

PROCEDURAL LEGAL TRANSACTIONS IN JUDICIAL REORGANIZATION

by **Giovanna VIEIRA PORTUGAL MACEDO**, Lawyer, Specialist in Civil Procedural Law at the Romeu Felipe Bacellar Institute of Law, LLM in Business Law by the Faculdade da Indústria do Estado do Paraná (College of Industry of the State of Paraná), qualified in Judicial Reorganization by the Instituto Brasileiro de Administração Judicial (Brazilian Institute of Judicial Administration) and Escola da Magistratura do Paraná (School of Magistracy of Paraná).

On March, 2016, Law 13.105 / 2015, the so-called “New Code of Civil Procedure” came into force in Brazil, with the purpose of promoting a speedier, fairer, and more effective procedure, aiming to attend to social needs with the reduction of the “complexity” of procedural rules.

The simplification of the procedure itself, therefore, allows the judge to pay more attention to the merits of the cause, changing the mentality of the Brazilian jurist, so that he gives attention mainly to the merits and effectiveness of the lawsuits.

As set out in the explanatory memorandum of the New Code of Civil Procedure, the goals of the law are the following:

“With a clear reduction in the complexity inherent to the process of creating a new Code of Civil Procedure, it could be said that the work of the Commission was guided primarily by five objectives: 1) to express and implicitly establish a true harmony with the Federal Constitution; 2) create conditions for the judge to give a decision more closely to the factual reality underlying the case; 3) simplify, solve problems and reduce the complexity of subsystems, such as the appeals subsystem; 4) provide full yielding to each procedure considered in itself; and, 5) finally, since this latter objective is perhaps partially achieved by the realization of those mentioned above, to give a greater degree of organicity to the system, thus giving it more cohesion.”¹

As a complement, one of the excerpts from the conclusion of explanatory statement that clearly defined the ideas of the New Code of Civil Procedure: “So held the Jurists Commission that reformed the procedural system: created a healthy balance between conservation and innovation, without there being any drastic rupture with the present or the past.”²

Thus, as well explained in the explanatory statement of the procedural legislation reform, Law 13,105 / 2015 brought innovations to the Brazilian civil procedure in order to optimize the lawsuits and reduce the bureaucracy.

¹ <https://www2.senado.leg.br/bdsf/bitstream/handle/id/512422/001041135.pdf>.

² <https://www2.senado.leg.br/bdsf/bitstream/handle/id/512422/001041135.pdf>.

An example of such innovations is the permission to carry out procedural legal transactions, including the possibility of establishing a procedural calendar, provided for in Articles 190 and 191 of the procedural law, respectively.

Law 11,101 / 2005, on the other hand, regulates the judicial reorganization, extrajudicial reorganization and bankruptcy of the entrepreneur and the entrepreneurial society, having as main objective the preservation of the companies, that is, to allow the uprising of companies in crisis in order to enable the maintenance of their social function.

In order to make it possible for companies to be hoisted, the law provides effective mechanisms for such, as an example of the stay period, provided for in Article 6 of the law, which is the suspension of the continuity and prescription of all actions and executions in the face of the company under reorganization for the period of one hundred and eighty days, soon after the deferral of the judicial reorganization, allowing the reorganization to obtain the necessary breath to reorganize.

The Law on Judicial Reorganization and Bankruptcies is applied in a subsidiary manner to Law 13,105 / 2015, in cases where the bankruptcy legislation is incomplete or silent.

Since judicial reorganization is nothing more than a collective bargaining over patrimonial rights between debtors and creditors, much has been said to apply the procedural legal transactions in the judicial reorganization proceedings with the aim of making them increasingly more effective.

The main point that has been addressed in this respect is the possibility of stipulating a specific procedural timetable for each case, allowing for the negotiation of issues such as the definition of deadlines for holding a General Meeting of Creditors, to present the Reorganization Plan, definition on the counting of deadlines, if the deadline is counted in business days or in calendar days, as well as the period for closing the judicial reorganization.

