



CONSUMER CREDIT AND OVERINDEBTEDNESS: THE BRAZILIAN EXPERIENCE

Crédito ao consumidor e superendividamento: a experiência brasileira
Revista de Direito do Consumidor | vol. 130/2020 | p. 65 - 77 | Jul - Ago / 2020
DTR\2020\8417

Bruno Miragem

Professor of the Law School at the Federal University of Rio Grande do Sul (Brazil).

Attorney-at-Law. bmiragem@uol.com.br

Área do Direito: Consumidor

Resumo: Este artigo é resultado da palestra proferida no Simpósio Jurídico Brasileiro de 2019 na Harvard Law School e tem como objetivo analisar o crédito ao consumidor e o endividamento do consumidor, de modo a descrever a experiência e os desafios brasileiros sobre o tema. Devido ao histórico econômico envolvendo a expansão do crédito no Brasil, o texto foi dividido em duas partes principais: (i) o esboço da experiência brasileira na promoção do crédito (e seu impacto no desenvolvimento econômico), seguido pela (ii) experiência do superendividamento do consumidor como um fenômeno recente, no qual os esforços dos atores de proteção ao consumidor para oferecer uma solução justa às famílias brasileiras são finalmente discutidos, juntamente com a situação atual do projeto de lei sobre o superendividamento no Congresso Nacional.

Palavras-chave: Superendividamento – Brasil – Proteção do consumidor

Abstract: This paper originates from the lecture given at the 2019 Brazilian Legal Symposium at Harvard Law School and is aimed at analyzing consumer credit and consumer indebtedness, so as to describe the Brazilian experience and challenges on the topic. Due to the historical economic background involving the expansion of credit in Brazil the text has been divided in two main parts, (i) the outline of the Brazilian experience in credit promotion (and its impact on economic development), followed by (ii) the consumer overindebtedness experience as a recent phenomenon, in which the consumer protection actors effort to grant a fair solution to the Brazilian families is finally discussed, along with current situation of the proposed bill on overindebtedness before the national congress.

Keywords: Overindebtedness – Brazil – Consumer protection

Good afternoon¹. I thank you for the invitation to join this Brazil Legal Symposium at Harvard Law School, especially to discuss consumer credit and consumer indebtedness, and to describe the Brazilian experience and challenges on the topic. It is also a great pleasure to share this panel with Professor Shawn Cole, whom I certainly have a lot to learn from.

I will break down my overview into two parts. The first one will outline the Brazilian experience in promoting credit at its different stages and its impact on economic development. The second one will locate the consumer overindebtedness experience as a recent phenomenon in Brazilian Society, the current stage of the debates concerning the measures envisioned to prevent it and the framework of the legal relations it encompasses.

Sumário:

I – THE MANY STAGES TO PROMOTE CONSUMER CREDIT IN BRAZIL - II –
OVERINDEBTEDNESS OF CONSUMERS AND THE SOLUTIONS BRAZILIAN CONSUMER
LAW PROPOSES - REFERENCES

I – THE MANY STAGES TO PROMOTE CONSUMER CREDIT IN BRAZIL



In Brazil, not unlike other countries, the development of a financial system that allowed the offer of consumer credit was a key element to promote national development.

Consumer credit in Brazil is a relatively recent fact, having begun to develop around the second half of the twentieth century. In the nineteenth century, the first decades of independent Brazil saw slavery as the main source of labor in an economy founded mostly on large farmlands, originally sugar cane, then coffee². Thus, lacking a sizeable class of paid workers, and with most of the population living outside of urban centers, consumption in city markets was accessible to a very limited number of people.

The arrival of European immigrants of many origins (though mostly German and Italian) still in the nineteenth century started some commerce – and therefore consumption – in the cities they created, or where they settled, though not enough to cause a significant change in the consumption profile of the population. Upon the abolition of slavery in 1888, the former slaves did not immediately join the formal labor market. On the contrary, many immediately became unemployed or took on underemployment, which naturally hindered the formation of a relevant consumer market, or even the framing, at that early moment, of a consumer credit system in Brazil³.

