Scientia.
Technology, Science and Society
ISSN 3083-5577
open access • peer reviewed •

Judicial Reorganization in Brazil: Balancing Creditors' Interests and Preventing Abuse of Voting Rights

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Abstract

This study analyzes the Brazilian Judicial Reorganization and Bankruptcy Law, which contributes to effective compliance with the basic precepts of the reorganization process, such as preserving the company and protecting creditors' claims. The research uses a qualitative approach and systematic interpretation to analyze information from bibliographical and jurisprudential research on the Cram Down Institute and the possible abuse of dissenting creditors' votes. The goal is to study the possible removal of the vote declared abusive and the consequent approval of the Plan via Cram Down, weighing up the principles of reorganization law, which are helpful for policymakers, scholars, managers, and other practitioners.

Keywords: *judicial reorganization; creditors' voting; Cram Down.*

Suggested citation: Vidaletti, M., & Dias, M.d.O. (2025). Judicial Reorganization in Brazil: Balancing Creditors' Interests and Preventing Abuse of Voting Rights. *Scientia. Technology, Science and Society, 2*(5), 64-74. DOI: 10.59324/stss.2025.2(5).06

Introduction

Judicial Reorganization is a legal process that helps companies in financial crisis recover and maintain their activities. The Brazilian Judicial Reorganization and Bankruptcy Law ("LREF"), instituted by Law No. 11,101/05 (and later amended by Law No. 14,112/20) (Brasil, 2020) was influenced by the North American *Bankruptcy Law*, with a focus on the benefits of aid to debtor companies' recovery (White, 2007).

Bankruptcy *Law* prevents creditors, driven by their own interests in recovering their claims, from voting in bad faith, setting limits on their rights to claim, and giving courts the power to overturn abusive votes. In Brazil, the LREF enshrined private autonomy, allowing the entrepreneur to appeal to the State to claim its recovery or not, provided that certain legal requirements are met.

Among these requirements, creditors must not oppose the Judicial Reorganization Plan ("PRJ") presented by the debtor. In case of objection, the plan must be approved by the General Meeting of Creditors ("AGC"), respecting the quorum provided for in article 45 of the LREF. Even if the quorum of the vote is not reached, the law allows the judge to intervene in the result, being able to impose the approval of the PRJ on the dissident creditors.

The institute known as *Cram Down is then used.* Cram *Down* is a mechanism inspired by U.S. law that allows the magistrate to approve the PRJ, upon compliance with specific legal requirements and

criteria. The institute aims to overcome the veto of a particular class of creditors that attack minorities or pursue individualistic positions. Thus, it is avoided that the PRJ implies different treatment among creditors of the same class, as provided for in Article 58 of the LREF (Brasil, 2020).

This work aims to study the complex identification and removal of the abusive vote, affirmed by article 39, paragraph 6 of the LREF (Brasil, 2020), and the consequent granting of judicial Reorganization by *cram-down,* given the principles of reorganization law. Such an institute gives the judge the possibility, with a view to the ratification of the PRJ, to overcome the veto of a class of creditors. The study is divided into five chapters: introduction, methods and materials, origins and application of Cram Down, abuse of votes in judicial Reorganization, discussion on current jurisprudential treatment, and final considerations on the problem.

Materials and Methods

The research methodology will be inductive, qualitative, and systematic. Secondary data is collected through archival research, comparing doctrines, jurisprudence, and previous research. This research aims to clarify the conditions for applying the institutes of abusive voting and *Cram Down*, seeking to contribute to a better understanding of their application within judicial Reorganization in Brazil.

Cram Down Applied to the Recovery of Companies

The LREF, inspired by Chapter 11 of the US bankruptcy law (Cuevas, 2018), incorporated the mechanism of deliberation made by the majority of creditors, so that those who disapprove of the PRJ must comply with it, regardless of whether they manifest otherwise (Cuevas, 2018). Cram Down is applied in judicial reorganization to enable the approval of the PRJ even without the agreement of all classes of creditors. This institute is used when resistance from some creditors can compromise the company's continuity and its social and economic function (Brasil, 2020; Art.45).