Considering that in judicial reorganization the interested parties, that is, the creditors and debtors seek a negotiated solution to overcome the crisis faced by the company under reorganization, seems to be fully possible the procedural agreement.

The agreement on procedural rules in this case could also include issues such as the holding of online assemblies, among several other issues, with the aim of also easing a more effective participation of creditors themselves in the judicial reorganization. Thus, the purpose of this paper is to analyze the procedural legal transaction, more specifically the legal procedural calendar, so that the provisions of the Code of Civil Procedure, with its recent changes, can help to make the judicial reorganization more effective.

§1 – PROCEDURAL LEGAL TRANSACTIONS

As mentioned in the introduction, the possibility of agreements on procedural issues, based on the flexibility of the procedure, gained importance in the Code of Civil Procedure.

This possibility is stated in Article 190 of the aforementioned law, which authorizes changes to the procedure obviously only in cases where self-determination is admitted.

“Article 190. When the action deals with rights that permit the resolution of the dispute by the parties themselves, the competent parties can lawfully stipulate changes in the procedure to adapt it to the specific requirements of the action and to agree upon their burden, powers, procedural rights and obligations, before or during the proceedings.

Sole paragraph. Whether ex officio or upon request, the judge shall control the validity of the agreements set forth in this article, denying their application only in the case of nullity or inclusion of unconscionable terms in adhesion contracts or in cases where any of the parties is in a manifest position of weakness.”

Following, in turn, a provision on the possibility for the parties to set a procedural timetable:

“Article 191. By mutual agreement, the judge and the parties can establish a timetable for the performance of procedural acts, when appropriate.

§ 1 The timetable binds the parties and the judge, and the deadlines established are to be changed only in exceptional cases, when duly justified.

§ 2 The service of notice upon the parties to perform procedural acts or to hold hearings whose dates were determined in the timetable is waived.”

It is the first time that Brazilian procedural law allows self-regulation of procedural issues, that is, this negotiating nature of the procedure is unprecedented in the Brazilian legal system.

Below, DIDIER JR's concept, Freddie on procedural legal deal:

“Procedural transaction is the voluntary act, in which factual support gives the subject the power to choose the legal category or establish, within the limits set in the legal system itself, certain legal procedural situations”³.

Well, it is this possibility of power of choice linked to the interest of the parties and procedural effectiveness that must be incorporated according to the peculiarity of each suit.

Regarding the effectiveness of the procedural legal transactions, obviously with the limitations established by law, the analysis of the articles mentioned above in conjunction with article 200 of the same law, reveals the consecration of this new possibility.

On this question, REDONDO, Bruno Garcia states:

³ DIDIER JR., Fredie, *Curso de Direito Processual Civil*, 17 Ed., Vol. 1, 2015. Salvador: JusPodivm. Pág. 376 – 337.

“The joint analysis of articles 190 and 200 shows that the Code of 2015 enshrined not only a general clause but also a new principle, namely the principle of self-regulation of the parties to the proceedings. This principle establishes that the will of the parties must be observed by the judge as a general rule, since the effectiveness of the legal transactions is immediate and independent of judicial approval, being possible judicial control, only *posteriori* and only for the recognition of defects relating to the plan of existence or validity of the convention”⁴. Thus, even if the legal transaction has immediate effectiveness, it cannot fail to observe that it must relate only to rights that can be self-composed, must be signed by capable individuals, and there must exist balance between the parties, in order to ensure the effectiveness of the institute.

Observed the aforementioned issues, it is possible to verify that no other clear and specific limits have been established by the legislator when it concludes atypical procedural legal transactions, thus leaving open the possibility of agreements between the parties on burdens, faculties and duties of the parties.

In spite of the innovation and the possibility of the procedural legal transactions being decisive for the effectiveness of the procedure, since, according to the Illustrious Judge of Law Dr. Daniel Carnio Costa affirms, “the traditional proceedings management, normally employed by the Judiciary Power, does not give adequate and timely responses so that success can be achieved in bankruptcies and judicial reorganizations”⁵, there is still some resistance on flexibilization.