Even the structuring of the banking system⁴ in the country evolves slowly throughout the nineteenth century and the beginning of the twentieth century. It was highly concentrated on public banks (mostly Banco do Brasil) and some regional banks, all of which were almost exclusively dedicated to financing the earliest business activity or the owners of large farmlands. In that context, the first consumer credit experiences are punctual, by means of store owners who granted direct credit based on “personal trust” (or “fiado,” to use the Brazilian word for it), and manually recorded debts that accrued and were paid regularly – mostly forming the common practice of monthly payment of the debts in trading posts in the countryside as well as in urban centers. However, it lacked most formalities, and it was available only to repeat customers who were already known to the traders who granted credit. Scholars call them “chains of cordiality” between these traders and their customers, in which the concession of credit was a “personal favor,” and the settlement of the debt was more a moral obligation than a legal liability.

Only starting in the 1950s do we see the outline of a modern consumer market in Brazil, mostly as a result of a fast urbanization process and the resulting increase in paid labor in urban centers, which immediately increased social mobility and thus the need for products and services directly from the market. This is also the period when the first credit cards come into existence, becoming a new form of payment for local commerce purchases. However, the lack of reliable information about the payment history and general profile of potential credit takers inhibited the concession of consumer credit.

It is only towards the end of the 1950s, given a new direction of the economic policies towards stimulating the expansion of Brazilian industry in order to produce durable consumer goods, that the circulation of merchandise based only on the current income of the average Brazilian became insufficient. That called for the creation of consumer financing instruments to encourage the consumption of these new goods being manufactured nationally.

Then, in 1964, an institutional framework for the National Financial System is defined as part of the guidance of a government economic policy, and it organizes banking activity with the “Bank Reform Act” (Act 4595 of 31 Dec 1964)⁵, the capital market with a “Capital Market Act” (Act 4728 of 14 Jul 1965)⁶, and the private insurance system with an “Insurance Act” (Decree-Act 73 of 21 Nov 1966)⁷. The organization of a strong popular housing financing system⁸ around that same time should be noted as well.

The economic development that followed in the 1960s and 1970s boosts consumption and sets the ground for banking credit for that purpose, with increased access of the population to banking services. Credit intermediation as a professional activity, on its



turn, is reserved for financing institutions by law (article 17 of Act 4595/64)⁹, which is why bank participation in the various consumer credit arrangements becomes mandatory.

In the 1980s, the significant increase in inflation rates makes consumer credit a necessity for families, because of the imbalance between salary income and their needs of goods and services¹⁰. However, the disorganization of the economy, including the enacting of a number of monetary stabilization plans, constrains long-term credit-taking due to the uncertainties concerning the ability to maintain employment and income to honor debt payments.

Only in the mid-1990s, with "Plano Real," the first successful economic stabilization plan¹¹, and the attainment of monetary and price stability – thus preserving the purchasing power of currency – can one observe a consistent expansion of consumer credit in Brazil, mostly given the growing popularization of banking services throughout the country.

On their turn, banking institutions reorganized their activities and extended consumer credit operations (known as "personal credit") aimed at natural persons. At the turn of the century, 40% of the total credit issued in the market was targeted to "personal credit," or consumers as natural persons¹². Likewise, new alternatives of popular credit were created, such as consigned credit¹³ (charged directly against payroll), which is simpler and granted to retirees at lower rates, as well as greater ease to obtain credit cards and debit cards with credit functionalities, making up what has undoubtedly become the greatest movement of banking inclusion in the history of the country.

In the same manner, a broader internal market, resulting from consumer credit, also contributed to the increase of the average income countrywide, and to greater social mobility among the lower income population, the expansion of the so-called middle-income class, and the increased consumption of durable goods (such as real estate for own homes) as well as vehicles, computers, smartphones and others¹⁴.

In that sense, the explanations to the increase in the concession of consumer credit to natural persons and its impact are divided into those that assess it from its identification as an instrument to acquire goods that only becomes possible to popular classes through financing (strengthening "consumerism")¹⁵, and those that perceive the offering of continued banking credit as a means to round off the standard income of families, which is not enough to face all their necessities.