In summary, the mechanism allows magistrates to carry out legality control over the assembly result, making the voting quorum more flexible, applying specific objective parameters provided for in the LREF (Brasil, 2020), to declare the approval of the PRJ. It is also up to them to evaluate any evidence of abusiveness, individually analyzing the creditors' vote. Occasionally, the judge, when invalidating a certain vote, may approve the PRJ, which, without his interference, would be fatally disapproved according to the election held in the AGM that counted an allegedly abusive vote. Therefore, it is not a procedure for the mere solution of debts and charges since the judicial reorganization itself seeks to achieve the company's socioeconomic function in all its aspects (Fazzio Junior, 2024).

Cram Down is an originally American institute, regulated in Chapter 11 of the Bankruptcy Code called Reorganization, specifically in Subchapter II – The plan, in Section 1129(b). This fact is the confirmation of PRJ by the Court, and which, as Deborah Kirschbaum points out, derives from the idea of "shoving it down our throats" (Martins, 2016), alluding to the imposition of a plan that did not have the agreement of all classes. The concept emerged jurisprudentially (Martins, 2016), and this institute was affirmed in American legislation in 1978, with the Bankruptcy Act substantially renewing bankruptcy practices in the United States. This act made it easier for companies and individuals to declare bankruptcy and reorganize (Skeel, 2024). Within the U.S. corporate restructuring procedure, the debtor has exclusivity in filing a PRJ within 120 days. After this period, any interested party, such as the trustee, a committee of creditors, or an individual

creditor, may submit a proposal for a PRJ. The main objective is the company's recovery, the resumption of its activities, and the maintenance of jobs, providing a reasonable time for agreement between debtor and creditors (Franco, 2015; Baril & Feijó, 2024). The creditors deliberate on the PRJ presented by the debtor, which is gathered in classes organized by the plan. Approved by all classes, the Court confirms this Reorganization, provided that certain requirements outlined in section 1129 of Chapter 11 are met. The application of the Cram Down institute in Brazilian legislation was markedly influenced by the experience of US law31, but with some particularities, such as greater rigidity and specific criteria for creditors' approval of the PRJ32. Because of this, the national system, affirmed in the LREF, based on numerical premises (Munhoz, 2007) was criticized by the doctrine (Cerezetti, 2012), and, as a consequence of this rigorism, the jurisprudence relaxed the criteria for granting judicial reorganization, expanding the powers of the judge in assessing compliance with the requirements for the application of Cram Down, even in cases where the PRJ had not been approved by all classes of creditors (Cerezetti, 2012) in the reform promoted by Law No. 14,112/20, consolidating the Legal Statute. In view of the delimitation of this survey, it is not necessary to detail the procedures that occur until the PRJ is put to a vote by the creditors able to vote during the AGM. It is only mentioned that some classes of creditors do not vote at this meeting that analyzes the PRJ, either because they are not subject to judicial reorganization or because they are prevented from voting.

The Cram Down Institute, a Brazilian institution that ensures compliance with the basic principles of reorganization processes, has been criticized for addressing creditors' abusive voting power. Brazilian legislation before the reform of the LREF did not have explicit provisions on abusive voting, leaving it up to doctrine and jurisprudence to shape criteria. Before the reform, both doctrine and jurisprudence understood that creditors should consider their private interests and the company's interests in accordance with Article 187 of the Civil Code and the principle of preservation of the company. João Pedro Scalzilli defines a standard for recognizing abusive voting, which is based on the feasibility of the terms and conditions and the probability of overcoming the crisis. This standard was introduced in the amendment by Law No. 14,112/20, which limits the interpretation of the abusiveness of the right to vote, only allowing it to be considered abusive when exercised with the manifest purpose of obtaining an illicit advantage for oneself or others. This limitation may make it difficult for Cram Down to approve the plan, as the creditor may express their claim according to their interest and judgment of convenience. Fábio Ulhoa Coelho also mentions that abusive voting occurs when the will declared in the vote does not benefit or harm the debtor, other creditors, or the purpose of the judicial reorganization.