Notwithstanding the still existing resistance on the applicability of procedural legal transactions in view of conservative understandings that it would violate fundamental rights, the tendency is the recognition that the exercise of autonomy of the parties enriches the normative system.

Also, given that it is allowed to carry out procedural legal transaction in the Brazilian legal system, considering that it confers a certain freedom that previously existed, including influencing the application of due process of law principle.

On such a question DIDIER JR, Fredie:

“The due process of law principle must guarantee, at least in the Brazilian legal system, the exercise of self-regulation power throughout the procedure. A procedure which unjustifiably limits the exercise of freedom cannot be considered due process. A hostile judicial process to the exercise of freedom is

⁴ REDONDO, Bruno Garcia. Negócios Processuais: Necessidade de Rompimento Radical com o Sistema do CPC/1973 para a Adequada Compreensão da Inovação do CPC/2015. Extraído do Cap. 12 da Coleção Grandes Temas do Novo CPC, Vol. 1 – Negócios Processuais. 2015. Salvador: JusPodivm. Pág. 274.

⁵ <http://www.cartaforense.com.br/conteudo/artigos/a-gestao-democratica-de-processos---uma-nova-tecnica-de-conducao-de-processos-concursais/14648>.

not due process, under the terms of the Brazilian constitution⁶.”

The idea of the Code of Civil Procedure with the inclusion of the provisions discussed above is nothing more than conceiving a participatory democracy, valuing the will of the subjects of the procedure.

According to the proceduralist TALAMINI, Eduardo, the standard in question has the potential to help in the effectiveness and function of the most diverse institutes, as follows:

“Potentially, this rule has the potential of substantially altering the function and effectiveness of the most diverse institutes and mechanisms - whether they are novelties or those which, in themselves, remain formally the same as before”⁷.

Therefore, lawyers must work with care and be inspired to ensure that the time of the proceedings is the same as negotiation relations, using the possibilities that the law gives them, with creativity and knowledge of the possibilities of the laws.

§2 – THE LEGAL PROCEDURAL CALENDARS

As mentioned in the previous topic, the prediction constant of article 191 of Law 13,105 / 2015 is nothing more than a possibility of a procedural legal transaction, in which the parties and judges can set a timetable for the practice of procedural acts. Thus, in view of the possibility of scheduling the proceedings, it can be used as a technique of judicial governance. On this positive possibility of judicial governance, COSTA, Eduardo José Fonseca states:

“In product and service providers, for example, a good governance practice is the inventive and particularizing techniques of each procedural reengineering that allows them to work under the idea of lead time: it is the processing time of an order, from the moment it is placed in the company until the when the product or service is delivered to the customer. Currently, for these companies, the utopian challenge is to work hard so that the lead time is reduced to zero, which ends up requiring a very flexible production. *Mutatis, mutandis*, something similar is happening today with the Judiciary. The judge-supplier must: a) set lead times for the delivery of judicial protection to the parties-consumers; b) make procedures flexible according to the particularities of the concrete situations and the applicable substantive law; c) to schedule procedural acts in accordance with the temporal expectations for the pronouncing of decisions”⁸.

⁶ DIDIER JR. Fredie. Princípio do Respeito ao Autorregramento da Vontade no Processo Civil. Extraído do Cap. 1 da Coleção Grandes Temas do Novo CPC, Vol. 1 – Negócios Processuais. 2015. Salvador: JusPodivm. Pág. 21.

⁷ <https://www.migalhas.com.br/arquivos/2015/10/art20151020-17.pdf>.

⁸ <https://www.editorajuspodivm.com.br/cdn/arquivos/1717-leia-algumas-paginas.pdf>. Capítulo 3. Calendarização Processual, COSTA, Eduardo José Fonseca.

Different from the procedural legal transactions, the legal process calendar necessarily constitutes deadlines, in which it may be an accessory to the first, and it is not mandatory for the judges to approve the schedule depending on the deadline imposed for the pronouncing of decisions.

Understanding that the procedural calendar has the potential to produce better results, MULLER, José Guilherme says:

“It is a maxim of experience to affirm that the proper planning of any human endeavor has the potential to produce more effective results when compared to simple, uncompromised, participation in the unfolding of events”⁹.

