

Scientific
Journal of
**Applied
Social and
Clinical
Science**

**CORPORATE
GOVERNANCE IN
BUSINESS CONSUMER
RELATIONS AND
CUSTOMERS' OVER-
INDEBTEDNESS.
THE R2 ROPE AND THE
EXISTENTIAL MINIMUM**

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Abstract: The theme of this study is focused on consumer relations involving over-indebtedness. Objective: to analyze general aspects of the over-indebtedness law, the impacts of the existential minimum on consumers' lives and the effects on the relationships between companies and their customers. Methodology: bibliographical and documentary research, inductive method and applied nature. Results: Over-indebtedness is a phenomenon that needs effective awareness and responsibility actions so that people learn to deal with money, its monetary value, its material cost and the immaterial value it translates into consumer relations. Conclusion: In order to obtain beneficial results for consumers and companies, the responsibility for overcoming over-indebtedness must involve the consumer, the State, companies and Brazilian society in its entirety, observing principles that guide consumer relations.

Keywords: consumer relations; over-indebtedness; existential minimum; governance by heart.

INTRODUCTION

Scholars comment on structural changes experienced by society, caused by a different world, which has gained more space, complexity, with parallel existences – physical and virtual – keeping life in motion with the peculiarities of each universe, where man lives, interacts with the goods of life and relates to people. The world has changed and so has life. A new social scenario has been established, demanding a more complex and ecosystemic view, in the face of the new that brings opportunities and insecurities. When we add to this context the challenges brought by the Covid-19 pandemic, the postmodern reality becomes more demanding and worrying, due to the social, economic and legal impacts that have come to reflect on people's lives. The pandemic crisis brought instability and

imbalance to business activities and people, as it moved many workers to unemployment, interrupting and dragging planning, budgets, commitments and hopes to the unexpected loss plan. Without work, there was no income, the economy was running out of steam and money was more expensive and rare. To deal with these new challenges, it was necessary to meet the needs of subsistence, security, importance and recognition of people and organizations.

To better understand these events and their impact on consumer relations between companies and their customers, who found themselves overly indebted, we developed this work in five moments: Initially, we address the challenges of human beings when, in the search for happiness and for life, he finds himself unable to meet his financial commitments, affecting his self-esteem and his sense of importance in society. Afterwards, we examined general aspects of Law 14,181, of July 1, 2021, regarding over-indebtedness. We continue with the analysis of the institute of the existential minimum in consumer relations. Based on these considerations, we present Corda R2 of corporate governance, reflecting on its relevance in business activities with its clients. We close this work with conclusions about the impact of the state of over-indebtedness and the existential minimum on people's lives, with the awareness and responsibility of the State, of Brazilian society, and, in particular, of consumers and companies, in the contributory system and solution for this new economic, social and legal category: the over-indebted.

SOCIAL DEVELOPMENT AND THE CHALLENGES IN THE SEARCH FOR HAPPINESS AND THE PRIMARY GOODS OF LIFE

As society moves, other needs begin to be part of life and man seeks to find ways

to feel more fulfilled. Human nature seems inexhaustible in the pursuit of happiness and one of the paths lies in achievements that allow recognition, personal and professional satisfaction. About the evolution of man, Comparato (2015, p. 42) said that we are unfinished beings and we are in a continuous process of evolution towards a “come-to-be”.

This is man, a being in constant transformation, in pursuit of happiness, whether considered individually or associated with others, to obtain a common end. Everyone wants the same thing: happiness.

Leôncio Netto (2011, p. 136), when dealing with money and happiness, brings an interesting reasoning: “In general, the conclusion was reached that money and happiness are correlated, yes, but this correction has a similar form to of a logarithmic curve. Reflecting on this statement, as increments are added to human life - in the pursuit of happiness, when provided by money - it is necessary to have the economic notion of utility and satisfaction. When money provides ever-increasing gains for happiness, the relationship between them is fruitful, based on utility and satisfaction. When money provides less and less gains for happiness, the relationship ceases to be profitable because money loses its strength and usefulness to achieve man’s satisfaction.

When we talk about happiness, we are in the field of needs, which motivate human behavior, which is linked to emotions, feelings and interests. In this journey towards happiness, the social, psychological and economic context in which man is inserted is very significant, as it can lead to choices that make him vulnerable to adverse situations, even without wanting or realizing it.

When describing the primary goods of life, Rawls (2000) discusses the relevance for human beings of some points, of which the following stand out: the respect we have for our own value and confidence in our potential.