The jurisprudence has prohibited all forms of abusive voting in AGMs, valuing the company's social function and maintaining the basic principle of judicial reorganization, which is the preservation of the company. Waldo Fazzio Júnior emphasizes that a company is an economic unit interacting in the market, composing a web of legal relations with extraordinary social repercussions. Admitting that a creditor puts a company's survival at risk without demonstrating economic coherence is unreasonable, contrary to the essential principle of Preservation of the Company (article 47 of the LREF). The company's preservation means minimizing the effects of the crisis, as it serves not only the private interests of entrepreneurs and creditors but also the whole society. The regulation of institutes of corporate recovery has led to the insolvency system being guided by the search for the company's preservation. However, the economically irrational conduct of creditors reluctant to approve a plan that gives them more advantages than in bankruptcy may reveal abuse in exercising the right to vote. If there is an abuse in the exercise of the vote or a conflict of interest, these will be confronted with the law's guidelines and may be declared null and void. However, it is not because the vote is based on that it will no longer be characterized as abusive. The exercise of the creditor's vote is limited by good faith, duty of loyalty to other creditors, and the creditor's interests as a creditor. The interpretation of the content of

Article 39 of the LREF must be carried out by the meaning of the subjective right to vote attributed to creditors and the entire structuring of the judicial reorganization system (Brasil, 2020).

Case Law Reports: Applied Examples of Voting Abusiveness

In order to understand how the jurisprudence is adapting to the new specific rule on the abuse of creditors' voting rights in judicial reorganization proceedings, we will briefly present some recent rulings from the Superior Court of Justice ("STJ"), the Court of Appeals of São Paulo ("TJSP"), the Court of Justice of the State of São Paulo, the Court of Justice of the State of São Paulo, the Court of Justice of the Court of Appeals of the State of São Paulo, the Court of Justice of the Court of Appeals of the Court of Appeals, the Court of Justice of the Court of Justice of the State of São Paulo, of the Court of Justice of the Court of Justice. Rio Grande do Sul ("TJRS") and the Court of Justice of Paraná ("TJPR").

The choice of these Courts is justified because they are the most relevant within their scope of action: the Court with the highest hierarchy, the Superior Court, and the three largest State Courts. The judgments of the reports were selected by the following criteria: date of judgment rendered from 2021 (when the change promoted by Law 14,112/20 came into force); that face the appeal claim about the application of *Cram Down* and the content of article 39, paragraph 6 of the LREF; its decision 91, 92, 93 regarding the application of the Institute of *Cram Down,* either because the application of *Cram Down* has generated divergence, or because it is a relevant case in itself.

The Case: Group of Creditors of the Majority of Claims Unsecured

Interlocutory Appeal No. 0101193-37.2023.8.16.0000/PR concerns the Judicial Reorganization Action (case No. 0006314-02.2022.8.16.0185), filed by the supermarket company SUPERMERCADOS TISSI LTDA. ("Reorganization 4.6") In 2022, pending before the 1st Bankruptcy and Judicial Reorganization Court of the District of Curitiba/PR. During the regular processing of the fact, the credits to which the Debtor 4.7 would be subject, after verification by the Judicial Administrator (article 7, paragraph 2[1] of the LREF), were classified as follows:

Table 1. Credit Value

CLASS	NUMBER OF CREDITORS	CREDIT VALUE
I – Labor	13	R$ 172.294,28
	100%	100%
III – Unsecured	266	R$ 18.761.677,02
	100%	100%
IV – ME and EPP	68	R$ 581.220,08
	100%	100%
Grand Total	**347**	**R$ 19.515.191,38**

[1] Article 7 - The verification of credits shall be carried out by the judicial administrator, based on the debtor's accounting books and commercial and tax documents and on the documents presented to him by the creditors, and may count on the assistance of professionals or specialized companies. Paragraph 2 - The judicial administrator, based on the information and documents collected by the caput and paragraph 1 of this article, shall publish a notice containing the list of creditors within forty-five (45) days, counted from the end of the term of paragraph 1 of this article, and shall indicate the place, time and common term in which the persons indicated in article 8 of this Law will have access to the documents on which the preparation of this list was based.