Still, on the efficiency of the procedural calendar, DIDIER JR, Fredie:

“The efficiency principle is the basis for allowing the adoption by the court of atypical techniques (because they are not expressly provided for by law), such as the procedural calendar (definition of an agenda of procedural acts, with the prior notice of all procedural parties at one time), or other procedural agreements with the parties, promoting certain procedural changes, such as extending deadlines or reversing the order of evidence”¹⁰.

And finally, on the WAMBIER procedure calendar, Luiz Rodrigues and BASILIO, Ana Teresa:

“There are those who support, as has also been said in relation to the rule of judgment in chronological order (article 12), that the calendar will hinder the management of the stock of cases by the judge. It seems to us that, just as in chronological order, as long as the judge creates a new management method, taking into account all the changes of the new code, he can effectively manage his proceedings stock, taking into account both the expectation of the parties, regarding the rules of the Tribunal's organs, such as the Justice Internal Affairs Department and the administrative and disciplinary control bodies, such as the CNJ¹¹. This is a major step forward, which, if well used, will be particularly useful in making the procedure more agile and predictable”¹².

Thus, it is seen that scheduling will not introduce any inefficiency to the Judiciary, much less it is necessary to talk about small

⁹ MÜLLER. José Guilherme O acordo processual e gestão compartilhada do procedimento. In: FREIRE. Alexandre; DANTAS. Bruno; NUNES. Dierle; DIDIER JR. Fredie. MEDINA. José Miguel Garcia Medina. FUX. Luiz; CAMARGO. Luiz Henrique Volpe; OLIVEIRA. Pedro Miranda de (coords.). *Novas tendências do processo civil: estudos sobre o projeto do novo Código de Processo Civil*. Vol. 02. Salvador; Juspodivm, 2014, p. 154.

¹⁰ DIDIER JR. Fredie. MEDINA. José Miguel Garcia Medina. FUX. Luiz; CAMARGO. Luiz Henrique Volpe; OLIVEIRA. Pedro Miranda de (coords.). *Novas tendências do processo civil: estudos sobre o projeto do novo Código de Processo Civil*. Vol. 02. Salvador; Juspodivm, 201, p. 439.

¹¹ CNJ stands for National Council of Justice.

¹² <https://www.migalhas.com.br/dePeso/16,MI228542,31047->

[0+negocio+processual+Inovacao+do+Novo+CPC](https://www.migalhas.com.br/dePeso/16,MI228542,31047-0+negocio+processual+Inovacao+do+Novo+CPC).

effectiveness when approaching the subject, since it is enough the cooperation between the parties and the judge in order to set feasible and efficient deadlines.

Another innovation is that the parties and the judge are bound to the procedural calendar there is no longer the need for subpoena of the parties for the scheduled procedural acts, since the parties have prior science of the schedule.

The absence of a subpoena, in addition to the reduction of public costs, brings much less discussion about any nullity related to defense restraint, since the parties will be previously aware of the procedural movements.

Still, on the timing of setting the procedural timetable, it does not necessarily need to be at the beginning of the proceedings, although it seems to be the most appropriate.

There is also a statement from the Permanent Forum of Civil Proceduralists in the following sense:

“Statement 299. (Articles 357, §3 and 191) The Judge may also appoint a hearing (or only) in order to adjust with the parties the establishment of a calendar for the investigation and decision phase”¹³.

What is seen, therefore, is that the judge can determine the hearing schedule to adjust the issues related to the dates of the procedural acts in order to ensure greater effectiveness in the proceedings.

The possibility of holding such a preliminary hearing seems remarkably similar to the status conferences held in the United States, which are designated hearings in judicial reorganization or bankruptcy proceedings where the judge, with the parties, sets the procedural timetable and distributes tasks.

In this case, what is observed is that regardless of how often the Brazilian legal system is based on American ideas, certainly the Brazilian legislation has its own subsidies to enable satisfactory results.

