ii) prevent the withdrawal of essential goods for business activity, even if inserted in bank contracts as fiduciary guarantee, and (iii) define the jurisdiction of the Universal Judgment for matters pertaining to the assets of the company.

III. Possibility of using the properties of the company for the storage of its clients´s goods:

Having clarified the points regarding the executions and the jurisdiction of the Universal Judgment, it is necessary to mention the decision of the Magistrate who is responsible for the Judicial Reorganization of SEARA.

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In appeal filed by the company, the judge rendered the following decision on 05/11/2017:

"2.1. I grant the appeal to clarify, even in view of the insurgencies in mov. 132 and 141 which, according to the legal provision in article 6 of Law 11.101 / 2005 and according to the "point 6" of the appealed decision, ALL actions and executions against the companys in reorganization shall be suspended, except for those expressly provided for in the legislation.
This suspension, frieze, implies the immediate stoppage of any acts to be carried out in such processes, impeding their progress."

Also, regarding eventual attachment orders already deffered, but still unfulfilled, it was concerned to safeguard the rights of the company, under the aegis of the Reorganization Law:

"I further clarify that in the decision of mov. 96.1, by rejecting the request to restore the assets already seized, was in refference of attachment orders alread granted and fulfilled, and, in the hypothesis of attachment orders granted and not yet complied with, even though the compliance has already been granted, it shall be suspended immediately as a consequence of the suspension of the main proceedings - execution / action."

Undoubtedly, therefore, that the assets of the company - in possession or ownership - are protected by the principles of legislation and jurisprudence and supported by the correct application of the Law by the Universal Judgment of Sertanópolis/PR.

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If, hypothetically, the 180-day suspension period or even the extended suspension period for another 180 days has elapsed, it is appropriate to deconstruct other possible and foreseeable questions, for example:

Can executions continue after the period - or second period - of suspension (stay period) granted by the judiciary?

It is conveniente, in this point, to develop a logical reasoning regarding the timing of this or any Judicial Reorganization, for the practical know-how and not simply legal.

Well, it is known that not infrequently the procedural rite falls short of expectations in the Reorganization Law, which, when elaborated, counted on the optimism of the Legislator, who relied on enough celerity to have a decision regarding the Reorganization Plan presented - the concession of Judicial Reorganization or the decree of the breakdown of the company (converting into bankruptcy) - within the aforementioned deadlines.

In practice, as a rule, the deadlines granted are ineffective for the purpose of defining the company status, which in this period is eminently working to elaborate the best and adequate Judicial Reorganization Plan and in honest negotiation with the creditors.

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In this context, it does not seem fair that the claims´s holders under discussion, in a case pending of the General Creditors´s Meeting, want to execute them, sometimes providing essential assets for the company´s reorganization, whitch is protected by the Reorganization Law, even if these claims are labor-related payments.

In that matter is the current position of the Superior Court of Justice:

APPEAL No. 140,553 - SP (2015 / 0118358-7) RAPPORTEUR: MINISTER RAUL ARAÚJO APELLANT: SUSTENTARE SERVIÇOS AMBIENTAIS S/A - IN JUDICIAL REORGANIZATION ATTORNEY: ROBERTO TRIGUEIRO FONTES AND ANOTHER (S) APPEALED: JUDGMENT OF THE RIGHT OF THE 1A VALE OF SÃO PAULO, BRAZIL BANKRUPTCY AND RECOVERY OF THE CENTRAL FORUM OF SÃO PAULO - SP. SUBMITTED: JUDGMENT OF THE LAW OF THE 1A VARA CIVEL, FAMILY AND TRINDADE SUCCESSIONS - GO INTERES.: LUCIA PEREIRA DA SILVA. As a rule ***, once the processing is approved or, all the more reason, the judicial reorganization plan is approved, it is not possible to continue the individual executions automatically, even after the 180-day deadline set forth in art. 6, paragraph 4, of Law 11,101/2005****. 4. Conflict granted to declare the jurisdiction of the Court of Law of the Bankruptcy and Judicial Reorganization Court of the Federal District. "(CC 112.799 / DF, Rel. Minister LUIS FELIPE SOLOMÃO, SECOND SECTION, adjudicated on 03/14/2011, DJe 22 / 03/2011) "POSITIVE CONFLICT OF COMPETENCE. JUDICIAL REORGANIZATION. UNIVERSAL JUDGMENT. LABOR EXECUTIONS. PROSEGUIMENTO. IMPOSSIBILITY. KNOWLEDGE ACTIONS PROPOSED BEFORE LABOR JUSTICE. PURSUIT TO THE CREDIT CLEARANCE. 1.* ***Universality must prevail in judicial reorganization, under penalty of frustration of the plan approved by the creditors' assembly, even if the credit is labor-related****. 2. "With the enactment of Law 11.101/05, respecting the specificities of bankruptcy and judicial reorganization, the respective court shall be*

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responsable to proceed with executory actions, such as the alienation of assets and the payment of creditors, involving credits established in other judicial bodies, including labor courts, even though there has been a constriction of the debtor's assets "(CC 90.160 / RJ, DJ of 06.05.2009). Post it. Brasília, June 02, 2015. MINISTER RAUL ARAÚJO Rapporteur

In other words, by the contractual nature of Judicial Reorganization, it is inevitable to conclude that the decision of the creditors' assembly is sovereign, since it has uncontrollable power and authority, and in it operates the novation of the subject claims.

The presentation, filed by the debtor, of the Reorganization Plan, as well as its approval by the creditors, whether by the lack of opposition or by the votes in the Creditors' Meeting (articles 56 and 57 of the Reorganization Law), constitute acts of manifestation of will.

When regulating the Judicial Reorganization, in effect, the Law submits to the will of the collectivity directly interested in the realization of the credit the power to express an opinion and authorize the procedures of economic rebranding of the company in difficulties, arriving at a consensus solution.

In addition, if there is a Recorganization concession, there is a novation of the claims, which become part of and subject to the payment conditions ordered in the Plan, making unavailable for creditors to seek other executory actions but through the Universal Judgment.

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IV. Conclusion:

In view of the considerations above, as well as the consolidated understanding of the Superior Court of Justice on the issues addressed, it is clarified that: **(i)** Reorganization's Law main purpose is to preserve the company's social function; **(ii)** in the Reorganization process there is legal security for the company, its customers and creditors, due to its contractual nature; **(iii)** there are no legal subsidies or jurisprudential interpretations that authorize the continuation of executions and attachment of the company´s assets until the definition of the General Meeting of Creditors; and that, **(iv)** the definition in General Meeting of Creditors operates the novation of claims subject to Judicial Reorganization, by the terms agreed in the Plan.

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