RESTRUCTURING AND INSOLVENCY

CNJ REGULATES REGISTRATION AND EXECUTION OF JUDICIAL ADMINISTRATORS/TRUSTEES DUTIES IN INSOLVENCY PROCEEDINGS

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The Plenary of the National Council of Justice (CNJ) passed on May 18, an actthat orders State Courts to create and keep a Registry of Judicial Administrators/Trustees.[1] The purpose is to standardize the treatment given by the courts to the appointment and execution of the duties of said professionals.

The act, which was written by the working group created to improve court's supervision on in-court and out-of-court reorganization and bankruptcy proceedings, sets forth the criteria to be adopted by judges when appointing trustees, whose duties are vital to the proper development (and success) of insolvency proceedings.

According to the rule, both individuals and legal entities can be registered at the Court's Registry of Judicial Administrators/Trustees, except for those who hold public offices, that are forbidden to work as trustees. As to legal entities, the act determines that they should preferably be founded to perform the specific duties of trustees and that the name of the individual representing the company must be appointed, pursuant to the sole paragraph of article 21 of Law 11,101/05 .

Registration must be renewed annually and it will be possible to so through an online platform. All interested in the registration must submit the documents and informations enumareted in article 4. Among a variety of data, it is required for the parties to provide information on the professional association in which the trustees are enrolled and to prove that all payments due to such association are paid. In addition, they are also required to provide an updated tax and criminal regularity certificates. It will also be necessary to submit a list of all in-court and out-of-court reorganization and bankruptcy proceedings for which they have been appointed on the two years prior to enrollment, followed by a full description of the respective cases, including the names of the judges in charge of the proceedings, along with information on any dismissal from the position of trustee.

In Article 5, paragraph 3, the act sets an equitable rule for appointments, preventing trustees from serving simultaneously in more than four in-court or out-of-court reorganization proceedings and four bankruptcies. This rule should consider the distribution of cases among judges when the court is served by more than one. For the purposes of control, pursuant to article 6, III, of the act, trustees are required to report the court of their appointment and the particulars of the case (including the name of the judge in charge of the respective proceeding) within 15 days of their appointment.

Any appointment that could qualify as nepotism is strictly prohibited. It is the trustee's burden to disclosure his/her degree of partiality and any relations he/she may have with parties to the case, in order to provide the required transparency.

The act restates the obligation of trustees to work diligently and in good faith, in compliance with all the duties imposed by Law No. 11,101/05 – recently expanded by the changes brought forth by Law No. 14,112/20. The courts will have 60 days as of June 2nd – the date the act was published – to create its respective Registry of Judicial Administrators/Trustees and/or adjust the existing ones to the terms of act. Professionals not enrolled in the Registry may be appointed to the position, however the act recommends judges to prioritize the registered professionals.

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[1] The full resolution can be accessed through the link: <https://atos.cnj.jus.br/atos/detalhar/3954>