Such expansion of credit, however, gives rise to an increase in consumer debt and inability to pay, with exponential growth of debts by added interest and default fines, thus causing the phenomenon of consumer overindebtedness¹⁶. Having identified this circumstance, we can move on to examine what has been proposed in Law – mostly Consumer Law – to protect the best interest of consumers and to prevent future situations.

II – OVERINDEBTEDNESS OF CONSUMERS AND THE SOLUTIONS BRAZILIAN CONSUMER LAW PROPOSES

Traditionally, the inability of a natural person to pay debt is what leads to what Brazilian Law calls civil insolvency. However, although set forth in Civil Proceedings Law, the procedure to declare the civil insolvency of a debtor never attracted much interest from legal scholars¹⁷, nor was it used systematically by creditors in order to constrain debtors to pay. It deserves some attention as far as credit fraud is defined, within the scope of Contract Law, when the debtor, having the intention to default payment, transfers personal assets to a third party and thus becomes insolvent. In such cases, the contract that allowed for that may be ruled null and void, and the creditors may reach the assets of the debtor in order to comply with the liabilities.

Other than that, civil insolvency has never been a favorite. There are many reasons for



that. Firstly, the time and cost of litigation to have the debtor in default declared insolvent do not pay off the creditor's efforts. After all, such declaration will serve only as admonition to the debtor but given the lack of assets to pay off the debt it will not be a useful advantage for the plaintiffs. In fact, a sign of such disinterest is that the recent passing of a new Civil Proceedings Code, in 2015, did not address the subject, so that the rules of the previous Code are still in force until a new act is passed with the purpose of ruling this point specifically.

Secondly, the absence of a general procedure to collect debts from a natural person – unlike the bankruptcy procedure that applies to businesses – limits insolvency to cases of a single creditor, in which the creditors suing the debtor cannot identify assets enough to cover the debt. The concourse of creditors for the assets of the insolvent debtor, on its turn, would assemble only those who did not hold a legal preference towards their title deeds that might give them priority. In such case, often the cost to file the proceedings and collect the debt would not compensate the effort, since the preferred credits would not leave out other assets enough.

A third practical reason also plays against the use of civil insolvency. It is the obvious fact that, unlike companies that undergo bankruptcy proceedings in Brazil, the natural person in debt and declared insolvent cannot be "extinct." In other words, he or she will still live and need to survive, which will require a bare minimum set of assets. The statutory solution grants creditors the administration of the assets of the natural person in debt, which disregards survival needs at a bare minimum and therefore has never been applied by any courts in the manner set forth by the law.

Likewise, if the bankruptcy of a business highlights the inability of management to practice such risky activity to the detriment of society – which justifies its eventual extinction, or even prior to that the adoption of measures that allow for the recovery of the business – on the other hand it is doubtful that punishing a natural person as gravely as a civil insolvency might allow – which includes the restriction of engagements that might compromise the insolvent's assets for up to five years – would be appropriate to the current state of our consumer society, in which temporary financial difficulties of varied intensity are common throughout one's life.

That sets the ground for propositions to regulate consumer overindebtedness, especially from the study of other legal systems – including that of the United States – with attention to the prevention of such situations as well as to the adoption of procedures that allow for the consumer to reenter the consumption market, thus balancing the instruments of debt collection and debtor asset constraint with the need to preserve living dignity while responding to the debts.

The main initiative towards that, stemming from studies at several academic institutions and originally at the Federal University at Rio Grande do Sul¹⁸, will be the proposition of a bill to amend the Consumer Defense Code with two purposes: a) to reinforce the duties of information, clarification and advice prior to entering a credit contract, so as to make the consequences of indebtedness clear to the consumer; b) in the case of previous situations of indebtedness, and upon identification of consumer's inability to pay all creditors, set forth a negotiation agenda with the participation of all creditors, thus leading to the composition of a sort of concourse of creditors that stops debt growth and offers time for debt payment.

This bill is under analysis in the Brazilian Congress¹⁹. It has been approved by the Senate and it now waits for deliberation in the House of Representatives.