It is human self-esteem. The author also comments on the skills and natural gifts that integrate our attitudes, constituting a two-way street of personal and public satisfaction. They are human excellences. Then he talks about the damage suffered in personal self-esteem when we are not carriers of some excellence or when we are unable to manifest them. It is the natural shame of human beings.

An interesting study carried out by Brasileiro [2022], contemplating emotions and feelings, such as fear and shame, involving non-performing financial debts, was the subject of the following manifestation, when commenting on the Over-indebtedness Law:

Despite the facilities, what the law barely discusses is something that greatly influences the efficiency of the other proposed measures: the emotional factor. The “Debt Profile in Brazil 2021” survey, carried out by Serasa/Opinion Box, shows that 88% of respondents felt ashamed for having an overdue debt, 85% had insomnia and difficulty sleeping due to worry and 84% admitted that their debts affected his social life. The other five available response options surpassed the 60% mark, showing that no one was exempt from negative emotions. The embarrassment of exposing oneself, in addition to not helping to take an attitude towards debt negotiation, can sink the citizen even further, as observed by Júlio César Leandro, doctor in marketing and consumer behavior from Eaesp-FGV: “In my research, I found that there is a great fear of being branded a ‘deadbeat’ or ‘malicious’ when one has a ‘dirty name’. For this reason, in order not to default, many take on even more credit and, when they realize it, they are already so sunk that they have to choose which bills will be paid and which will not, having, in fact, no income for basic household consumption. day by day”.

The indebted human being, without a job, goods and resources to pay his debts, walks towards civil insolvency and social exclusion, leading him to a kind of public punishment,

close to the state that Han calls “exhaustion fatigue”, “for the disappearance of otherness” (2002, p. 40 and p.10). This is a difficult reality of devaluation faced by many Brazilians. It is necessary to remember Reale (2002. p. 220) when he said that “the human person is the source value of all values”.

It is verified how much self-esteem, lack of value, importance and meaning take over life due to the absence of excellence and the presence of natural shame, which takes hold of human beings, when they find themselves unable, as consumers, to comply its obligation due to the lack of sufficient financial resources.

GENERAL ASPECTS OF THE LAW OF OVER-INDEBTEDNESS

Today, we are experiencing the result of the global pandemic, which left its marks and still generates financial effects, as Marques (2021) says, when discussing the update of the CDC in terms of credit and over-indebtedness, referring to “social exclusion more than 30 million of consumers in the market”. To deal with situations involving consumer debt with no prospect of a solution and people with no hope of living, Law 14,181, of July 1, 2021, improved the discipline of consumer credit, establishing three distinct moments in over-indebtedness: prevention, treatment and resolution.

Article 54-A of the law understands that over-indebtedness is characterized by the manifest impossibility of the consumer, an individual, to settle all consumer debts assumed in good faith, without compromising his existential minimum.

Over-indebtedness translates, as analyzed by Silva (2006), into the supervening impossibility that prevents payments and charges assumed by the consumer from being honored, without affecting their livelihood. The person ceases to be an indebted consumer to become a financially and emotionally over-

indebted consumer, a situation that goes beyond their strength and capacity for a positive reaction to payment.

For Sampaio (2018), there is a need for a joint effort by professionals from various areas of knowledge to assist consumers in these conditions, as over-indebtedness is a phenomenon that encompasses multidisciplinary issues, of a financial, psychological, emotional and social nature.

In an article, when studying specific cases of Káren Rick Danilevicz Bertoncello, Marques and Sanseverino (2015), clarify that over-indebtedness can be classified in two ways:

Based on its causes, two distinct types of over-indebtedness can be identified: active and passive. Active over-indebtedness, the first situation to give rise to concern in consumer society, encompasses situations in which the consumer loses control over the ease of credit, accumulating a considerable volume of debts far in excess of their income. Passive over-indebtedness, in turn, encompasses those situations in which, due to the misfortunes of life, the consumer suffers a significant reduction in his income as a result of job loss, illness, separation, leading him to serious financial difficulties.

Marques, Lima and Vial [2020?], expose in their studies that, in international doctrine, there are two ways of treating over-indebtedness: the North American - fresh start model (immediate start), which grants the forgiveness of debts, allowing the that the consumer takes back his life. They add that the American system is based on the remission of debts that remain after the liquidation of the honest debtor's assets. The French system, unlike the US model, has a pedagogical nature, focusing on the re-education and accountability of the debtor. The authors add that “in practice, instead of forgiveness of debts or direct settlement with the liquidation of assets, debtors are obliged to repay them

through a payment plan that can last up to 10 (ten) years”.