§ 3 – INNOVATION IN JUDICIAL REORGANIZATIONS

A) The Democratic Management Hearings

As mentioned above, the Brazilian legal system, constantly improving, has subsidies to enable good results, with the interest and creativity of the Law operators.

On the possibility and need for innovation, the jurist COSTA, Daniel Carnio, in response to an interview when questioned about the influence of comparative law in the proposed amendment to Law 11,101 / 2005, spoke about the status conference:

“We do not have this anticipated hearing in our system, but our system admits that the judge schedules hearings to attempt

¹³ <http://civileimobiliario.web971.uni5.net/wp-content/uploads/2017/07/Carta-de-Florian%C3%B3polis.pdf>.

conciliation, hearings to seek a better outcome of the proceedings. Even now the New Code of Civil Procedure gives us the possibility of scheduling, gives us the possibility of the procedural legal transaction to change the procedure according to the concrete case, so it is enough that the interpreters have a little creativity to be able to adapt solutions which have already worked in other systems for our reality. This is the case for the democratic management hearings applied to the 1st Court of Bankruptcy and Judicial Reorganization, which is the inspiration of democratic management hearings.”¹⁴

It is clear that the mechanisms are at the disposal of the parties, which has made a move towards greater efficiency in the judicial reorganizations, with the application of these mechanisms that result in economy and speed of proceedings and above all, effectiveness.

An example of such applied innovation mechanisms is the "Democratic Management Hearings" mentioned in the excerpt above, instituted in Brazil by the Judge COSTA, Daniel Carnio, who, despite having started the practice in 2011, in 2015 enrolled the practice of this hearing to the Innovare Award.

In order to understand, the Innovare Award aims to identify, advertise and disseminate practices that contribute to the improvement of justice in Brazil, rewarding ideas that bring the best solutions.

According to the Judge, the intended innovation with the hearings is linked to the fact that "Procedure time cannot be disconnected from business time."¹⁵

The summary description of the Democratic Management Hearings, in which it is possible to extract in a clear and objective way the purpose of the execution of said hearing:

“It is a proceeding management method that allows a more efficient and speedy execution of the judicial process, removing bureaucracy of the progress of the proceedings, increasing the participation of the parties in the process, with an incentive to judicial mediation and with increased monitoring of the procedural progress by all interested parties. The bankruptcy and judicial reorganization usually have complexity incompatible with the conventional management of the progress of the proceedings, which occurs through decisions rendered only after the hearing, written petition, of all those involved in the procedure (creditors, debtors, creditors committee, judicial administrator and prosecutor). The gathering of written and successive manifestation of all the interested parties demands a lot of time, considering the deadlines to be observed and judicial bureaucracy aggravated by the excess of proceedings and the scarce number of judicial

¹⁴ Revista IBAJUD, Administração Judicial em Destaque. Ano III, Ed. 3. Em Debate – Lei de Recuperação de Empresas e Falência, p. 14.

¹⁵ <http://www.tnabrazil.org/en/materias/noticias-na-midia/magistrado-inova-em-recuperacao-judicial>.

servers. However, several issues relating to insolvency proceedings must be taken in effective time, otherwise the damage to creditors and to society in general will be consolidated. In this sense, this new method seeks to give the Judge the conditions to decide quickly and correctly, without prejudice to guarantee to all interested parties the possibility of prior manifestation and effective participation in the procedure of forming the judicial decision”¹⁶.

As mentioned above, said hearing has been applied in the 1st Court of Bankruptcy and Judicial Reorganization of São Paulo since 2011, and was developed before a peculiar case.

It is noteworthy that, at the time when this type of hearing started, there was not even a legal possibility to carry out atypical procedural legal transactions, as well as the procedural timetable, and yet the solution was extremely effective.

The solution came into effect once, for instance, after four years the assets of the company had not been evaluated and, after the hearing, it was possible to coordinate the sale and withdrawal of the company's assets, which brought effectiveness to the judicial reorganization proceedings.

Faced with such a history and many others that reflect the greater effectiveness of judicial reorganization and bankruptcies, the adoption of said hearing to also define procedural issues, such as procedural scheduling is extremely relevant.

