



# ALMEIDA ADVOGADOS

DIREITO CORPORATIVO

## **ECONOMIC CRISIS AND RECESSION AND THEIR IMPACT ON BUSINESSES: IS JUDICIAL REORGANIZATION ALWAYS THE BEST SOLUTION?**

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With the arrival of the New Coronavirus and, together with it, a scenario of historic economic retraction, many economy and juridical specialists foresee for the upcoming months a significant increase in the number of new judicial actions and, particularly, bankruptcy and judicial reorganization filings. Statistically, according to the Boa Vista Serviços website, bankruptcy filings increased by 30% this May in comparison with April in Brazil. On the basis of this same comparison, judicial reorganization filings and granted judicial reorganizations increased 68.6% and 61.5%, respectively.

In truth, what is projected is that for the course of the second semester of 2020 bankruptcy or judicial reorganization filings will be those having the most direct relationship with the present pandemic given that the initial wave, actually, is that of companies already having sensitive financial problems and suffering pre-existing cash flow strangulation. But the reflection to be made here is whether a company in financial distress would have, in the present scenario, the best solution for its creditors will be always through filing for judicial reorganization?

It appears that the answer is in the negative and that this will depend on the analysis of a number of factors. Judicial Reorganization is a great and important tool in several situations but initially, and in accordance with the spirit of Law 11.101/05, judicial reorganization is intended for such companies that despite being in debt still appear to be viable, objectify

<sup>1</sup> Historical series of indicators measured since 2006 can be consulted on the site:  
<http://www.boavistaservicos.com.br/economia/falencias-e-recuperacoes-judiciais/>

their continuity and possess the means to preserve the economic and social benefits (jobs, payment of taxes, production and public consumer supply continuity amongst others) resulting from their business activity, creating via the judicial proceeding an environment adequate for the existence of balanced and transparent negotiation between the debtor and the creditors, proportioning the interests involved and constructing a scenario fostering the overcoming of the economic-financial distress situation of the debtor company.

From the above premises it is clear that a judicial reorganization proceeding brings with it procedural and social onus to the filing company and, consequently, investment/a certain amount of cash flow availability to effectuate the necessary measures.

Initially, should the company fulfill the minimum legal requirements for filing a judicial reorganization proceeding, pre-evaluation of all existent debt, in particular those of labor claim-related creditors, creditors with real right of guarantee or special privilege, unsecured creditors and those with general privileges as well as micro and small-sized company creditors, will be necessary, given that the existence of a sole majority debt or two or concentration in but one modality can in itself render the real development of a reorganization proceeding unviable.

Further, the company wishing to file for judicial reorganization will be responsible for procedural, notice-publishing, meeting and judicial administrator expenses, this last expense alone possibly totaling 5% of the amount due the creditors under judicial reorganization.

The investment necessary for the judicial protection inherent from the proceeding, further, includes, obligatorily, the drafting of a structured reorganization plan that is feasible, has economic and social meaning, in addition to being reasonable relative to deadlines and procedure, all following the logic of obtaining equilibrium between all those involved, i.e., the creditors and the debtor.

As an example of this one can highlight from the legal provision itself that the judicial reorganization plan cannot stipulate more than 1 (one) year for the payment of labor claim or occupational accident claim-related credit that expired before the date of filing for judicial reorganization.

The company the candidate for the judicial reorganization keep in mind, further, that executions of a fiscal nature are not suspended by the granting of judicial reorganization, with exception of the granting of their payment in installments, in accordance with Brazilian tax law.

Such considerations, even though quite preliminary, become of extreme importance in a context in which the concentration of efforts and expense by businessmen should be evermore strategic in that, in various scenarios, multidisciplinary juridical consultation can

result in much more effectiveness as to the negotiation of debt and company restructuring than a drawn out judicial reorganization proceeding.

Adding to this is the fact that there is public initiative by various sectors of the economy – for example, by banks and credit agencies – to negotiate and extend contract terms in the new crisis scenario.

Attuned to the new reality, there are also legislative initiatives such as Bill No. 1.397/2020, which, *inter alia*, calls for the automatic suspension of judicial executions of companies during the COVID-19 pandemic public calamity, the text of which has already been approved by the Chamber of Deputies with Senate vote pending without indication of when it might take place.

Almeida Advogados has among its professionals a team specialized in Civil Law and Business Law, with ample expertise in assisting national and international companies and that is fully available to render all juridical support necessary.

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