The 1st AGM of Debtor was called, but the conclave was not installed due to the absence of a minimum quorum in Class I and Class IV, pursuant to article 37, paragraph 2[2] of the LREF. The AGC was installed in the 2nd call, without the need to verify the minimum quorum. The quorum for attendance at the AGM was as follows:

Table 2. Quorum

			QUORUM 2nd AGM	
CLASS	**NUMBER OF CREDITORS**	**CREDIT VALUE**	**NUMBER OF CREDITORS**	**CREDIT VALUE**
I – Labor	13	R$ 172.294,28	6	R$ 76.815,15
	100%	100%	46,15%	44,58%
III – Unsecured	266	R$ 18.761.677,02	37	R$ 15.824.603,65
	100%	100%	13,90%	84,34%
IV – ME and EPP	68	R$ 581.220,08	7	R$ 129.714,96
	100%	100%	10,68%	22,31%
Grand Total	**347**	**R$ 19.515.191,38**	**50**	**R$** 16.031.133,76
	100%	**100%**	**14,40%**	**82,14%**

Considering that this quorum, discounting abstentions – three Class III creditors who had a total of R$ 35,413.16 and two Class IV creditors who had a total of R$ 13,138.31 of the regularly qualified credits – became the basis for voting; once the work began and with the PRJ put to a vote, it was not approved, as can be seen:

Table 3. Approval/Disapproval

	Basis for Voting (-) Abstentions		**Disapproval**		**Approval**	
CLASS	**No. CREDITORS**	**CREDIT VALUE**	**No. CREDITORS**	**CREDIT VALUE**	**No. CREDITORS**	**CREDIT VALUE**
I – Labor	6	R$ 76.815,15	0	R$ 00,00	6	R$ 76.815,15
	100%	100%	0%	0%	100%	100%
III – Unsecured	34	R$ 15.789.190,49	19	R$ 15.224.015,36	15	R$ 565.175,13
	100%	100%	55,88%	96,42%	44,12%	3,58%
IV – ME and EPP	5	R$ 116.576,65	2	R$ 36.172,80	3	R$ 80.403,85
	100%	100%	40%	31,03%	60%	68,97%
Grand Total	**45**	**R$ 15.982.582,29**	21	R$ 15.260.188,16	**24**	R$ 722.394,13
	100%	**100%**	46,67%	**95,48%**	**53,33%**	**4,52%**

As observed, the PRJ, approved by 53.33% of the creditors present at the AGM, with approval of 100% of Class I and 60% of Class IV about the number of creditors, as well as approval of 100% by Class I and 68.97% by Class IV about the value of the credit; even so, it did not obtain the minimum approval required in Class III and was therefore rejected[1] with a percentage of 95.48%

[2] Article 37. The meeting shall be chaired by the judicial administrator, who shall appoint one (1) secretary from among the creditors present. Paragraph 2 - The meeting shall be convened, on the 1st (first) call, with the presence of creditors holding more than half of the credits of each class, computed by the amount, and, on the 2nd (second) call, with any number.

of all credits. Of the total Class III credits (R$15,824,603.65), the amount of R$14,653,582.97 (92.60%) of the credits belongs to 09 financial institutions, namely: Banco Bradesco S/A, Banco Daycoval S/A, Banco do Brasil S/A, Banco Itaú S/A, Banco Safra S/A, Banco Santander S/A, Banco Senff S/A, Caixa Econômica Federal and Sicredi – Cooperativa de Crédito de Livre Admission Associados.

The judgment of the 1st Bankruptcy and Judicial Reorganization Court issued in 2023 (after the reform of the LREF promoted by Law No. 14,112/20) accepted the opinion of the AJ and ratified the PRJ through Cram Down. In its reasoning, it argued that: (i) Several creditors showed various doubts regarding the PRJ presented at the AGM, and, given the doubts and dissatisfactions demonstrated, Debtor 4.7 requested the suspension of the conclave so that it could clarify the doubts and present any modifications to the PRJ. However, the suspension was rejected by 78.54% of the creditors, but the result would be different if counted per head, as the majority of creditors, individually considered, voted for the suspension; that the attitude of the creditors at the meeting may have compromised the result of the AGM, because, especially the financial institutions, they caused the votes to be hurriedly cast, without due debate and justification.