The bill defines overindebtedness as the "clear impossibility of the natural person debtor in good faith to pay the entire amount of his or her consumer due debts, whether present or future, without compromising his or her bare minimum livelihood, in the terms of this regulation."²⁰ The concept comprises any financial commitment the debtor has taken over, including credit operations, long term purchases and recurrent services.



With regards to the first goal, which is to reinforce the right to information²¹ and clarification of the credit consumer, the bill defines the creation of a norm into the Consumer Defense Code that forbids the indication, in credit advertising, that it is free credit, as well as other expressions that may mislead the consumer. Likewise, it forbids ads from stating that the contract will be entered without a consultation to consumer protection services, to avoid encouraging consumers already in debt to contract them.

The enforcement of these obligations is especially important when considering that, according to 2018 survey data, three out of ten Brazilians between 15 and 64 years of age, i.e. 29% (twenty-nine percent) of the population, or 38 million people, are considered illiterate. In that group, 8% cannot read or write, and the other 21% are not able to understand a written text (functionally illiterate)²².

With regards to the duties of prior information, the bill states that when purchasing products through financing the total cost of the credit operation ought to be informed with the interest and interest rates that apply, at least, as well as the price of the product with and without financing.

Before entering a credit agreement, the creditor will have to inform the consumer, according to the proposed bill, about the granted credit and its costs as well as the consequences of default, and in doing so will have to take into consideration the consumer's age, health state, education and social condition. Also, it sets forth an obligation for the creditor to assess the consumer's ability to pay, by requiring documents and information needed to do that. Finally, it defines a duty to disclose to the consumer who the credit supplier is, and to hand over a copy of the contract with all relevant information.

The bill also sets forth restrictions to the conduct of certain suppliers, such as credit card operators, prohibiting debts that have been disputed to be recorded and collected as long as the consumer dispute has not been appropriately addressed²³. Likewise, the following will be infractions to the rights of consumers: failing to hand over a copy of the contract to the credit consumer²⁴; obstructing the dispute of a payment due to fraud²⁵; harassing a consumer in a special state of vulnerability with the purpose of entering a contract²⁶; and listing the consumer in credit restriction databases when the debt has been disputed in court.

It also sets forth a top limit for loans consigned against payroll as 30% of the consumer's monthly net income.²⁷ Failure to observe this limit will allow the extension of the consumer's payment terms without an increase in costs or debt-related interest²⁸.

However, the most substantial innovation of the bill concerns the creation of a process to renegotiate debts with the intervention of a judge, through which the overindebted consumer will be able to present a payment plan to meet debts within a period of five years. This payment plan will be submitted to the creditors. This payment plan ought to include, besides the conditions to service the debt, the extension of terms of payment and the reduction of debt costs for the consumer, as well as the consumer's commitment not to incur new debts that worsen his or her situation²⁹.

Some of the criticism to the renegotiation procedure as proposed in the bill is that it does not encompass all debts of the consumer, with the explicit exclusion of spousal, child and parental support as well as tax debts, and those purposefully entered into with the intention of not being paid.

Another common criticism is the moral risk affecting the appropriate fulfilling of contracts that this process of renegotiation might cause. From that standpoint, the answer to critics is that a minimum time lapse is set forth before a consumer can propose a different global renegotiation process. The bill, on that point, defines that the consumer can only propose a new renegotiation of debts two years after the liquidation of all debts as detailed in the payment plan of the previous process³⁰.



Another topic of debate concerns adherence to the payment plan approved by the judge. An attempted agreement is assumed to exist from the consumer's proposal to all creditors. However, if such agreement is not reached, a payment plan can be imposed by court order, if it ensures that creditors receive at least the principal of debt, inflation-adjusted. In that case, the maximum term for repayment will be five years, and the first installment will be due in six months after the court adjudicates the payment plan.

These solutions, which are in part inspired by experiences of different countries, are currently under discussion in the National Congress, and opinions are divided, mostly regarding the imposition of a court-ordered payment plan in case the negotiation terms are not accepted by the creditors.