In the socioeconomic situation that we live in Brazil and in view of the legal approach given to cases of over-indebtedness, whether active or passive, a new corporate governance perspective must be present, both in the prevention, treatment and solution of this economic, legal and social phenomenon that affects the lives of people and companies.

A LOOK AT THE EXISTENTIAL MINIMUM

According to the Over-Indebtedness Law, the existential minimum provided for in art. 54-A, as protection for the survival of the individual debtor in consumer relations, would be regulated, which happened with the publication, on July 26, 2022, of Decree 11,150. In its regulatory text, art. 3 established the existential minimum for consumer debts of natural persons equivalent to 25% (twenty-five percent) of the minimum wage in effect on the date of publication of the said rule, that is, R\$1,212.00, setting the living minimum at R\$ \$303.00 of the debtor's monthly income.

This minimum, according to the second paragraph of the same art. 3rd, it does not receive an update, even with the annual readjustment of the minimum wage. Therefore, the minimum for survival is immobilized in time, by virtue of the federal decree, regardless of the impact of economic and social movements on people's lives. Life goes on with expected and unexpected events and human survival at a standstill, compromised and lost.

In addition, this value is unique, established, according to specialists, below the poverty line and that neglects the special characteristics of each debtor for his own dignified survival and that of his family.

Article 4 continues to exclude from the calculation, in order to preserve and not

compromise this vital value, debts and credit limits not related to consumption, which aggravates the situation of the over-indebted person who has the survival limit parked in time and his debts and normal expenses growing on that same timeline. Therefore, the vital minimum was and continues to be considered low by scholars, who expressed concern about the fact that 75% (seventy-five percent) of the monthly income is available for new commitments.

The mentioned decree was also criticized on the grounds that the fixed existential minimum makes room for more indebtedness, to the detriment of consumers already in debt, benefiting the financial system, with the contracting of new credit operations to replace previously signed operations, worsening the situation of the debtor, who will be even more financially committed. It is credit being used as a means to supply people's already impaired survival by credit without awareness.

The National Council of General Public Defenders - CONDEGE (2022), issued a technical note expressing its disagreement with the percentage of the stipulated existential minimum, understanding that this identification must be carried out from the socioeconomic reality of each over-indebted person. The Brazilian Institute of Consumer Defense (IDEC) (2022) also seeks a path that makes it possible to balance the decent existential minimum for the debtor and his ability to commit income to creditors. SENACON (2023), through Technical Note No. 11/2023, concludes that Decree 11,150 is illegal and unconstitutional for not observing the State's constitutional duty to protect consumers.

IMPORTANCE OF CORDA R2 CORPORATE GOVERNANCE IN BUSINESS ACTIVITIES WITH ITS CUSTOMERS

The legal changes introduced into the legal system by the Brazilian over-indebtedness law matter and are reflected in business activities and consumer relations. Companies are made of people and for people. All have needs and seek fulfillment. Legal and natural persons relate to each other and are responsible for the agreed deals.

Entrepreneurial work involves time, money, knowledge and reputation. The company that is concerned with its own existence, as an economic and social instrument of happiness for its internal and external stakeholders, seeks, in corporate governance, an improved management that brings more than a legalistic or efficiency vision or, simply, profit-oriented.

In this sense, Alves (2001, p.80) highlights the thinking of John Keynes on the almost secondary role of profit maximization, highlighting business stability, the institutional image before the public and its ability to satisfy its customers as relevant factors in the development of companies, in the following terms:

More than half a century ago, John Maynard Keynes stated that the gradual growth of the company is correlated with the diversification of its functions. According to the eminent British economist, the maximization of profit for the shareholders, as the company grows, occupies an almost secondary role. The stability of the company, its image before the public and its ability to satisfy its customers come to play a prominent role (Keynes, 1947).

Benites and Polo (2013, p.828) talk about generating wealth in a broader sense and point to the protection of consumer interests as one of the company's roles in society, stating:

[...] The role of the company in society is not restricted merely to the production of

goods or the provision of services under efficient conditions, nor is it limited to maximizing profit for shareholders, but consists, rather, in the generation of wealth in a broader sense. The generation of wealth by the company, for Alves (2001), can extend beyond profit maximization, to the benefit of shareholders or creditors, the generation and maintenance of jobs and the development of research, development and communications infrastructure. It also incorporates the preservation of non-renewable natural resources, the promotion of fundamental worker rights and the protection of consumer interests.

This way, an attempt is made to achieve legitimacy in business activities, generating confidence and security in its activities and decisions. This performance goes beyond legality and what is not easily quantified by rational calculations.

Camargo (2021) teaches that companies have evolved and we are seeing changes; governance is currently in phase 5, in which "companies are being asked to have a more human view in decision-making.

