

Chapter 11

Business Reorganizations

For
Business Leaders,
Accountants and
Lawyers

Practical & Technical Advice

Glossary of Key Terms

Full Text of Most Commonly Used Code Sections

Myles H. Alderman, Jr., Esq.

Chapter 11 Business Reorganizations Alderman

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Chapter 11 Business Reorganizations Alderman:

Chapter 11 Business Reorganizations Myles H. Alderman, Myles H. Alderman, Jr., 2006 A Great Reference Source For Business Leaders and Their Professionals Each year billions of dollars of business credit and contracts are restructured under Chapter 11 of the United States Bankruptcy Code In the process substantial fortunes are reallocated Debtors in Chapter 11 reorganizations range from some of the largest business entities in the world to small local businesses When these companies file for protection from creditors under Chapter 11 new problems and opportunities are created Mr Alderman draws upon over twenty years of experience counseling clients to explain the key legal theories and offer practical and tactical advice to business leaders stakeholders and their advisors This book should be a part of the libraries of management practitioners and accountants It is comprehensive The Halyard Restructuring Group LLC This well organized and comprehensive book will be a great asset for anyone on either side of a Business Bankruptcy William Wright President Publisher Park Ave Publishers Inc This book is a great reference source with a wealth of insightful information No accounting firm s library will be complete without a copy James E Schultz CPA Sheftoff Reuber Co

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dico e cont bil que permeia a crise na atividade empresarial sob o enfoque da an lise econ mica do direito AED e da Lei de Recupera o de Empresas e Fal ncia LFRE Lei n 11 101 05 O foco dessa an lise est concentrado nas falhas de mercado que agem no plano de recupera o judicial especialmente no que diz respeito ao n vel de assimetria informacional e disclosure proposto pela LFRE Por essa raz o o approach da AED que deve ser adotado pela LFRE no processo de recupera o judicial aquela proposta pela Nova Economia Institucional NEI que reconhece e identifica a exist ncia de falhas no mercado especialmente os altos custos de transa o e demanda novos arranjos institucionais para sane las Nesse contexto do novo institucionalismo a LFRE assumida como integrante do ambiente institucional do ordenamento jur dico que prov os incentivos aos agentes econ micos para superar o estado de crise E como consequ ncia conclui se que a efici ncia econ mica pr pria de um processo de recupera o judicial se estabelece a partir do modelo Kaldor Hicks Isso ocorre porque na recupera o judicial estabelece se um jogo de barganhas que se desenvolve em rodadas sequenciais inicialmente num ambiente competitivo pelos ativos da empresa em crise asset grabbing resultando comportamentos pouco cooperativos dos credores com informa es assim tricas onde o surplus resultante da recupera o nem sempre claramente visualizado pelos participantes Mas ser nesse ambiente em meio ao caos que o instituto da recupera o judicial imp e sua ordem adotando como modelo de efici ncia aquele eminentemente compensat rio e distributivo de valores modelo Kaldor Hicks criando mecanismos para fomentar um comportamento cooperativo reduzir a assimetria informacional e estabelecer um foro nico de delibera es Nesse arcabou o te rico e normativo descortina se a compreens o do conceito de demonstra o da viabilidade econ mica exigido pela LFRE afastando o do costumeiro fluxo de caixa projetado que frequentemente integram os planos de recupera o Essa demonstra o cont bil se isoladamente considerada insuficiente para demonstrar a viabilidade econ mica da empresa devedora Por isso identificamos na ci ncia cont bil notadamente na contabilidade gerencial os meios adequados para identificar mensurar e evidenciar a estrat gia planejada pelo devedor sendo essa a contabilidade que verdadeiramente deve ser adotada para demonstrar a consist ncia do plano de recupera o judicial e sua viabilidade Diante disso a partir da orienta o jurisprudencial norte americana que interpretou o conte do informacional m nimo e adequado a ser apresentado pelo devedor bem como pela no o do best interest test of creditors presente no direito concursal estrangeiro acreditamos que a contabilidade gerencial deve ser aplicada tanto durante o processo de recupera o quanto na fase de cumprimento do plano de recupera o E a partir dessas constata es sugerimos a elabora o do planejamento estrat gico na forma de or amento empresarial completo e a elabora o do teste de impairment recuperacional que dever ser disponibilizado pelo devedor at a realiza o da Assembleia Geral de Credores sendo um elemento essencial para a tomada de decis o informada pelos credores Nada obstante sendo aprovado o plano a sugest o que sejam estabelecidos no pr prio plano covenants falimentares e como forma de acompanhar seu cumprimento recomendamos a elabora o da Demonstr a o de Valor Adicionado DVA um importante componente do balan o social das empresas

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