On the other hand, the greatest merit of the proposed model is to provide a debt payment opportunity to the overindebted consumer, and the possibility to bring him or her back into the consumer market (and this is inspired by the "fresh start" of the American experience³¹), while saving the debtor's ability to ensure resources for subsistence.

The benefits of having a statute set forth instruments to prevent overindebtedness and debt renegotiation with overindebted consumers are also perceived from the viewpoint of financial system stability, given a scenario that in February of 2019, according to the National Confederation of Commerce, 60.1% (sixty point one percent) of Brazilian families have debts, of which 23.1% (twenty-three point one percent) are in default with at least one of them³².

The reasons for default, besides occasional specific financial trouble arising from consumer-related circumstances (personal situations such as family illness, death or unexpected pregnancy, which put pressure on family budgets) also result from factors related to the general economic situation that affect debtors, such as unemployment. On that topic, the unemployment index in Brazil is currently at 12.4% (twelve-point four percent) of the economically active population, which represents 13.1 million people today, according to official data from the Brazilian Institute of Geography and Statistics as of February of 2019³³.

These data points, when placed next to the debates on the extension of the legal measures to deal with overindebtedness in Brazil, speak to its importance not only to protect the dignity of debtors and the need to ensure their subsistence, but also to the stability of the economic system itself.

The challenge at hand is to make sure that such overindebtedness prevention rules, as well as those that set forth the possibility to renegotiate debts in extreme situations, remain updated with regards to new credit concession forms that arise rapidly, mainly due to the massive use of technology and the internet. Likewise, the proper balance between the possibility of debt renegotiation by the overindebted and the need to preserve the natural efficacy of credit in a consumer society, which is the ability to demand it and ensure the legitimate interest of the creditor, while addressing exceptional situations and their preservation as tools that are fundamental to development.

Thank you all very much for your attention.

REFERENCES

BAUMAN, Zygmunt. *Vida para Consumo: a transformação das pessoas em mercadoria*. Tradução de Carlos Alberto Medeiros. Rio de Janeiro: Jorge Zahar, 2008.

CARVALHO, José Murilo. *Cidadania no Brasil: O Longo Caminho*. Rio de Janeiro, Civilização Brasileira, 2001.

FRANCO, Gustavo. A moeda e a lei: uma história monetária brasileira (1933-2013). São Paulo: Zahar, 2017.

LIMA, Clarissa Costa de. O cartão de crédito e o risco de superendividamento uma análise da recente regulamentação da indústria de cartão de crédito no Brasil e nos Estados Unidos. Revista de Direito do Consumidor, São Paulo, v. 81, jan./mar. 2012, pp. 239-261.

LIMA, Clarissa Costa de. O tratamento do superendividamento e o direito de recomeçar dos consumidores. São Paulo: Editora Revista dos Tribunais, 2014.

LIMA, Heitor Ferreira. Formação industrial do Brasil. Rio de Janeiro: Fundo de Cultura, 1961.

MARQUES, Claudia Lima. Algumas perguntas e respostas sobre prevenção e tratamento do superendividamento dos consumidores pessoas físicas. Revista de Direito do Consumidor, São Paulo, v. 75, jul/set. 2010, pp. 9-42.

MARQUES, Claudia Lima. Sugestões para uma lei sobre o tratamento do superendividamento de pessoas físicas em contratos de crédito ao consumo: proposições com base em pesquisa empírica de 100 casos no Rio Grande do Sul. Revista de Direito do Consumidor, São Paulo, v. 55, jul/set. 2005, pp. 11-51.

MARQUES, Claudia Lima. Sugestões para uma lei sobre o tratamento do superendividamento de pessoas físicas em contratos de crédito de consumo. In: MARQUES, Claudia Lima; CAVALLAZZI, Rosângela (coord.). Direitos do consumidor endividado: superendividamento e crédito. São Paulo: Ed. RT, 2006, p. 256.

MARQUES, Claudia Lima; MIRAGEM, Bruno. Anteprojeto de lei de atualização do Código de Defesa do Consumidor. Revista de Direito do Consumidor, São Paulo, v. 82, abr./jun. 2012, pp. 331-356.