Thus, there is a possibility that procedural legal transactions may be perfectly applicable to judicial reorganization proceedings, so that companies undergoing reorganization, creditors and judges can define the procedural issues that best fit each case, so that recovery of the company is effective, since each case has its own peculiarity.

In spite of Dr. Daniel Carnio Costa mentioning above, the democratic management hearing as an effective means so that the decision of complex issues, such as those involving the sale of goods, is faster and meets the need of the company, since many times the natural time of the procedure does not fit into the business opportunity of the company, such a hearing can certainly be assigned to define procedural issues in order to ensure the uprising of companies also faster and more effective.

In fact, this was an orientation of the jurist himself, who in an interview in the year 2017 talks about the possibility of definitions in said hearing of procedural legal transactions and procedural scheduling¹⁷.

With the application of these hearings, greater transparency, less bureaucracy, greater satisfaction of those involved have been seen, in view of the established dialogue, as well as the treatment to the social interest involved.

¹⁶ <https://premioinnovare.com.br/proposta/audiencias-de-gestao-democratica-de-processos-de-insolvencia-falencias-e-recuperacoes-judiciais-de-empresas-20150316113436349169/print>.

¹⁷ Revista IBAJUD, Administração Judicial em Destaque. Ano III, Ed. 3. Em Debate – Lei de Recuperação de Empresas e Falência, p. 14.

According to COSTA, Daniel Carnio, on the effectiveness of the hearings:

“Through the democratic management hearings, it was possible to accelerate the payment of thousands of creditors (some already in disbelief of Justice), to avoid the abandonment of real estate and other assets with prejudice to the public interest (health, urban planning, and public safety problems). This method has allowed the decision on the disposal of the assets of the bankruptcy party to be delivered in a more effective manner, and with intense inspection and participation of creditors and other interested parties in the destination of the procedure.”

Allowing the parties to be part of that hearing, increases the satisfaction rate of all involved in the procedure, as it becomes more collaborative so that in the end the proceedings have a more useful result.

B) Procedure Scheduling

The Illustrious Judge of the 2nd Court of Bankruptcy and Judicial Reorganization, Dr. Paulo Furtado de Oliveira Filho on the procedural legal transactions in judicial reorganizations and bankruptcies:

“Other norms that merit reflection are the articles 190 and 191 of the Code of Civil Procedure: the parties may establish changes in the procedure and institute rules on burdens, powers, faculties and procedural duties, and institute a procedural calendar.

In the reorganization proceedings, debtors and creditors seek a negotiated solution to overcome the crisis, there is no incompatibility between the negotiation model on substantial law (values, terms and conditions of payment, etc.) and the model now adopted for the procedural law (negotiation over form and deadlines for carrying out the acts, change of procedure, setting dates for publications, etc.)”¹⁸

Moreover, the Judge warns that the parties cannot negotiate the essential acts to the procedure of judicial reorganization, for example, the stay period and the division of creditors¹⁹.

As an example of the applicability of the legal transactions and procedural scheduling, there is an ongoing procedure in the 2nd Court of Bankruptcy and Judicial Reorganization of São Paulo, where the creditors assembly was held at the beginning of the procedure in which the parties adjusted a calendar and procedural legal transactions²⁰.

This first assembly may also be referred to in a unique way, including as a democratic proceedings’ management hearing, it gives the possibility of applying the procedural provisions in

¹⁸ <https://alfonsin.com.br/recuperao-judicial-e-o-cpc/>.

¹⁹ <https://www.migalhas.com.br/InsolvenciaemFoco/121,MI284720,61044-O+negocio+juridico+processual+na+recuperao+judicial>.

²⁰ Autos n° 1056004-07.2018.8.26.0100.

articles 190 and 191 of the Code of Civil Procedure on Judicial Reorganizations.