Reflecting on how a more humanized vision of governance could be incorporated "in fact and from the heart" in business management, Camargo (2020) ponders:

Organizations need to sincerely internalize the four principles of governance (transparency, accountability, equity and responsibility), have and constantly improve their internal mechanisms, acculturate all their internal and external stakeholders, demonstrating through acts and lessons in their performance. [...] Let's see who believes in governance "by law" or governance "by heart"?

The company with governance by heart provides the people with whom it relates with a listening space, seeking to understand all its institutional relationships. This is fundamental, as a company lives and moves for its stakeholders, including its customers.

Discussing corporate governance, Reis (2019) observes the importance of aligning business objectives and stakeholder interests, aiming to reduce conflicts, maintain the trust of its customers and its image in the market.

Considering this, for the sake of reflection, let us imagine an organizational support rope, which unites, at one end, the individual customers, and, at the other end, the legal entities that offer and contract goods, products, services and credits.

Important forces sustain this rope: the strength of Relationships linking individuals and companies and the strength of Responsibilities to commitments assumed, based on principles of corporate governance, such as integrity and transparency.

This rope metaphorically supplies the needs of both partners in the business carried out, such as trust and security.

This is the Corda R2 of Corporate Governance that must be offered by the company to its consumer client, linking common and complementary interests of the parties involved, generating connection and expectations of happiness and obligatory legal effects for both sides.

We see, in Diagram A, that the principles of Integrity and Transparency are in the same box with the forces - Relationships and Responsibilities - generating continuous support so that the rope remain stretched with positive tension producing confidence and security in the commitments assumed. People stay connected by achieving desired happiness on both sides of the R2 rope.

In Diagram B, we see that the Integrity and Transparency principles are in a separate, dark, unopened box, not forming the basis of the Relationships and Responsibilities strengths. When the principles of support move away from the forces R2, the rope loses its positive tension and breaks; the line is no longer continuous, causing the confidence and

security initially expected to disappear. The connection gained is lost and expectations of happiness are not achieved.

It is important for companies to breathe and exhale quality, efficient and effective corporate governance, as a renewing and sustainable flow of organizational life, reflecting a legitimate, present, preventive, corrective, innovative, ethical, coherent and effective governance system.

Satisfactory business performance, in meeting its mission, objectives and goals, must necessarily focus on its consumer customers, to avoid the legal effects of over-indebtedness on them and on the institution itself.

It is Governance by heart, which goes beyond vision, what is seen and what is required by law. Business management needs to get out of comfort and humanize relationships to impact the numbers it wants to achieve; change before the changes overtake you; get to know the client, their aspirations, needs, feelings, identify interests, difficulties and concerns. Companies have a noble function. It is necessary to impact the world, responsibly take care of customer relations and create better processes, maintaining a humanized, safe, sustainable and prosperous governance.

In order to manage satisfactory and sustainable results for the company and for the client, governance must take care of the R2 rope, which needs to be in the proper tension of Relationship and Responsibility so as not to break its continuous line of satisfaction for both sides. It is the responsibility that makes people act to preserve the relationship. A relationship without responsibility is a loss from a social, moral and financial point of view. It is a duty of care to recognize the customer as an indispensable value for carrying out the business activity, whether in tangible or intangible assets, as it is he who will reflect the image generated by the company in society.