MARQUES, Manuel Leitão et al. O endividamento dos consumidores. Lisboa: Almedina, 2000, p. 2.

MIRAGEM, Bruno. Curso de Direito do Consumidor. 7ª ed. São Paulo: Revista dos Tribunais, 2018.

MIRAGEM, Bruno. Direito Bancário. 2ª ed. São Paulo: Revista dos Tribunais, 2018.

MIRAGEM, Bruno. Disciplina Constitucional da Moeda e do Crédito: aspectos da experiência brasileira. In: GRUNDMAN, Stefan, [et al] (org.). Direito Privado, Constituição e Fronteiras: Encontros da Associação Luso-Alemã de Juristas do Brasil. São Paulo: Revista dos Tribunais, 2013, pp. 195-230.

MIRAGEM, Bruno; LIMA, Clarissa Costa de. Patrimônio, contrato e a proteção constitucional da família: estudo sobre as repercussões do superendividamento nas relações familiares. Revista de Direito do Consumidor, São Paulo, v. 90, nov./dez. 2013, pp. 85-116.

POCHMANN, Márcio. Nova classe média? O trabalho na base da pirâmide social brasileira. São Paulo: Boitempo, 2012.

PRADO JÚNIOR, Caio. História e desenvolvimento. São Paulo: Brasiliense, 1972.

SIMONSEN, Roberto. História econômica do Brasil. São Paulo: Companhia Editora Nacional, 1937.

SOUZA, Jessé. Os batalhadores brasileiros: nova classe média ou nova classe trabalhadora? Belo Horizonte: Editora UFMG, 2010.



1 Lecture given at Harvard Law School (Cambridge-MA), April 8, 2019, at the Brazil Legal Symposium at Harvard Law School.

2 See SIMONSEN, Roberto. História econômica do Brasil. São Paulo: Companhia Editora Nacional, 1937, p. 247; PRADO JÚNIOR, Caio. História e desenvolvimento. São Paulo: Brasiliense, 1972, p. 138; LIMA, Heitor Ferreira. Formação industrial do Brasil. Rio de Janeiro: Fundo de Cultura, 1961; CARVALHO, José Murilo. Cidadania no Brasil: O Longo Caminho. Rio de Janeiro, Civilização Brasileira, 2001.

3 About the Brazilian experience with credit expansion, see: MIRAGEM, Bruno. Disciplina Constitucional da Moeda e do Crédito: aspectos da experiência brasileira. In: GRUNDMAN, Stefan, [et al] (org.). Direito Privado, Constituição e Fronteiras: Encontros da Associação Luso-Alemã de Juristas do Brasil. São Paulo: Revista dos Tribunais, 2013, pp. 195-230.

4 See: MIRAGEM, Bruno. Direito Bancário. São Paulo: Revista dos Tribunais, 2018, pp. 109-139.

5 The 4595 Act Provides for the Policy and Monetary, Banking and Credit Institutions, Creates the National Monetary Council and other measures. Available in: http://www.planalto.gov.br/ccivil_03/LEIS/L4595.htm. Access in Out, 30 2019.

6 The 4728 Act disciplines the capital market and establishes measures for its development. Available in: http://www.planalto.gov.br/ccivil_03/LEIS/L4728.htm. Access in Out, 30 2019.

7 The Decree-Act 73 provides for the National Private Insurance System, regulates insurance and reinsurance operations and makes other arrangements. Available in: http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del0073.htm. Access in Out, 30 2019.

8 The Housing Finance System – from the portuguese Sistema Financeiro da Habitação (SFH) – was created in 1964 and was aimed at facilitating the acquisition of real estate by low-income people.

9 In the original text: “Art. 17. Consideram-se instituições financeiras, para os efeitos da legislação em vigor, as pessoas jurídicas públicas ou privadas, que tenham como atividade principal ou acessória a coleta, intermediação ou aplicação de recursos financeiros próprios ou de terceiros, em moeda nacional ou estrangeira, e a custódia de valor de propriedade de terceiros.”