Another point that can also be flexible by procedural legal transaction is the reduction of the period of judicial review in the judicial reorganizations, as stated in the decision pronounced by Dr. OLIVEIRA FILHO, Paulo Furtado de, published on 06.25.2018:

“Experience has shown that the permanence of the debtor in a state of judicial reorganization for two years generates several obstacles, both in financial aspect and in the business aspect. In addition to expenses with financial advisors, lawyers and people who must be available to the judicial administrator to provide information on activities, the debtor has restricted access to credit, as financial institutions are required to adopt more conservative provisions in transactions with debtors in reorganization and the other economic agents feel insecure in contracting with those who are in the regime of judicial reorganization. The entrepreneur who approved the judicial reorganization plan is more advantageous to be free of such obstacles, being able to dedicate himself to the resumption of his activity and to the fulfillment of the plan. On the other hand, there will be no loss to creditors, who, even after the decision of closing the reorganization, may at any time be able to apply for bankruptcy or titles execution, in case of breach of obligations. At the first stage of reorganization proceedings, which consists of negotiating and deliberating on the plan, is when it should be given the utmost importance. It is necessary to allow the parties to promote the negotiation of obligations and their supervision following their interests. Considering that it is not public order the rule instituted by the LRF²¹ that establishes the maximum period of 2 years for the judicial reorganization process and that article 190 of the 2015 CPC²² allows changes in the procedure to adjust them to the specificities of the cause, the creditors' meeting should deliberate about the closure of the proceedings in the form that is most convenient to the parties (with the grant of reorganization, for instance), which will allow the elimination of barriers to the company undergoing reorganization in the continuity of business activity, without prejudice to creditors. I hereby authorize the judicial administrator to call a general meeting for deliberation on the subject”²³.

Considering there is no reason to restrain the parties of such negotiations, since they are the main interested parties in the companies' reorganization, it is therefore clear that its application is compatible with judicial recoveries.

²¹ LRF stands for Fiscal Responsibility Law.

²² CPC stands for Code of Civil Procedure.

²³ Autos nº 1054376-80.2018.8.26.0100 – 2ª Vara Falências e Recuperações Judiciais de São Paulo/SP. Publicação em 25.06.2018.

CONCLUSION

In view of all that has been exposed, it can be said that the application of Law 13,105/2015 may be complementary to Law 11,101/2005 to bring greater effectiveness to the judicial reorganization proceedings.

In this article, the approach is exclusively about the applicability of procedural legal transactions, including procedural scheduling, to judicial reorganization processes.

The State of São Paulo Judiciary is the pioneer in the adoption of such practices, as it been proven in the present study, and the innovation of the Judges of the Specialized Courts of said State, both in regard to the holding of democratic management hearings and in the realization of assemblies for fixing procedural schedule, even to reduce the period of supervision provided by law. It has been observed that the application of these provisions, recently added to the procedural law, has brought effectiveness to the reorganization demands, in order to make the proceedings less bureaucratic, less litigious (in view of the possibility of the parties to dialogue and cooperate with each other), therefore, faster because the number of appeals is reduced, and more efficient, in the sense that, as Dr. Daniel has so well stated, most of the time the proceedings time is not connected with the business time.

Thus, by bringing the possibility of the parties to adapt the procedure to their needs, such as the need to sell an asset urgently, whose value will revert to creditors, the Judicial Reorganization institute becomes much more effective, which will certainly bring about changes in the indicators on the effectiveness and potential reorganization of companies from time to time, when duly incorporated into judicial reorganization processes. It is therefore incumbent upon law enforcers to innovate in judicial reorganization processes, such as those applied and admitted to the Judiciary of the State of São Paulo, bringing to the interested parties, besides the aforementioned benefits, more adequate and realistic solutions.

All this rationale ensures a greater commitment on the part of all those interested in judicial reorganizations, since the procedural legal transactions are governed by the principle of cooperation between the parties.

Notwithstanding all the benefits that the application of the new procedural law can bring to the judicial reorganization proceedings, with respect to the increase of effectiveness of the institute, it is also necessary to report that the application of such practices does not matter in increase of costs in order to make it impossible to practice it.

Therefore, jurists must act with care and inspire to ensure that the time of the proceeding is the same as the negotiation relations, using the possibilities of the law, including the moment of modification of law 11.101/2005, using of creativity and knowledge of the possibilities provided by the laws.