The decision, in short, recognized the possibility of mitigating the requirements of article 58 of the LREF, since the abuse of voting rights by the 09 Banks that were exercised to obtain an illicit advantage in disagreement with the reorganization principles and, for this reason, were annulled. As a result, the requirement of item I of the aforementioned provision was fulfilled, so the PRJ was approved by the criteria established in article 58 of the LREF, through *Cram Down*.

> 56. In the present case, there were 50 creditors registered at the General Meeting of Creditors at the time of its installation, therefore able to vote. Of these fifty (50) creditors, 5 had already abstained from voting on whether or not to approve the judicial reorganization plan, as can be seen from mov. 684.9:
> 57. In addition, the votes of nine (9) unsecured creditors were annulled, according to the grounds of this decision, creditors who made up a total credit of R$14,654,100.94 (fourteen million, six hundred and fifty-four thousand, one hundred reais and ninety-four cents), according to the list attached to mov. 684.4:
> 58. Excluding such votes from the count, there were 36 (thirty-six) valid votes, of which 6 (six) were labor, 25 (twenty-five) unsecured and 5 (five) ME/EPP, to be used for the cram *down count*.
> 59. Of these, there was a favorable vote of creditors representing more than half of the values of all credits present at the meeting: 24 (twenty-four) votes "I APPROVE" and 12 (twelve) votes for "REJECT", with the total amount of credit voting "I APPROVE" being R$ 722,394.13 and R$ 606,087.22 (R$ 569,914.42 remaining from unsecured creditors and R$ 36,172.80 from ME and EPP) voting "REJECT".
> 60. In addition, there were THREE classes of voters at the AGM, with Classes I and IV having approved the plan in accordance with article 45 of Law 11,101/2005, complying with the requirement of item II of article 58, paragraph 1 of the LRJF.
> 61. Item III, on the other hand, says that in the class that has been rejected, the plan must obtain the favorable vote of more than 1/3 (one third) of the creditors, computed in the form of paragraphs 1 and 2 of article 45 of the LRJF.
> 62. In this case, the plan was rejected by Class III (unsecured) and, therefore, the count must be made based on paragraph 1 of article 45: "*In each of the classes referred to in items II and III of article 41 of this Law, the proposal must be approved by creditors representing more than half of the total value of the credits present at the meeting and, cumulatively, by simple majority of the creditors present.*" In other words, the count in this case should occur by head (number of creditors) and credit (total value of the credits in the class).

Scientia. Technology, Science and Society
ISSN 3083-5577 | Volume 2 | Number 5 | 2025

63. In the count by 'head', it can be seen that Class III, in which the plan was rejected, had 25 (twenty-five) creditors, of which 15 (fifteen) voted "I APPROVE" and 10 (ten) voted "REJECT", which totaled 60% (sixty percent) of the creditors, a total much higher than the 1/3 (one third) required by law.

64. In the count by 'credit', it can be seen that 49.79% (thirty-nine-point seventy-nine percent) of the value of the credits (R$ 565,175.13 of R$ 1,135,089.55) voted in favor of the approval of the judicial reorganization plan, also making up more than 1/3 (one third) of the value of Class III credits.

Dissatisfied, the Banks aggravated the decision, such as Interlocutory Appeal No. 0101193-37.2023.8.16.0000/PR – filed by Banco Bradesco – and, among their arguments, alleged that: (i) the statement that there was a rush on the part of the financial creditors to finalize the AGM is false, given the 5-hour duration; (ii) it was not only financial institutions that voted against the PRJ; (iii) in light of article 39, paragraph 6 of the LREF and the clauses of the PRJ, his dissenting vote would not be unreasonable and requested the reform of the decision.