10 MIRAGEM, Bruno; LIMA, Clarissa Costa de. Patrimônio, contrato e a proteção constitucional da família: estudo sobre as repercussões do superendividamento nas relações familiares. Revista de Direito do Consumidor, São Paulo, v. 90, nov./dez. 2013, pp. 85-116.

11 For the history of “Plano Real” see, among others: FRANCO, Gustavo. A moeda e a lei: uma história monetária brasileira (1933-2013). São Paulo: Zahar, 2017.

12 LIMA, Clarissa Costa de. O cartão de crédito e o risco de superendividamento uma análise da recente regulamentação da indústria de cartão de crédito no Brasil e nos Estados Unidos. Revista de Direito do Consumidor, São Paulo, v. 81, jan./mar. 2012, pp. 239-261.

13 In 2003, during the Lula administration, the Act 10.820 / 2003 was sanctioned authorizing the granting of credit through payroll deduction at lower interest rates, increasing the purchasing power of the lower income classes.



14 See MARQUES, Claudia Lima. Algumas perguntas e respostas sobre prevenção e tratamento do superendividamento dos consumidores pessoas físicas. *Revista de Direito do Consumidor*, São Paulo, v. 75, jul/set. 2010, pp. 9-42. Explains that the beneficial effect of credit is that "it allows the inclusion of people with low monthly income in the consumer society". For a sociological view, see: SOUZA, Jessé. *Os batalhadores brasileiros: nova classe média ou nova classe trabalhadora?* Belo Horizonte: Editora UFMG, 2010. Recognizing the effects of social inclusion but criticizing the notion of a new middle class: POCHMANN, Márcio. *Nova classe média? O trabalho na base da pirâmide social brasileira*. São Paulo: Boitempo, 2012.

15 See BAUMAN, Zygmunt. *Vida para Consumo: a transformação das pessoas em mercadoria*. Tradução de Carlos Alberto Medeiros. Rio de Janeiro: Jorge Zahar, 2008.

16 MIRAGEM, Bruno. *Curso de direito do consumidor*. 7ª ed. São Paulo: RT, 2018, cit.

17 The Brazilian Civil Code thus defines the civil insolvency: "Art. 955. Proceder-se à declaração de insolvência toda vez que as dívidas excedam à importância dos bens do devedor". To understand the portrait of over-indebtedness as a sort of bankruptcy of the common man see the lectures of MARQUES, Manuel Leitão et al. *O endividamento dos consumidores*. Lisboa: Almedina, 2000, p. 2.

18 See MARQUES, Claudia Lima. Sugestões para uma lei sobre tratamento do superendividamento de pessoas físicas em contratos de crédito ao consumo: proposições com base em pesquisa empírica de 100 casos no Rio Grande do Sul. *Revista de Direito do Consumidor*, São Paulo, v. 55, jul/set. 2005, pp. 11-51.

19 Originated PLS 283/2012, that is currently in the Chamber of Deputies under the identification number PL 3515/15. On Oct, 01 2019 a special committee to discuss the matter was created. The entire procedure available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2052490>. Access in Oct, 30 2019.

20 In the original text: Art. 54-A, §1º. "§ 1o Entende-se por superendividamento a impossibilidade manifesta de o consumidor, pessoa natural, de boa-fé, pagar a totalidade de suas dívidas de consumo, exigíveis e vincendas, sem comprometer seu mínimo existencial, nos termos da regulamentação."

21 For a better understanding of the right to information before the Brazilian legal framework see MIRAGEM, Bruno. *Curso de Direito do Consumidor*. 7ª ed. São Paulo: Revista dos Tribunais, 2018, p. 288-291.

22 Results derive from the Functional Illiteracy Indicator (INAF) developed by the Paulo Montenegro Institute and the Brazilian Institute of Public Opinion and Statistics (IBOPE Inteligência). Infos extracted from: <https://educacao.estadao.com.br/noticias/geral,tres-em-cada-10-sao-analfabetos-funcionais-no-pais,70> Access in Oct, 30 2019.