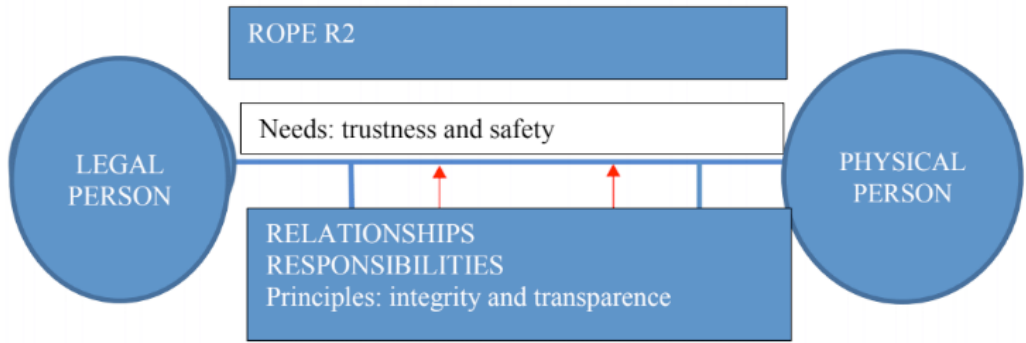


Figure 1 – Diagram A: Rope R2
 Anna Maria Marques de Almeida

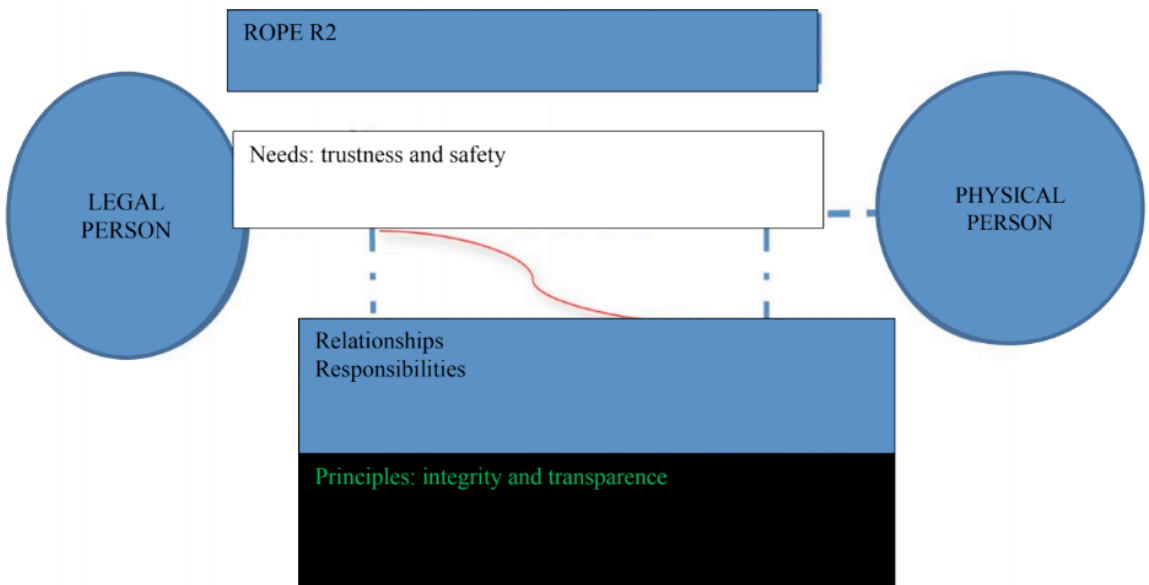


Figure 2 - Diagram B: Rope R2
 Source: Anna Maria Marques de Almeida

CONCLUSION

We return to Leôncio Netto's thought that the problem is not the money itself, but the use that is made of it, in order to draw a reflective background parallel. Money is part of a system, the monetary system. It feeds and drives the economy up or down, as operated. Money must have a definite purpose, be used with conscience and responsibility. Money is a financial means to achieve happiness, fulfillment and satisfaction of natural persons. So too with corporate governance. It is not the problem, but the use that the company makes of it. Governance is a system, the organizational system, which feeds and drives the company up or down, depending on how it operates. Governance needs to have its job defined, be used with conscience and responsibility. Governance is an administrative means to achieve happiness, fulfillment and satisfaction of the legal entity and its stakeholders. In a consumer market, with constant and changing material and immaterial exchanges, the organizational R2 rope needs to be supported by the Relationship and Responsibility between company and customer, with principles of integrity and transparency to meet the needs of trust and security in the business entered into. Companies, with the Over-Indebtedness Law, need, even more, governance by heart, serious, living, human and active in their cultural, structural, people and process pillars. Governance must be prepared, in this new legal, economic and social context, for responsible business action, based on a conscientious culture of contracting in the consumer sphere, taking into consideration,

the best interests of its customers.

With regard to setting the existential minimum, we understand that Decree 11,150/2022, about to complete a year of publication, must give rise to many challenges in the legal field, as it brings a quantitative response backed by a fixed and single value to regulate different situations, disregarding the specificities of the lives of over-indebted people.

Law 14,181/2021 brings the possibility of collectively negotiating debts, giving a chance to a dignified social life – perhaps the last one – to rescue the consumer's self-esteem, identity and value, through their responsibility towards their creditors, honoring its commitments to the extent of its possibilities, without compromising its subsistence.

In this context, thinking about and accompanying the legal possibilities that present themselves, at the moment, a path is indispensable: financial education for all; for those who sell, provide services, for those who grant credits and who receive all these goods. Awareness and responsibility that must involve the consumer, the State, companies and Brazilian society in its scope, in actions committed to the Principles that guide consumer relations: Principle of financial education, Principle of prevention of over-indebtedness and treatment of over-indebtedness; Principle of combating social exclusion and the Principle of preserving the existential minimum, which includes the guarantee of effective preservation of dignified survival of the over-indebted consumer.

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