The 17th Civil Chamber of the TJPR dismissed the appeal, recognizing the abusiveness of the vote and confirming the sentence that ratified the PRJ for mitigating the requirements for the application of *Cram Down*. In the opinion of the rapporteur of the ruling, the understanding that the magistrate must act sensitively in verifying the requirements of the "*cram down" should prevail*, and should be guided by the principle of preservation of the company, especially when a small group of creditors dominates the deliberation absolutely, overriding what seems to be the interest of the community of creditors, in manifest abuse of vote.

In this sense, it is possible to see that, if the PRJ is not approved in the traditional way required by law, it is appropriate for such approval to occur via *Cram Down*, including by mitigating its requirements, when it is found, in the specific case, that there was abusiveness in the vote exercised and a lack of a collaborative attitude to the detriment of the benefit of the collectivity.

Discussion

In Brazil, the first legal provision dealing with the possibility of annulling the creditor's abusive vote was introduced by the LREF in the reform in 2020. Since the new legal provision entered into force, the courts have faced several controversial aspects that arise from the wording of the law, leaving room for various interpretations. Article 39, paragraph 6 of the LREF, referred to, brought the hypotheses of a vote considered as abusive, consolidated through the majority doctrine of the country, and it is worth adding that the interpretation of the expression "undue advantage" should not be made restrictively. Even so, the Brazilian courts find the abusive exercise of the vote by the creditor in the vote of the PRJ, adopting as a basis for disregarding the vote considered abusive the violation of the guiding principles of judicial reorganization, such as the preservation of the company. In this sense, there are several ways in which the abusive vote can be verified to remove it and, as a consequence, the PRJ being approved via *Cram Down*. Each case must be analyzed in its particularity, assuming the investigation of each case's particularities. Nevertheless, the doctrine and jurisprudence are dissonant, which needs to be settled.

Research Limitations and Implications

The research on Cram Down in Brazilian corporate law has limitations, including the complexity of its application, judicial discretion, potential for abuse, creditor protection concerns, mathematical complexity in calculating approval and viability, limited precedents, and the challenge of balancing competing interests between companies, creditors, and the economy, highlighting the need for ongoing refinement and development of the framework.

The Cram Down is a powerful tool in Brazilian corporate law that allows a judge to approve a Judicial Reorganization Plan (PRJ) even without the approval of all creditor classes, provided specific legal requirements are met. This mechanism implies in providing a viable solution for debtor companies, enabling them to continue operations and avoid bankruptcy, which could harm the company, employees, creditors, and the market. To apply the Cram Down, requirements include partial plan approval by creditors representing over 50% of the credits present at the general creditors' meeting, approval by at least two classes of creditors with a simple majority in one class, and the judge's assessment that the plan is economically viable and in the collective interest of creditors and the economy. Despite its benefits, the Cram Down faces criticism and legal challenges, particularly regarding potential violations of creditor rights and abusive use. Its application depends heavily on judicial interpretation, balancing company preservation with creditor protection.

This work has implications in other fields or research, such as M&A (Vidaletti, Ferreira & Dias, 2025); business negotiations (Correa, Santana & Dias, 2025; Lago Amaral & Dias, 2025; Scheuer & Dias, 2025; Smejoff, Zornitta & Dias, 2025; Soliva & Dias, 2025); labor claims associated to judicial recovery (Barros & Dias, 2025); family business (Dias, 2024; Delgado & Dias, 2025; Moura & Dias, 2025; Valle, Trindade & Dias, 2025); Court of Auditors (Panzarini & Dias, 2025)

Conclusion

In conclusion, the Cram Down institute in Brazilian corporate law provides a crucial mechanism for companies to overcome creditor opposition and achieve judicial reorganization. It balances the interests of debtors and creditors while promoting economic viability and fairness.

Future Research

Future research on Cram Down in Brazilian corporate law could explore case law analysis, comparative studies with other countries, stakeholder perspectives, economic impact analysis, and refining the framework to improve its effectiveness and fairness, ultimately contributing to a deeper understanding of the Cram Down's role in Brazilian corporate law and informing policy and practice.

Conflict of Interests

No conflict of interest.

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