23 In the original text of the proposed bill Art. 54-G, I: "Art. 54-G. Sem prejuízo do disposto no art. 39 deste Código e na legislação aplicável à matéria, é vedado ao fornecedor de produto ou serviço que envolva crédito, entre outras condutas: I - realizar ou proceder à cobrança ou ao débito em conta de qualquer quantia que houver sido contestada pelo consumidor em compra realizada com cartão de crédito ou meio similar, enquanto não for adequadamente solucionada a controvérsia, desde que o consumidor haja notificado a administradora do cartão com antecedência de pelo menos 7 (sete) dias da data de vencimento da fatura, vedada a manutenção do valor na fatura seguinte e assegurado ao consumidor o direito de deduzir do total da fatura o valor em disputa e efetuar o pagamento da parte não contestada;"



24 In the original text of the proposed bill Art. 54-G, II : " I - recusar ou não entregar ao consumidor, ao garante e aos outros coobrigados cópia da minuta do contrato principal de consumo ou do de crédito, em papel ou outro suporte duradouro, disponível e acessível, e, após a conclusão, cópia do contrato;"

25 In the original text of the proposed bill Art. 54-G, III. "III - impedir ou dificultar, em caso de utilização fraudulenta do cartão de crédito ou meio similar, que o consumidor peça e obtenha, quando aplicável, a anulação ou o imediato bloqueio do pagamento, ou ainda a restituição dos valores indevidamente recebidos."

26 In the original text of the proposed bill, Art. 54-C, IV: "Art. 54-C. É vedado, expressa ou implicitamente, na oferta de crédito ao consumidor, publicitária ou não: (...) IV - assediá-lo ou pressioná-lo para contratar o fornecimento de produto, serviço ou crédito, inclusive a distância, por meio eletrônico ou por telefone, principalmente se se tratar de consumidor idoso, analfabeto, doente ou em estado de vulnerabilidade agravada ou se a contratação envolver prêmio;"

27 In the original text of the proposed bill: Art. 54-E. "Art. 54-E. Nos contratos em que o modo de pagamento da dívida envolva autorização prévia do consumidor pessoa natural para consignação em folha de pagamento, a soma das parcelas reservadas para pagamento de dívidas não poderá ser superior a 30% (trinta por cento) de sua remuneração mensal líquida."

28 As an allusion to the attempt to regulate an existential minimum see the lectures from DERRUPPÉ, Jean. Rapport de synthèse. L'endettement. Travaux de l'Association Henri Capitant, Journées Argentines. Paris: LGDJ, 1997, t. XLVI/1995, pp. 36 e ss.

29 In the original text of the proposed bill Art. 104-A.: "Art. 104-A. A requerimento do consumidor superendividado pessoa natural, o juiz poderá instaurar processo de repactuação de dívidas, visando à realização de audiência conciliatória, presidida por ele ou por conciliador credenciado no juízo, com a presença de todos os credores, em que o consumidor apresentará proposta de plano de pagamento com prazo máximo de 5 (cinco) anos, preservados o mínimo existencial, nos termos da regulamentação, e as garantias e as formas de pagamento originalmente pactuadas."

30 See MARQUES, Claudia Lima; MIRAGEM, Bruno. Anteprojetos de lei de atualização do Código de Defesa do Consumidor. Revista de Direito do Consumidor, São Paulo, v. 82, abr./jun. 2012, pp. 331-356.

31 LIMA, Clarissa Costa de. O tratamento do superendividamento e o direito de recomeçar dos consumidores. São Paulo: Editora Revista dos Tribunais, 2014.

32 Data extracted from the Consumer Debt and Default Survey (Pesquisa de Endividamento e Inadimplemento do Consumidor - PEIC) produced monthly by the National Confederation of Trade in Goods, Services and Tourism (Confederação Nacional do Comércio de Bens, Serviços e Turismo -CNC). Information available in: <http://cnc.org.br/editorias/economia/noticias/percentual-de-familias-com-dividas-aumenta-em-fevereiro> Access in Oct 30, 2019.

33 Data extracted from the National Household Sample Survey (Pesquisa Nacional por Amostra de Domicílios - PNAD Contínua). Information available in: <https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/241> Access in Oct 30, 2019.